



**AGENDA  
CITY OF ALLEN  
CITY COUNCIL REGULAR MEETING  
NOVEMBER 8, 2016 - 7:00 PM  
COUNCIL CHAMBERS  
ALLEN CITY HALL  
305 CENTURY PARKWAY  
ALLEN, TX 75013**

**Call to Order and Announce a Quorum is Present.**

**Pledge of Allegiance.**

Members of Cub Scout Pack 870 will Post the Colors and Lead the Pledge of Allegiance.

**Public Recognition.**

1. Citizen's Comments.

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

2. Presentation of Proclamations by the Office of the Mayor:

- Presentation of a Proclamation to Representatives of the Collin County Homeless Coalition, Proclaiming November 12-20, 2016, as Hunger and Homelessness Awareness Week.
- Presentation of a Proclamation to Municipal Court Judge Linda Hopper Proclaiming November 7-11, 2016, as Municipal Court Week.

3. Recognition of the Accounting Division for the Receipt of the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting Award for the Fiscal Year Ending September 30, 2015.

**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. Approve Minutes of the October 25, 2016, Regular City Council Meeting.

5. Authorize the City Manager to Amend the Contract with KT Contracting - Concrete Series, LLC, for the Annual On-Call Concrete Repair and Trail Maintenance Programs for an Estimated Annual Amount of \$750,000.
6. Authorize the City Manager to Purchase Three (3) Chevy Tahoe Vehicle Replacements for the Allen Police Department from Reliable Chevrolet through the Interlocal Cooperative Purchasing Agreement with Tarrant County for an Amount of \$99,738.
7. Authorize the City Manager to Approve Annual Beverage Purchases through FinTech.net for Parks & Recreation Purchases Used for Retail Sale at Allen Event Center and The Courses at Watters Creek for an Amount of \$238,600.
8. Authorize the City Manager to Approve Annual Food & Beverage Purchases from Ben E. Keith for Parks & Recreation Purchases Used for Retail Sale at Allen Event Center and The Courses at Watters Creek for an Amount of \$280,000.
9. Authorize the City Manager to Execute a Three-Year Contract with an Option to Renew for Two Additional Years with Weaver and Tidwell, L.L.P. for Professional Auditing Services.
10. Authorize the City Manager to Execute an Arena License Agreement with the Championship Sports Group Inc, Doing Business as Texas Revolution, a Texas Limited Liability Company to Base a Professional Championship Indoor Football League (CIFL) Team at the Allen Event Center.
11. Authorize the City Manager to Purchase of Nineteen (19) New Cisco Switches from CDW-G through an Interlocal Agreement with the State of Texas Department of Information Resources ("DIR") for the Amount of \$69,499.34.
12. Receive the Investment Report for the Period Ending September 30, 2016

**Regular Agenda.**

13. Conduct a Public Hearing and Adopt an Ordinance to Establish Planned Development No. 125 and Adopt Development Regulations, a Concept Plan, and Building Elevations, for Lot 1, Block A, Allen High School Addition, and a 6.248+/- Acre Portion of Land Situated in the Peter Wetsel Survey, Abstract No. 990, Generally Located North of Main Street and East of Jupiter Road. [Community Facilities - Lowery Freshman Center Redevelopment]
14. Conduct a Public Hearing and Adopt an Ordinance Amending the Development Regulations for Planned Development No. 54 and Adopt a Concept Plan, Landscape Plan, and Building Elevations for a 2.387± Acre Tract of Land Generally Located Northeast of Walmart Supercenter, South of Curtis Lane and West of US Highway 75. [Corridor Commercial-Tru by Hilton Hotels]
15. Conduct a Public Hearing and Adopt an Ordinance Amending Planned Development No. 73 to Change the Base Zoning from Shopping Center to Single-Family Residential R-7, and Adopt a Concept Plan, Building Elevations, and Development Regulations, Relating to a 19.4817+/- Acre Portion of Lot 2A, Block B, The Village at Allen. [St. Andrews Park - Single-Family Residential]
16. Consider all Matters Incident and Related to the Issuance and Sale of "Allen



Economic Development Corporation Sales Tax Revenue Refunding Bonds, Series 2017A", Including the Adoption of a Resolution Approving the Resolution of the Corporation Authorizing the Issuance of Such Bonds.

17. Consider all Matters Incident and Related to the Issuance and Sale of "Allen Economic Development Corporation Sales Tax Revenue Bonds, Taxable Series 2017B", Including the Adoption of a Resolution Approving the Resolution of the Board of Directors of the Corporation Authorizing the Issuance of Such Bonds.

**Other Business.**

18. Calendar.

- November 12- Ribbon Cutting Ceremony - Allen Fire Station No. 2 @ 9:30 a.m.

19. Items of Interest. [*Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.*]

**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.)

20. Reconvene and Consider Action on Items Discussed During Executive Session.

**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, November 4, 2016, at 5:00 p.m.

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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.

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:**

November 8, 2016

**SUBJECT:**

Recognition of the Accounting Division for the Receipt of the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting Award for the Fiscal Year Ending September 30, 2015.

**STAFF RESOURCE:**

Eric Cannon, Chief Financial Officer  
Dana Thornhill, Controller

**ACTION PROPOSED:**

Recognition of the Accounting Division for the receipt of the GFOA Certificate of Achievement for Excellence in Financial Reporting Award for the fiscal year ending September 30, 2015.

**BACKGROUND**

The Certificate of Achievement for Excellence in Financial Reporting has been awarded to the City of Allen by the Government Finance Officers Association of the United States and Canada (GFOA) for the Comprehensive Annual Financial Report (CAFR) for the fiscal year ending September 30, 2015. 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.

The CAFR was judged by an impartial panel to meet the high standards of the program including demonstrating full disclosure and clear communication of the City's financial condition in an easily readable format. This is the eighteenth consecutive year that the City has received this award.

The FY2016 CAFR will be submitted to the GFOA for award consideration. We expect to receive the award again from GFOA.

The Certificate of Achievement plaque will be presented to the City Council with a brief presentation and recognition of the Accounting Division staff that were involved in the preparation of the CAFR.

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:**

November 8, 2016

**SUBJECT:**

Approve Minutes of the October 25, 2016, Regular  
City Council Meeting.

**STAFF RESOURCE:**

Shelley B. George, City Secretary

**ATTACHMENTS:**

Minutes

## **ALLEN CITY COUNCIL**

### **REGULAR MEETING**

**OCTOBER 25, 2016**

#### **Present:**

Stephen Terrell, Mayor

#### **Councilmembers:**

Gary L. Caplinger, Mayor Pro Tem

Kurt Kizer

Ross Obermeyer

Joey Herald

Robin L. Sedlacek

Baine Brooks

#### **City Staff:**

Peter H. Vargas, City Manager

Shelli Siemer, Assistant City Manager

Eric Ellwanger, Assistant City Manager

Shelley B. George, City Secretary

Teresa Warren, Director, Public and Media Relations Office

Rebecca Vice, Assistant to the City Manager

Pete Smith, City Attorney

#### **Workshop Session**

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The Workshop Session was not held in lieu of the City Council Community Reception recognizing the City of Allen as the 2016 National Gold Medal Award winner for Excellence in Parks and Recreation Management.

#### **Call to Order and Announce a Quorum is Present**

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With a quorum of the Councilmembers present, the Regular Meeting of the Allen City Council was called to order by Mayor Terrell at 7:01 p.m. on Tuesday, October 25, 2016, in the Council Chambers of the Allen City Hall, 305 Century Parkway, Allen, Texas.

#### **Pledge of Allegiance**

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#### **Public Recognition**

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**1. Citizen's Comments.**

**2. Presentation of Proclamations by the Office of the Mayor:**

- Presentation of a Proclamation to Representatives of the Keep Allen Beautiful Board Proclaiming November 5, 2016, as "Allen Recycles Day."

**3. Recognition of Parks and Recreation Department's Awards from the International Festival and Event Association (IFEA) and the Gold Medal Award from the National Recreation and Park Association.**

- The Parks and Recreation Department was presented with the following seven awards for Market Street Allen USA Celebration at the 2016 IFEA conference on September 27, 2016 in Tucson, Arizona:
  - Gold - Best Event Website (AllenUSA.org)
  - Gold - Best Miscellaneous Multimedia (Digital ads)
  - Gold - Best Single Newspaper Display Ad (Dallas Morning News advertisement)
  - Gold - Best Vendor/Supplier – (Community Waste Disposal)
  - Silver - Best Ad Series (Dallas Morning News advertising campaign)
  - Silver - Best Sponsor Partner (Market Street)
  - Bronze - Best Festival/Event Mobile Application (AllenUSA.org)
- The City of Allen was chosen as the 2016 National Gold Medal Award winner for Excellence in Parks and Recreation Management among cities our size.

**Consent Agenda**

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

- 4. Approve Minutes of the October 11, 2016, Regular City Council Meeting.**
- 5. Adopt an Ordinance Amending the Code of Ordinances, Chapter 9 - Motor Vehicles and Traffic, Section 9-137(b), Modifying the School Zone for Kerr Elementary.**

**ORDINANCE NO. 3428-10-16:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 9, "MOTOR VEHICLES AND TRAFFIC," ARTICLE V, "OPERATION OF VEHICLES," DIVISION 2, "SPEED REGULATIONS," SECTION 9-137(b), TO DESIGNATE TWIN CREEKS DRIVE FROM TWO HUNDRED (200) FEET NORTH OF GLENDOVER DRIVE TO TWO HUNDRED (200) FEET SOUTH OF GLENDOVER DRIVE AS A SCHOOL ZONE WITH A MAXIMUM PRIMA FACIE SPEED LIMIT OF TWENTY (20) MILES PER HOUR; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS (\$200) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

- 6. Adopt a Resolution Reappointing Members to Fill Expiring Terms on the Board of Directors for Tax Increment Financing (TIF) Reinvestment Zone No. 1 (Garden District).**

**RESOLUTION NO. 3429-10-16(R):** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPOINTING THE BOARD OF DIRECTORS OF THE ALLEN TAX INCREMENT FINANCING REINVESTMENT ZONE NO. 1; AND PROVIDING FOR AN EFFECTIVE DATE.

7. **Adopt a Resolution Reappointing Members to Fill Expiring Terms on the Board of Directors for Tax Increment Financing (TIF) Reinvestment Zone No. 2 (Central Business District).**

**RESOLUTION NO. 3430-10-16(R):** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPOINTING THE BOARD OF DIRECTORS OF THE ALLEN TAX INCREMENT FINANCING REINVESTMENT ZONE NO. 2; AND PROVIDING FOR AN EFFECTIVE DATE.

8. **Authorize the City Manager to Execute a Payment in the Amount of \$60,438.56 to PST Services, Inc., a McKesson Company, for Supplemental Payment Recovery Assistance Services.**
9. **Authorize the City Manager to Execute a Mutual Access, Utility, and Fire Lane Easement Purchase Agreement with Petov, L.P. in the Amount of \$50,000 Plus Closing Costs for an Easement Generally Located Between Cheddars and Panda Express on Stacy Road.**
10. **Authorize the City Manager to Execute a Facilities Participation Agreement with Chick-Fil-A, Inc.**
11. **Award Bid and Authorize the City Manager to Execute a One-Year Contract with Interline Brands, Inc., dba Supply Works, for the Purchase of Janitorial Supplies with Four (4) One-Year Optional Renewals for an Annual Amount of \$115,000.**
12. **Authorize the City Manager to Execute a Service Agreement with Motorola Solutions for Hardware and Software Maintenance of the P-25 Trunked Radio System Utilized by Public Safety in the Amount of \$203,668.**
13. **Authorize the City Manager to Execute a Professional Service Contract with Dannenbaum Engineering for the Design of Ridgeview Drive Paving and Drainage Improvements for a Segment of Roadway East of Watters Road to Chelsea Boulevard in the Amount of \$484,550.**
14. **Receive the Capital Improvement Program (CIP) Status Reports.**
15. **Receive the Summary of Property Tax Collections as of September 2016**

The motion carried.

#### **Regular Agenda**

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16. **Conduct a Public Hearing and Adopt an Ordinance Amending the Zoning from Single-Family Residential R-3 to a Planned Development for Townhome Residential District TH, and Adopt a Concept Plan, Open Space Plan, Development Regulations and Building Elevations; for a 6.245± Acre Tract of Land, Generally Located South of Main Street and East of Greenville Avenue. [Ashwood Creek Place: Townhome Development]**

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

The following individuals spoke in favor to the item:

William Edwards, 6060 N. Central Expressway, #500, Dallas, Texas;  
Sudhir Toorpu, 201 & 203 S. Greenville Ave., Allen, Texas.

The following individuals spoke in opposition to the item:

Michael Williams, 800 Youpon Drive, Allen, Texas;  
Tina Broce, 413 Allenwood, Allen, Texas;  
Kenneth R. O'Brien, 536 Cedar Elm Lane, Allen, Texas;  
Mai El Moreghayar, 410 Allenwood Drive, Allen, Texas;  
Keith Broce, 413 Allenwood, Allen, Texas;  
Hector Andres Serrato, 417 Ellis Drive, Allen, Texas;  
Sherilyn Kunkel, 9 Cedar Elm Circle, Allen, Texas.

The following individuals did not speak, but wished to record their support of the item:

Gary Nail, 6401 Stewart, The Colony, Texas;  
Vinaya Dasari, 201 & 203 S. Greenville Ave., Allen, Texas;  
Jaipal Dasari, 327 S. Jupiter Road, Apt. 1121, Allen, Texas;  
Mahipal Dasari, 315 N. Greenville Ave., Apt. 414, Allen, Texas.

The following individuals did not speak, but wished to record their opposition of the item:

Heather O'Brien, 536 Cedar Elm Circle, Allen, Texas;  
Susan Chipper, 408 Allenwood Drive, Allen, Texas;  
Julie Schornack, 1103 Shumard, Allen, Texas;  
Linda Robinson, 414 Ellis, Allen, Texas;  
May L. White, 415 Ellis, Allen, Texas;  
Craig Kunkel, 9 Cedar Elm Circle, Allen, Texas.

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

**MOTION:** Upon a motion made by Councilmember Obermeyer and a second by Councilmember Herald, the Council voted seven (7) for and none (0) opposed, to reopen and continue the public hearing to the November 22, 2016, regular meeting. The motion carried.

Councilmember Kizer commented that it may be in the interest to have the developer meet with residents of the surrounding communities prior to the November 22<sup>nd</sup> meeting.

17. **Conduct a Public Hearing and Adopt an Ordinance Amending the Zoning from Corridor Commercial "CC" to a Planned Development for a Data Center Use, and Adopt a Concept Plan, Building Elevations, Screening Plan, and Development Regulations for a 12.000+/- Acre Portion of Land Generally Located North of Allen Commerce Parkway and West of US Highway 75. [Compass Datacenters: Data Center Development]**

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

Chris Curtis, 14180 N. Dallas Pkwy., #610, Dallas, Texas, spoke in support of the item.

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

**ORDINANCE NO. 3431-10-16:** 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 GRANTING A CHANGE IN ZONING FROM "CC" CORRIDOR COMMERCIAL TO "PD" PLANNED DEVELOPMENT NO. 124 FOR DATA CENTER RELATED USES ON 12.0± ACRES OUT OF

THE GEORGE PHILLIPS SURVEY, ABSTRACT NO. 701, BEING FURTHER DESCRIBED IN EXHIBIT "A," ATTACHED HERETO; ADOPTING DEVELOPMENT REGULATIONS, A CONCEPT PLAN, BUILDING ELEVATIONS, AND A SCREENING PLAN; 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 Sedlacek and a second by Councilmember Obermeyer, the Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 3431-10-16, as previously captioned, amending the zoning from Corridor Commercial "CC" to a Planned Development for a Data Center use, and adopt a concept plan, building elevations, screening plan, and development regulations for a 12.000 +/- acre portion of land generally located north of Allen Commerce Parkway and west of US Highway 75. The motion carried.

**18. Conduct a Public Hearing and Adopt an Ordinance Establishing Reinvestment Zone #33 and Authorize a Tax Abatement Agreement with Compass Datacenters - DFW I, LLC Supporting Construction of Three 29,000 SF Data Center Pods Located South of Ridgeview Memorial Park on Allen Commerce Parkway. [Compass]**

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

Chris Curtis, 14180 N. Dallas Pkwy., #610, Dallas, Texas, spoke in support of the item.

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

**ORDINANCE NO. 3432-10-16:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, DESIGNATING REINVESTMENT ZONE NO. 33 (COMPASS DATACENTERS - DFW I, LLC); PROVIDING ELIGIBILITY OF THE ZONE FOR COMMERCIAL-INDUSTRIAL TAX ABATEMENT; CONTAINING FINDINGS THAT THE AREA QUALIFIES TO BE DESIGNATED AS A REINVESTMENT ZONE AND THE IMPROVEMENTS SOUGHT ARE FEASIBLE AND PRACTICABLE AND OF BENEFIT TO THE LAND AND THE CITY; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALING CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF SAID ORDINANCE.

**MOTION:** Upon a motion made by Councilmember Obermeyer and a second by Councilmember Herald, the Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 3432-10-16, as previously captioned, establishing Reinvestment Zone #33 and authorizing a tax abatement agreement with Compass Datacenters – DFW Inc., LLC, supporting construction of three 29,000 SF data center pods located south of Ridgeview Memorial Park on Allen Commerce Parkway. The motion carried.

**Other Business**

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**19. Calendar.**

- October 29 – Arbor Day and Orchard Park Dedication Celebration – Orchard Park @ 9:00 a.m.
- November 5 – Animal Shelter Ribbon Cutting @ 1:00 p.m.



**20. Items of Interest.**

- November 1 – 4<sup>th</sup> Annual ACO Restyle Show / Allen Community Outreach Boutique opens at 10:30 a.m.

**Executive Session**

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Executive Session was not held.

**Adjournment**

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**MOTION:** Upon a motion made by Councilmember Herald and a second by Councilmember Brooks, the Council voted seven (7) for and none (0) opposed to adjourn the Regular Meeting of the Allen City Council at 9:04 p.m. on Tuesday, October 25, 2016. The motion carried.

These minutes approved on the 8<sup>th</sup> day of November 2016.

**APPROVED:**

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**Stephen Terrell, MAYOR**

**ATTEST:**

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**Shelley B. George, TRMC, CITY SECRETARY**

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:**

November 8, 2016

**SUBJECT:**

Authorize the City Manager to Amend the Contract with KT Contracting - Concrete Series, LLC, for the Annual On-Call Concrete Repair and Trail Maintenance Programs for an Estimated Annual Amount of \$750,000.

**STAFF RESOURCE:**

Jimmy Knipp, Asst. Director of Community Services  
Matt McComb, Landscape Architect  
Debra Morris, Purchasing Manager

**PREVIOUS COUNCIL ACTION:**

On March 8, 2016, the City Council Approved the Initial Contract for Annual On-Call Concrete Repair and Trail Maintenance for an Amount of \$300,000 with the Option for Two One-Year Renewals.

**ACTION PROPOSED:**

Authorize the City Manager to Amend the Contract with KT Contracting - Concrete Series, LLC, for the Annual On-Call Concrete Repair and Trail Maintenance Programs for an Estimated Annual Amount of \$750,000.

**BACKGROUND**

The current contract with KT Contracting was authorized for an amount of \$300,000 during the term of the contract through March 7, 2017. The Annual On-Call Concrete Repair and Trail Maintenance programs involves standard and emergency street, sidewalk, alley, and trail repairs throughout the City.

The FY 2016-2017 budget increased the funding for concrete work to increase the City's ability to complete a higher volume of concrete repairs, including the sidewalk repairs, which are cost shared with the property owner. This contract is based on unit pricing, which remains the same as originally bid. Therefore, the amount authorized on the annual contract needs to reflect the increased budgetary allocation to \$750,000.

The length of the contract remains the same with the first contract term, effective through March 7, 2017, with the option for two one-year renewals.

**BUDGETARY IMPACT**

This agreement is funded by the appropriate funding source as it relates to each specific project, as follows:

- Parks and Recreation - CDC Facility Maintenance - \$150,000
- Community Services - General Fund and Drainage/Contractual Services Fund - \$600,000

### **STAFF RECOMMENDATION**

Staff recommends authorizing the City Manager to amend the contract with KT Contracting - Concrete Series, LLC, for the annual on-call concrete repair and trail maintenance programs for an estimated annual amount of \$750,000.

### **MOTION**

*I make a motion to authorize the City Manager to amend the contract with KT Contracting - Concrete Series, LLC, for the annual on-call concrete repair and trail maintenance programs for an estimated annual amount of \$750,000.*

### **ATTACHMENTS:**

Contract Amendment  
Executed Contract

## CONTRACT AMENDMENT

STATE OF TEXAS           §       AMENDMENT NO (1)  
                                     §  
COUNTY OF COLLIN       §       AGREEMENT FOR ANNUAL ON-CALL  
  CONCRETE REPAIR AND TRAIL MAINTENANCE

This amendment ("Amendment") is agreed upon by and between the City of Allen, Texas ("City") and KT Contracting, Concrete Services, LLC ("Vendor"), acting by and through their authorized representatives.

The Contract Agreement is amended as follows:

### Article V Compensation and Method of Payment

City shall compensate Contractor for the Services, including all labor, materials, equipment and supplies for an amount of \$750,000.00. Contractor shall provide the City with written invoices on a monthly basis describing the work and Services performed. Upon approval, City shall compensate Contractor with the payment term being net 30 days after the date the City is delivered a written invoice for Services completed. In accordance with the Bid, the prices set forth in the Bid Response establish the contract pricing for payment.

Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms and conditions. If there is any conflict between this Amendment and the Agreement, or any earlier amendments, the terms of this Amendment will prevail.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF ALLEN, TEXAS

By: \_\_\_\_\_  
Peter H. Vargas, City Manager

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

KT CONTRACTING, CONCRETE SERVICES, LLC.

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

STATE OF TEXAS

§  
§

**AGREEMENT FOR ANNUAL ON-CALL  
CONCRETE REPAIR AND TRAIL  
MAINTENANCE**

COUNTY OF COLLIN §

This agreement ("Agreement") is made by and between the City of Allen, Texas ("City") and KT Contracting, - Concrete Series, LLC. ("Contractor") acting by and through their authorized representatives.

**Recitals:**

**WHEREAS**, the City desires to award an annual contract for Annual On-Call Concrete Repair and Trail Maintenance for Parks and Recreation Department and Communities Services Facilities from Company in accordance with the City's description and scope of services attached hereto as Exhibit "A" ("Scope of Services"); and

**WHEREAS**, Company desires to provide services to City in accordance with Scope of Services attached hereto as Exhibit "A";

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

**Article I  
Term**

The term of this Agreement shall begin on the last date of execution hereof (the "Effective Date"), unless earlier terminated as provided herein (the "Term").

City maintains the right to renew this Agreement for up to two (2) additional renewal terms of one (1) year at the City's sole discretion, the first renewal term beginning on March 9, 2017. The City may exercise its right to renew this Agreement by providing Contractor written notice thereof thirty (30) days prior to the expiration of the Initial Term or renewal term, as the case may be.

**Article II  
Contract Documents**

Every provision of the documents below is incorporated into this Agreement by reference. The documents referenced below are in descending order of precedence. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence.

- A. This Agreement; and
- B. The City's Request for Bid #2016-1-69 Specifications (Exhibit A);
- C. The Vendor's response to Request for Bid #2016-1-69.

### **Article III Scope of Services**

Contractor shall provide the Services specifically set forth in the Scope of Services as contained in Exhibit "A," which is attached hereto and made a part of this Agreement for all purposes.

### **Article IV Schedule of Work**

Contractor agrees to commence Services upon the Effective Date of this Agreement and to complete the required Services in accordance with the schedules and at the times and locations provided by the City as set forth in Exhibit "A," to the extent they do not conflict with this Agreement.

### **Article V Compensation and Method of Payment**

Charges. City shall compensate Contractor for the Services, including all labor, materials, equipment and supplies as provided in Exhibit "A." The total compensation to Contractor shall not exceed \$300,000. Contractor shall provide the City with written invoices on a monthly basis describing the work and Services performed as provided in Exhibit "A." Upon approval, City shall compensate Contractor as provided herein and in Exhibit "A" with the payment term being net 30 days after the date the City is delivered a written invoice for Services completed. In accordance with the Bid, the prices set forth in the Bid Response in an annual amount of:

### **Article VI Notice to Proceed**

Contractor shall not proceed with any work required under this Agreement without a written Notice to Proceed from City. Any work performed or expenses incurred by Contractor prior to Contractor's receipt of a written Notice to Proceed from City shall be entirely at Contractor's own risk. Work performed and expenses incurred after Contractor has received a written Notice to Proceed from City will be eligible for reimbursement under the terms of this Agreement, subject to an approved task order.

### **Article VII Suspension of Work**

City shall have the right to immediately suspend work by Contractor if City determines in its sole discretion that Contractor has, or will fail to perform, in accordance with this Agreement. In such event, any payments due Contractor shall be suspended until Contractor has taken satisfactory corrective action.

### **Article VIII Devotion of Time; Personnel; and Equipment**

The Contractor shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should the City require additional services not included under this Agreement, the Contractor shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by the City; and without decreasing the effectiveness of the performance of services required under this Agreement.



To the extent reasonably necessary for the Contractor to perform the services under this Agreement, the Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Contractor may deem proper to aid or assist in the performance of the services under this Agreement. The cost of such personnel and assistance shall be borne exclusively by the Contractor.

The Contractor shall furnish the facilities, hardware, equipment, telephones, facsimile machines, email facilities, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

Time is and shall be of the essence in the performance of this Agreement as written.

### **Article IX Availability of Funds**

If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, this Agreement shall be canceled and Contractor may only be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of services delivered under this Agreement or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations for such purposes.

### **Article X Termination**

This Agreement may be terminated by:

- (a) by mutual written agreement of the parties;
- (b) immediately by City, if Contractor defaults or breaches any of the terms or conditions of this Agreement;
- (c) by either party, upon thirty (30) days prior to written notice. Should Contractor terminate this Agreement under this provision, Contractor shall further state the reason(s) for termination in its written notice;
- (d) by City, if Contractor suffers an Event of Bankruptcy or Insolvency; or "Event of Bankruptcy" shall mean the dissolution or termination (other than a dissolution or termination by reason of Contractor merging with an affiliate of Contractor) of Contractor's existence as a going business, insolvency, appointment of receiver for any part of Contractor's property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Contractor and in the event such proceeding is not voluntarily commenced by the Contractor, such proceeding is not dismissed within ninety (90) business days after the filing thereof;
- (e) by City, if City fails to budget and appropriate funds for payment of the obligations hereunder for the then ensuing fiscal year; or

## **Article XI Insurance**

Contractor shall during the term hereof maintain in full force and effect insurance with complies with the Specifications and contains, at a minimum: (1) a policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Contractor's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000 Dollars per occurrence for injury to persons (including death), and for property damage; (2) policy of automobile liability insurance covering any vehicles owned and/or operated by Contractor, its officers, agents, and employees, and used in the performance of this Agreement; and (3) statutory Worker's Compensation Insurance covering all of Contractor's employees involved in the provision of services under this Agreement.

All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service, or approved by the City Risk Manager. (d) A certificate of insurance evidencing the required insurance shall be submitted to the City prior to commencement of services.

## **Article XII Miscellaneous**

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

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

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

Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

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

Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity,



illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

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

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

If intended for City:

City of Allen, Texas.

Attn: Peter Vargas, City Manager

305 Century Parkway

Allen, Texas 75013

Facsimile: 214-509-4118

If intended for Contractor:

KT Contracting – Concrete Series LLC

Attn: Brynne Gutierrez

1521 McKinney St. Suite 100

Melissa, Texas 75454

Email:

[brynne.gutierrez@tallentroofing.com](mailto:brynne.gutierrez@tallentroofing.com)

with copy to:

Peter G. Smith

Nichols, Jackson, Dillard, Hager  
& Smith, L.L.P.

500 N. Akard, 1800 Lincoln  
Plaza

Dallas, Texas 75201

Facsimile: 214-965-0010

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

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

Indemnification. Contractor shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages, (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the performance of the work or caused by the negligent act or omission of Contractor, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Contractor is legally responsible (hereinafter "Claims"). Contractor is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless

such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Company's obligation to defend City or as a waiver of Contractor's obligation to indemnify City pursuant to this Contract. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City.

Audits and Records. Contractor agrees that during the term hereof, City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the Contractor's records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by City or date of termination if sooner.

Conflicts of Interests. The Contractor represents that no official or employee of City has any direct or indirect pecuniary interest in this Agreement.

Warranty. The Contractor warrants to the City that all labor furnished to perform the work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that the work will be performed in a good and workmanlike manner and at least in accordance with industry standards, and that the work will be of good quality, free from faults and defects and in strict conformance with this contract. All work not conforming to these requirements may be considered defective.

Uniforms. Contractor shall provide and require its employees to wear a uniform that bears the company name, logo, and the employee's name. Uniforms are not to be dirty, stained, or torn. Uniforms shall be worn at all times while on the job. Contractor shall provide and ensure the wearing of protective clothing, masks, eye protection, etc., as required by laws, regulation, ordinances, and/or manufacturer's instruction for material and equipment. All employees of Contractor working on right-of-ways or medians must utilize personal protective equipment such as safety vests to insure their visibility to drivers.

*(Signature page to follow)*

EXECUTED this 2nd day of August, 2016.

CITY OF ALLEN



By:   
PETER H. VARGAS, CITY MANAGER

305 Century Parkway  
Allen, Texas 75013

ATTEST

  
SHELLEY B. GEORGE, CITY SECRETARY

EXECUTED this 1 day of AUG, 2016.

KT CONTRACTING – CONCRETE SERIES, LLC

By:   
Signature of Authorized Officer

Name: Brynne Gutierrez  
Print Name

Title: Member

Date: August 1, 2016

1521 McKinney St., Suite 100  
Melissa, Texas 75454

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

1. The City's Request for Bid (Specifications) #2016-1-69
2. The Vendor's response to Request for Bid #2016-1-69





KTCONTR-02 CWENDORF

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/2/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 4682  
Fort Worth, TX-Hub International Insurance Services  
421 West Third Street, Suite 800  
Fort Worth, TX 76102

CONTACT NAME:  
PHONE (A/C, No, Ext): (817) 820-8100 FAX (A/C, No): (817) 870-0310  
E-MAIL: ftw.service@hubinternational.com  
ADDRESS:

INSURED

KT Contracting-Concrete Series, LLC  
DBA Tallent Construction  
1521 McKinney Street, Suite 100  
Melissa, TX 75454

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Colony Insurance Company	39993
INSURER B: Hanover Insurance Company	22292
INSURER C: Commerce & Industry Insurance Company	19410
INSURER D: Texas Mutual Insurance Company	22945
INSURER E:	
INSURER F:	

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		103GL000937401	04/21/2016	04/21/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 COMBINED CONSTR \$ 5,000,000 COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY					
	ANY AUTO ALL OWNED AUTOS HIRED AUTOS	SCHEDULED AUTOS NON-OWNED AUTOS	AWDA61411701	04/21/2016	04/21/2017	BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR				
	<input checked="" type="checkbox"/> EXCESS LIAB	CLAIMS-MADE	18783960	04/21/2016	04/21/2017	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 DED <input checked="" type="checkbox"/> RETENTION \$ 0
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N / A	TSF0001286467	04/21/2016	04/21/2017	<input checked="" type="checkbox"/> PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The General Liability Policy and Auto Liability policies includes a blanket automatic additional insured endorsement that provides additional insured status to the certificate holder when there is a written contract between the named insured and the certificate holder requiring such status subject to policy terms and conditions. The General Liability, Auto Liability and Workers Compensation policies include a blanket automatic waiver of subrogation endorsement providing this feature when there is a written contract between the named insured and the certificate holder requiring the Waiver subject to policy terms and conditions. Policy contains 30 day notice of cancellation. Umbrella follows form.

The Certificate Holder is extended to include The City of Allen, Texas, its officers, agents and employees, as their interest may appear, per policy provisions.

## CERTIFICATE HOLDER

## CANCELLATION

City of Allen  
Attn: Peter Vargas, City Manager  
305 Century Parkway  
Allen, TX 75013

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CONTRACTORS PAC**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

A. **SECTION II – WHO IS AN INSURED** is amended to include as an additional insured all persons or organizations as required by written contract with the named insured:

1. But only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" performed for that additional insured at the location(s) as designated in a written contract and included in the "products-completed operations hazard".
2. But only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

a. your acts or omissions; or

b. the acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) as designated in a written contract

3. From whom you lease equipment when you have agreed in writing in a contract or agreement, executed and signed prior to any loss, that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

A person's or organization's status as an additional insured under this endorsement ends when:

1. your operations for that additional insured are completed; or
2. their contract or agreement with you to furnish such leased equipment expires.

B. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 4. Other Insurance** is amended and the following added:

This insurance afforded to all persons or organizations included as additional insureds noted above in Section A is primary and non-contributory insurance, and we will not seek contribution from any other insurance available to that additional insured.

C. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us** is amended and the following added:

We waive any rights of recovery we may have against any person or organization because of payments we make for injury or damage resulting from your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" if:

1. you agreed to such waiver;
2. the waiver is included as part of a written contract or lease; and
3. such written contract or lease was executed and signed prior to any loss to which this insurance applies.



- D. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, and for all medical expenses caused by accidents under **SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS**, which can be attributed only to ongoing operations at any construction project involving the named insured during this policy period:
1. A separate Construction Project General Aggregate Limit applies to each construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  2. The Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under **SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS** regardless of the number of:
    - a. insureds;
    - b. claims made or "suits" brought; or
    - c. persons or organizations making claims or bringing "suits".
  3. Any payments made under **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages or under **SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS** for medical expenses shall reduce the Construction Project General Aggregate Limit for that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Construction Project General Aggregate Limit for any other construction project involving the named insured during this policy period.
  4. The limits shown in the Declarations for Each Occurrence, Damage to Premises Rented to You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Construction Project General Aggregate Limit.
  5. The most we will pay for the sum of all Construction Project General Aggregate Limits combined and to which this insurance applies is \$5,000,000.
- E. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, and for all medical expenses caused by accidents under **SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS**, which cannot be attributed only to ongoing operations at any construction project involving the named insured during this policy period:
1. Any payments made under **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages or under **SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any Construction Project General Aggregate Limit.
- F. When coverage for liability resulting from the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Construction Project General Aggregate Limit.

- G. If the applicable construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- H. The provisions of **SECTION III – LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.
- I. We will endeavor to mail or deliver 30 days written notice (10 days for non-payment of premium by the Insured) to all certificate holders where written notice of the cancellation or non-renewal of this policy is required by written contract, permit, or agreement with the Named Insured and whose names and addresses will be provided by the broker or agent listed in the Declarations Page of this policy, within three (3) business days of our request for the list of certificate holders, for the purposes of complying with such request.

The notification of cancellation or non-renewal of the policy is solely for the purpose of informing all persons or organizations as required by written contract with the named insured the effective date of cancellation or non-renewal and does not grant, alter, or extend any rights or obligations under this policy. Our failure to provide such notification to all persons or organizations as required by written contract with the named insured will not extend any policy cancellation or non-renewal date nor impact or negate any cancellation or non-renewal of the policy. This endorsement does not entitle any person(s) or organization(s) as required by written contract with the named insured to any benefit, rights or protection under this policy.

Any provision of this endorsement that is in conflict with a statute or rule is hereby amended to conform to that statute or rule.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.



**COMMERCIAL GENERAL LIABILITY  
CG 24 26 07 04**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**AMENDMENT OF INSURED CONTRACT DEFINITION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Paragraph 9. of the **Definitions** Section is replaced by the following:

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

## WORKERS' COMPENSATION AND EMPLOYERS LIABILITY POLICY

## INFORMATION PAGE

Agent Copy

NCCI Carrier Code: 29939

### ITEM 1

INSURED  
NAME AND  
ADDRESS

KT CONTRACTING - CONCRETE SERIES, LLC  
1521 MCKINNEY ST STE 100  
MELISSA TX 75454-9746

POLICY NUMBER  
**0001286467**

Federal Tax ID 472205857  
Bureau Number  
Branch DALLAS  
Renewal of 0001286467  
Entity LIMITED LIABILITY  
COMPANY

OTHER WORKPLACES NOT SHOWN ABOVE:  
see Schedule of Operations attached.

PRODUCER  
08216

HUB INTERNATIONAL TEXAS INC  
DBA: HUB INTERNATIONAL RIGG  
421 W 3RD ST STE 800  
FT WORTH TX 76102-3758

Interim Adjustment QUARTERLY-33% 3  
Safety Group  
Certificate of Approval

### ITEM 2

The Policy Period is from: 04-21-2016 To: 04-21-2017 12:01 A.M. standard time at the insured's mailing address

### ITEM 3

- A. **Workers' Compensation Insurance:** Part One of the policy applies to the Workers' Compensation Law of the states listed here: TEXAS
- B. **Employers Liability Insurance:** Part Two of the policy applies to work in each state listed in item 3A. The Limits of our Liability under Part Two are:
- |                           |                |               |
|---------------------------|----------------|---------------|
| Bodily Injury by Accident | \$1,000,000.00 | Each Accident |
| Bodily Injury by Disease  | \$1,000,000.00 | Each Employee |
| Bodily Injury by Disease  | \$1,000,000.00 | Policy Limit  |
- C. **Other States Insurance:** Part Three of the policy applies to the states, if any, listed here: NONE
- D. This policy includes these endorsements and schedules: see Schedule of Endorsements attached.

### ITEM 4

The premium for this policy will be determined by our manuals of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit.

#### TOTAL ESTIMATED STANDARD PREMIUM

WAIVER OF SUBROGATION  
INCREASED LIMITS 1000/1000/1000  
EMPLOYER LIAB BALANCE TO MIN  
SCHEDULE RATE MODIFIER  
EXPENSE CONSTANT

Factor	Amount
0.020	
0.014	
(3.00%) 0.970	

#### TOTAL ESTIMATED ANNUAL PREMIUM

MINIMUM PREMIUM  
DEPOSIT PREMIUM

Countersigned by



Issue Date: 04-21-2016

04/21/2016

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**WORKERS' COMPENSATION AND  
EMPLOYERS LIABILITY POLICY**

**WC 42 03 04 B**  
Agent Copy

**TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

**Schedule**

1. ( ) Specific Waiver  
Name of person or organization

( X ) Blanket Waiver  
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations: ALL TEXAS OPERATIONS

3. Premium:

The premium charge for this endorsement shall be **2.00** percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: INCLUDED, SEE INFORMATION PAGE.

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.  
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)  
This endorsement, effective on **04/21/2016** at 12:01 a.m. standard time, forms a part of:

Policy No. 0001286467 of Texas Mutual Insurance Company effective on 04/21/2016

Issued to: KT CONTRACTING - CONCRETE SERIES, LLC

Premium:

NCCI Carrier Code: 29939

Authorized Representative

04/21/2016



# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2016-93138

Date Filed:  
08/01/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

KT Contracting - Concrete Series, LLC  
Melissa, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Allen Texas

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

Bid # 2016-1-69  
Annual On-Call Concrete Repair and Trail Maintenance

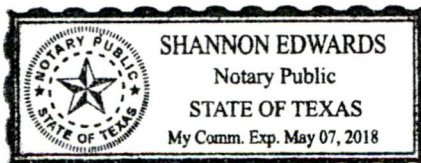
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



### 6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



AFFIX NOTARY STAMP / SEAL ABOVE

*Brynne Gutierrez*  
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Brynne Gutierrez, this the 1 day of Aug, 2016, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

## **CITY COUNCIL AGENDA COMMUNICATION**

**AGENDA DATE:**

November 8, 2016

**SUBJECT:**

Authorize the City Manager to Purchase Three (3) Chevy Tahoe Vehicle Replacements for the Allen Police Department from Reliable Chevrolet through the Interlocal Cooperative Purchasing Agreement with Tarrant County for an Amount of \$99,738.

**STAFF RESOURCE:**

Debra Morris, Purchasing Manager  
Ken Myers, Deputy Chief of Police

**ACTION PROPOSED:**

Authorize the City Manager to Purchase Three (3) Chevy Tahoe Vehicle Replacements for the Allen Police Department from Reliable Chevrolet through the Interlocal Cooperative Purchasing Agreement with Tarrant County for an Amount of \$99,738.

### **BACKGROUND**

The Allen Police Department needs to purchase three (3) Chevy Tahoe's to replace three that were deemed unrepairable after recent collisions. TML and the City's Risk Manager have declared these vehicles as total losses.

### **BUDGETARY IMPACT**

Funding for this purchase has been budgeted in the FY 2016-2017 Vehicle Replacement Fund. Additionally, revenue from the insurance coverage, approximately \$75,000, will offset these replacement costs.

### **STAFF RECOMMENDATION**

Staff recommends authorizing the City Manager to purchase three (3) Chevy Tahoe Vehicle Replacements for the Allen Police Department from Reliable Chevrolet through the Interlocal Cooperative Purchasing Agreement with Tarrant County for an amount of \$99,738.

### **MOTION**

*I make a motion authorizing the City Manager to purchase three (3) Chevy Tahoe Vehicle Replacements for the Allen Police Department from Reliable Chevrolet through the Interlocal Cooperative Purchasing Agreement with Tarrant County for an Amount of \$99,738.*

**ATTACHMENTS:**

Quote

Interlocal Agreement - Executed

# RELIABLE CHEVROLET

HOME OF THE ENFORCER POLICE PACKAGE

## Quote



Date	November 2, 2016
Valid Until	NOVEMBER 16TH 2016
Quote #	FOR TOM HESS
Customer ID	CITY OF ALLEN

### Customer:

CITY OF ALLEN

TOM HESS

### ORDER

BLACK WITH WHITE DOORS AND ROOF

### Quote/Project Notes

THIS QUOTE USES TARRANT CO 2016-006

REMINDER: TARRANT COUNTY CONTRACTS DO NOT INCLUDE ONSTAR (WHICH CANCELS BLUETOOTH COMPATABILITY) AND DOES NOT INCLUDE SCHEDULED DEALER SERVICE MAINTENANCE FOR 2YR/24K

Description	Line Total
2017 TAHOE 9C1 PURSUIT 2WHDR, ITEM 5, BASE BID -----30699.00	
7X6 - LH SPOTLAMP-----331.00	
VENDOR INSTALL PROGARD CENTER MOUNT PUSH BAR-----110.00	
<b>TOTAL OF BID FOR ITEM 5</b>	<b>31,140.00</b>
<b>PLUS THE FOLLOWING REQUESTED ITEMS</b>	
AZ3 - CLOTH FRONT SEATS, 5T5 - VINYL REAR SEAT, VK3 - FRT LIC PLATE, 9U3 - DELETE 20% SECTION	-
AMF - 6 PACK KEYLESS REMOTES	75.00
UT7 - REAR GROUNDING STUDS	88.00
V76 - FRONT RECOVERY HOOKS (FOR EASE OF INSTALLING PUSH BAR)	50.00
UTQ - CONTENT THEFT ALARM DISABLE	50.00
JF4 - POWER ADJUSTABLE PEDALS	150.00
5HP - 6 PACK EXTRA KEYS	40.00
9G8 - DAYTIME RUNNING LAMP DELETE	50.00
PLUS THE FOLLOWING TO BE ADDED BY RELIABLE	
RELIABLE TO PAINT 4 DOORS AND ROOF TO WHITE	1,590.00
DELIVERY (OPT) FROM RELIABLE TO ALLEN, TX - 10.4 X 1.25/M = \$13.00	13.00

### Special Notes and Instructions

THIS PRICE IS GOOD THROUGH NOVEMBER 16TH, 2016

THIS QUOTE DOES NOT INCLUDE DEALER SCHEDULED MAINTENANCE

COPY OF INTERLOCAL WITH TARRANT CO REQUIRED FOR AUDIT PURPOSES

PURCHASE ORDER IS REQUIRED TO SUBMIT WITH ORDER NUMBERS TO GM

Subtotal	\$	33,246.00
Discount		-
Sales Tax Rate	%	0.00
Sales Tax		-
<b>Total</b>	<b>\$</b>	<b>33,246.00</b>

**TOTAL FOR (3) UNITS \$ 99,738.00**

Above information is not an invoice and only an estimate of services/goods described above.

Payment will be collected in prior to provision of services/goods described in this quote.

Please confirm your acceptance of this quote by signing this document

Signature

Print Name

Date

**Thank you for your business!**

Should you have any enquiries concerning this quote, please contact Doug Adams on 972-952-1561

800 NORTH CENTRAL EXPRESSWAY, RICHARDSON, DALLAS, TEXAS, 75080

Tel: 972-952-1561 Fax: 972-952-8172 E-mail: dadams@reliablechevrolet.com Web: www.reliablechevrolet.com



**RESOLUTION NO. 2628-6-07(R)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF ALLEN, TEXAS, AND TARRANT COUNTY, TEXAS, PROVIDING FOR A COOPERATIVE PURCHASING PROGRAM FOR GOODS AND SERVICES; DESIGNATING THE CITY MANAGER, OR DESIGNEE, AS OFFICIAL REPRESENTATIVE OF THE CITY IN MATTERS RELATING TO THE PROGRAM; AND AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council has been presented a proposed Interlocal Agreement by and between the City of Allen, Texas, and Tarrant County, Texas, a copy of which is attached hereto as Exhibit "A," and incorporated herein by reference (herein called "Agreement"); and,

**WHEREAS**, upon full review and consideration of the Agreement and all matters incident and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved and that the City Manager, or his designee, shall be authorized to execute it on behalf of the City of Allen.

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

**SECTION 1:** The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Allen and found to be acceptable and in the best interest of the City of Allen and its citizens, are hereby in all things approved.

**SECTION 2:** The City Manager, or designee, of the City of Allen, under the direction of the City Council of the City of Allen, is hereby designated as the official representative to act for the City in all matters relating to the Cooperative Purchasing Program including the designation of specific contracts in which the City desires to participate.

**SECTION 3:** The City Manager, or designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Allen, substantially according to the terms and conditions set forth in this Agreement.

**SECTION 4:** This Resolution shall become effective from and after its passage.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 12TH DAY OF JUNE, 2007.**

**APPROVED:**

  
\_\_\_\_\_  
Stephen Terrell, MAYOR

**ATTEST:**

  
\_\_\_\_\_  
Shelley B. George, CITY SECRETARY



100511  
STATE OF TEXAS

§  
§  
§

**INTERLOCAL COOPERATION AGREEMENT**

COUNTY OF COLLIN

This Interlocal Cooperation Agreement ("Agreement") is by and between the City of Allen, Texas ("Allen"), and Tarrant County, Texas, acting by and through their authorized officers.

**RECITALS:**

**WHEREAS**, this Agreement is authorized by Chapter 791 of the Texas Government Code and Subchapter F, Chapter 271, Texas Local Government Code; and

**WHEREAS**, Section 271.102 of the TEX. LOC. GOV'T CODE authorizes a local government to participate in a Cooperative Purchasing Program with another local government or a local cooperative organization; and

**WHEREAS**, a local government that purchases goods and services pursuant to a Cooperative Purchasing Program with another local government satisfies the requirement of the local government to seek competitive bids for the purchase of the goods and materials; and

**WHEREAS**, each party has and will on an annual basis obtain competitive bids for the purchase of goods and services; and

**WHEREAS**, the parties desire to enter into a cooperative purchasing program which will allow each party to purchase under goods and services under each other's competitively bid contracts pursuant to Subchapter F, Chapter 271 of the TEX. LOC. GOV'T CODE.

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

**Article I**  
**Purpose**

The purpose of this Agreement is to establish a cooperative purchasing program between the parties, which will allow each party to purchase goods and services under each other's competitively bid contracts pursuant to Subchapter F, Chapter 271 of the TEX. LOC. GOV'T CODE.

**Article II**  
**Term**

The term of this Agreement shall be for a period of one (1) year commencing on the last date of execution hereof ("Effective Date"). Thereafter this Agreement shall automatically renew for successive periods of one (1) year each under the terms and conditions stated herein, unless sooner terminated as provided herein.

### **Article III Termination**

Either party may terminate this Agreement by providing thirty (30) days prior written notice to the other party.

### **Article IV Purchasing**

The City Manager or School Superintendent or their respective designees are authorized to act on behalf of the respective party in all matters relating to this cooperative purchasing program. Each party shall make payments to the other party or directly to the vendor under the contract made pursuant to Subchapter F, Chapter 271 of the TEX. LOC. GOV'T CODE. Each party shall be responsible for the respective vendor's compliance with provisions relating to the quality of items and terms of delivery.

### **Article V Miscellaneous**

5.1 **Relationship of Parties.** This Agreement is not intended to create, nor should it be construed as creating, a partnership, association, joint venture or trust.

5.2 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, or by hand-delivery or facsimile transmission addressed to the respective party at the address set forth below the signature of the party.

5.3 **Amendment.** This Agreement may be amended by the mutual written agreement of both parties hereto.

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

5.5 **Governing Law.** The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the parties shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in accordance with the law of the State of Texas.

5.6 **Entire Agreement.** This Agreement represents the entire agreement among the parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

5.7 **Recitals.** The recitals to this Agreement are incorporated herein.

5.8 **Counterparts.** This Agreement may be executed in any number of counterparts, each of whom shall be deemed an original and constitute one and the same instrument.

EXECUTED this 13<sup>th</sup> day of June, 2006<sup>7</sup>.

**CITY OF ALLEN, TEXAS**

By: \_\_\_\_\_

Peter Vargas, City Manager

305 Century Parkway  
Allen, Texas 75013

**ATTEST:**

By: \_\_\_\_\_

Shelley B. George, City Secretary

**APPROVED AS TO FORM**

By: \_\_\_\_\_

Peter G. Smith, City Attorney

EXECUTED this 15<sup>th</sup> day of may, 2006<sup>7</sup>.

**TARRANT COUNTY, TEXAS**

By: \_\_\_\_\_

B. Glen Whitley, County Judge

100 East Weatherford  
Fort Worth, Texas 76196

**APPROVED AS TO FORM**

By: \_\_\_\_\_

Ray Rike, County Attorney

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
--

**AGENDA DATE:**

November 8, 2016

**SUBJECT:**

Authorize the City Manager to Approve Annual Beverage Purchases through FinTech.net for Parks & Recreation Purchases Used for Retail Sale at Allen Event Center and The Courses at Watters Creek for an amount of \$238,600.

**STAFF RESOURCE:**

David Angeles, General Manager, Allen Event Center  
Carrie Cessna, Assistant Director, Parks and Recreation

**ACTION PROPOSED:**

Authorize the City Manager to approve annual beverage purchases through FinTech.net for Parks & Recreation purchases used for retail sale at Allen Event Center and The Courses at Watters Creek for an amount of \$238,600.

**BACKGROUND**

FinTech.net assists in the management and legal payment requirement of purchasing and payment timelines for alcohol related to retail sale for both Allen Event Center and Courses at Watters Creek. These purchases are made based on retail sale volume by product and have no contracted obligation with any vendors so the City may purchase the most competitive product. Funds spent with FinTech.net have historically been associated with vendors such as Ben E. Keith, Goody Goody, Republic National and Andrews Distributing but may include alternate vendors based on price and product. A Cost of Goods Report and F&B Prime Cost are compiled monthly for review. Revenues received from Food and Beverage cover expenses paid.

**BUDGETARY IMPACT**

Expenses and Revenue are budgeted for and approved by the Allen City Council in the FY 2016 - 2017 Adopted Budget.

**STAFF RECOMMENDATION**

Authorize the City Manager to approve annual beverage purchases through FinTech.net for Parks & Recreation purchases used for retail sale at Allen Event Center and The Courses at Watters Creek for an amount of \$238,600.

**MOTION**

*I make a motion to authorize the City Manager to approve annual beverage purchases through*

***FinTech.net for Parks & Recreation purchases used for retail sale at Allen Event Center and The Courses at Watters Creek for an amount of \$238,600.***

## **CITY COUNCIL AGENDA COMMUNICATION**

**AGENDA DATE:**

November 8, 2016

**SUBJECT:**

Authorize the City Manager to Approve Annual Food & Beverage Purchases from Ben E. Keith for Parks & Recreation Purchases Used for Retail Sale at Allen Event Center and The Courses at Watters Creek for an Amount of \$280,000

**STAFF RESOURCE:**

David Angeles, General Manager, Allen Event Center  
Carrie Cessna, Assistant Director, Parks and Recreation

**ACTION PROPOSED:**

Authorize the City Manager to approve annual Food & Beverage purchases from Ben E. Keith for Parks & Recreation purchases used for retail sale at Allen Event Center and Courses at Watters Creek for an amount of \$280,000.

### **BACKGROUND**

Ben E. Keith is a major supplier of Food & Beverage product for Parks and Recreation, at Allen Event Center and Courses at Watters Creek, with purchases made based on retail sales volume. Products purchased are generally Bakery, Dairy, Meat, Produce, Consumables, Equipment, Supplies and NA Beverages not covered in existing contracts. Parks and Recreation has no contracted obligation with this vendor and may purchase the most competitive product. A Cost of Goods Report and F&B Prime Cost are compiled monthly for review. Revenues received from Food and Beverage cover expenses paid.

### **BUDGETARY IMPACT**

Expenses and Revenue are budgeted for and approved by the Allen City Council in the FY 2017 Adopted Budget.

### **STAFF RECOMMENDATION**

Authorize the City Manager to approve annual Food & Beverage purchases from Ben E. Keith for Parks & Recreation purchases used for retail sale at Allen Event Center and The Courses at Watters Creek for an amount of \$280,000.

### **MOTION**

*I make a motion to authorize the City Manager to approve annual Food & Beverage purchases from Ben E. Keith for Parks & Recreation purchases used for retail sale at Allen Event Center and The*

***Courses at Watters Creek for an amount of \$280,000.***

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
--

**AGENDA DATE:** November 8, 2016

**SUBJECT:** Authorize the City Manager to Execute a Three-Year Contract with an Option to Renew for Two Additional Years with Weaver and Tidwell, L.L.P. for Professional Auditing Services

**STAFF RESOURCE:** Eric Cannon, Chief Financial Officer  
Dana Thornhill, Controller

**PREVIOUS COUNCIL ACTION:** On May 8, 2012, the City Council approved a contract with Weaver and Tidwell for Professional Auditing Services. The current audit services contract expires with the completion of the FY16 audit.

**ACTION PROPOSED:** Authorize the City Manager to Execute a Three-Year Contract with an Option to Renew for Two Additional Years with Weaver and Tidwell, L.L.P. for Professional Auditing Services

**BACKGROUND**

The City Charter requires an annual independent audit of the City's funds and accounts. The FY2016 audit will be the final year of the current contract. The amount paid annually during the last contract was \$65,000 for the first three years and \$67,000 for the two optional year extensions.

Weaver and Tidwell has now submitted a cost proposal to perform the annual audit under the same terms and conditions but at a slightly increased rate of \$67,000 in the first two years, increasing slightly in year three and the last two optional years to \$68,500. This proposed rate is approximately \$25,000 less per year than new audit contracts other cities the size of Allen are now entering into.

If a single audit or any other service outside the scope of the annual financial statement audit is required, Weaver will perform those services for a fee not to exceed \$7,500.

**BUDGETARY IMPACT**

There would be no budgetary impact for FY2017 and FY2018, and a slight increase of \$1,500 annually in FY2019 (excluding the single audit) compared to the FY2016 audit expenditures. Comparing other audit contracts with cities the size of Allen indicates the City will save an estimated \$125,000 over the five year period by approving the contract.

The annual fees proposed by Weaver are as follows (excluding single audit fees):

\$67,000 - FY17

\$67,000 - FY18



\$68,500 - FY19  
\$68,500 - FY20  
\$68,500 - FY21

Historical costs under the prior five year contract (including single audit fees) with Weaver and Tidwell have been:

\$72,000 - FY16  
\$65,000 - FY15  
\$65,000 - FY14  
\$65,000 - FY13  
\$71,000 - FY12  
\$66,000 - FY11  
\$69,400 - FY10

### **STAFF RECOMMENDATION**

Staff recommends approval of the agreement with Weaver and Tidwell, L.L.P. for professional auditing services and authorization for the City Manager to execute the three-year agreement with an option to renew for two additional years with Weaver and Tidwell, L.L.P.

### **MOTION**

*I make a motion to authorize the City Manager to execute a three-year contract with an option to renew for two additional years with Weaver and Tidwell, L.L.P. for professional auditing services.*

### **ATTACHMENTS:**

Auditing Services Agreement with Exhibits

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

**AGREEMENT FOR PROFESSIONAL SERVICES**

This agreement ("Agreement") is made by and between the City of Allen, Texas ("City") and Weaver and Tidwell, LLP, a public accounting firm ("Professional") (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

**RECITALS:**

**WHEREAS**, the City desires to engage the services of the Professional as an independent contractor, and not as an employee, to provide the services described in Exhibit "A" (the "Scope of Services") to assist the City in professional auditing services (the "Project") on the terms and conditions set forth in this Agreement; and

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

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

**Article I**  
**Term**

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

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination the Professional shall deliver to City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by the Professional in connection with this Agreement. Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

**Article II**  
**Scope of Service**

2.1 The Professional shall perform the services in connection with the Project as set forth in the Scope of Services. The Professional shall perform the services: (i) with the professional skill and care ordinarily provided by competent engineers or architects, as the case may be, practicing in the same or similar locality and under the same or similar circumstances and professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as the case may be.

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

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

2.4 Upon execution of this Agreement the City has the right to use the Professional's instruments of service, including but not limited to reports, maps, cost estimates, recommendations or other deliverables for the Project, provided that the City substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The City's employees, agents, contractors and subcontractors may reproduce applicable portions of the instruments of service for use in performing services or construction for the Project. Upon payment of all amounts due Professional hereunder, all deliverables, materials and reports prepared by the Professional in connection with this Agreement shall become the property of the City. The City shall have the right to publish, disclose, distribute and otherwise use such deliverables, materials and reports only for those purposes for which they were intended. Subject to the foregoing, Professional shall upon completion of the services, or earlier termination, provide the City with the deliverables, drawings, reports, maps, and materials prepared by Professional as set forth in the Scope of Services. Any reproductions shall include 24" x 36" blackline 3mil reproducible mylars of the completed drawings plus a compact disc containing all construction plan sheets in a ".dwg" format and a scanned 24" x 36" black & white "Tiff" images at 400 dpi resolution and in electronic format as requested by the City or as required in the Scope of Services.

### **Article III Schedule of Work**

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

### **Article IV Compensation and Method of Payment**

4.1 Professional will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services. Unless otherwise provided herein, payment to the Professional shall be monthly based on the Professional's monthly progress report and detailed monthly itemized statement for services that shows the names of the Professional's employees, agents, contractors performing the services, the time worked, the actual services performed, the rates charges for such service, reimbursable expenses, the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein. The final payment of the compensation shall be made after satisfactory completion of the services

following the City acceptance of the study, report, recommendation or other work set forth in the Scope of Services, and the submittal of "AS BUILT" drawings, or record drawings, as applicable.

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

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

## **Article V**

### **Devotion of Time; Personnel; and Equipment**

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

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

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

5.4 The Professional shall submit monthly progress reports and attend monthly progress meetings scheduled by the City or more frequently as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

## **Article VI Miscellaneous**

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

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

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

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

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

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

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

6.8 Right-of-Access. The Professional shall not enter onto private property without lawful right-of-access to perform the required surveys, or other necessary investigations. The Professional will take reasonable precautions to minimize damage to the private and public property in the performance of such surveys and investigations. Any right-of-access to public or private property shall be obtained in accordance with the Scope of Services.

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

If intended for City:

Peter H. Vargas  
City Manager  
City of Allen, Texas  
3rd Floor, Allen City Hall  
305 Century Parkway  
Allen, Texas 75013  
214.509.4110 - telephone  
214.509.4118 - fax

With a copy to:

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

If intended for Consultant:

Attn: Sara Dempsey, CPA  
Weaver & Tidwell, L.L.P.  
12221 Merit Drive  
Suite 1400  
Dallas Texas 75251  
972-490-1970 – telephone  
972-702-8321 - fax

6.10 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage including the property of the City, its officers, contractors, agents and employees (collectively referred to as the "City") insuring against all claims, demands or actions relating to the work and services provided by the Professional pursuant to this Agreement with a minimum combined single limit of not less than \$2,000,000.00 per occurrence for injury to persons (including death), and for property damage and \$2,000,000.00 aggregate including products and completed operations coverage of \$1,000,000.00. This policy shall be primary to any policy or policies carried by or available to the City; (ii) policy of automobile liability insurance covering any vehicles owned, non-owned and hired and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit for bodily injury, death and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability



covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$1,000,000.00; (iv) Professional Liability with policy limit of not less than \$3,000,000.00 per claim and \$5,000,000.00 in the aggregate, covering negligent acts, errors and omissions by Professional, its contractors, sub-contractors, consultants and employees in the performance of services pursuant to this Agreement. Such Professional Liability insurance shall be annually renewed and remain in effect for not less than twenty four (24) months after substantial completion of the services; and (v) Excess Liability insurance with a limit of not less than \$2,000,000.00. Such insurance shall be excess of the commercial general liability insurance, business auto liability insurance and employers liability insurance. This insurance will apply as primary insurance with respect to any other insurance or self-insurance programs maintained by City and shall be provided on a "following form basis".

- (b) All insurance shall be endorsed to provide the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to the City that indicates the insurance company will provide to the City at least a thirty (30) day prior written notice for cancellation, non-renewal, and/or material changes of the policy. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, the Consultant shall provide at least thirty (30) days prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance.
- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City.
- (d) A certificate of insurance and copies of policy endorsements evidencing the required insurance shall be submitted to the City prior to commencement of services. On every date of renewal of the required insurance policies, the Professional shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Professional shall within ten (10) business days after written request provide the City with certificates of insurance and policy endorsements for the insurance required herein. The delivery of the certificates of insurance and policy endorsements to the City is a condition precedent to the payment of any amounts due to Professional by the City. The failure to provide valid certificates of insurance and policy endorsements shall be deemed a default and/or breach of this Agreement.

6.11 Debarment and Suspension.

- (a) In accordance with 2 CFR section 180.300, the principal of this contract as described in 2 CFR section 180.995 being duly sworn or under penalty of perjury under the laws of the United States, certifies that neither this company nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, the State of Texas or any of its departments or agencies.
- (b) If during the contract period the principal becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, the principal shall immediately inform the City of Allen.
- (c) For contracts that are financed by Federal or State grants, the principal agrees that this section will be enforced on each of its subcontractors, and will inform the City of Allen of any violations of this section by subcontractors to the contract.
- (d) The certification in this section is a material representation of fact relied upon by the City in entering into this contract.

6.12 Indemnification. PROFESSIONAL DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE PROFESSIONAL, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B).

INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE PROFESSIONAL'S LIABILITY.

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

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

of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

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

*(Signature Page to Follow)*

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF ALLEN, TEXAS**

By: \_\_\_\_\_  
Peter H. Vargas, City Manger

**ATTEST:**

By: \_\_\_\_\_  
Shelley George, City Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Peter G. Smith, City Attorney

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**WEAVER AND TIDWELL, L.L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**GENERAL INFORMATION**

The City Charter requires an annual independent audit of the City's funds and accounts. The City of Allen requires the services of a qualified firm of certified public accountants to audit its financial statements for the five fiscal years beginning October 1, 2016 and ending September 30, 2021.

In 2011, the City entered into a contract with Weaver for three years with an option to extended for two years. The FY2016 audit will be the final year of the contract extension.

Weaver will continue to perform the annual audit under the same terms and conditions at a rate of \$67,000 in the first two years, \$68,500 in the third year, and \$68,500 in the last two optional years of this agreement. If a Single Audit on federal programs is required, the fee is not to exceed \$7,500 annually.

All costs directly or indirectly shall be the sole responsibility of and shall be borne completely by the firm.

**SERVICES REQUIRED**

These audits are to be performed in accordance with the provisions contained.

The auditors will be responsible for preparing the Comprehensive Annual Financial Report (CAFR) with the expectation that the GFOA Certificate of Achievement will be awarded. The Finance staff will assist in providing updated information. The City of Allen was awarded the Certificate of Achievement for Excellence in Financial Reporting for the fiscal years ending September 30, 1998 through 2015. The CAFR for the fiscal year ending September 30, 2016 will be submitted for consideration and an award is anticipated. Because the CAFR must be released within six months after the fiscal year end (March 31) to be eligible for the award, coordination of schedules for the following year will be required between the Controller and auditor during January and February of each year.

**SCOPE OF WORK TO PERFORM**

The City of Allen desires the auditor to express an opinion on the fair presentation of its basic financial statements in conformity with generally accepted accounting principles.

The City of Allen also desires the auditor to express an opinion on the fair presentation of its combining and individual fund financial statements and schedules in conformity with generally accepted accounting principles. The auditor is not required to audit the supporting schedules contained in the comprehensive annual financial report. However, the auditor is to provide an "in-relation-to" opinion on the supporting schedules based on the auditing procedures applied during the audit of the basic financial statements and the combining and individual fund financial

statements and schedules. The auditor is not required to audit the introductory section of the report or the statistical section of the report.

The auditor shall also be responsible for performing certain limited procedures involving required supplementary information required by the Governmental Accounting Standards Board as mandated by generally accepted auditing standards.

The scope of the City's annual audit, or of any other work for which the firm is engaged, can only be broadened with the express written consent of the City. The City will have the right to negotiate fees for work related to broadening the scope (special projects) of any work for which the firm is engaged.

#### **Auditing Standards to Be Followed**

To meet the requirements, the audit shall be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants, the standards for financial audits set forth in the U.S. General Accounting Office's *Government Auditing Standards* (1994), the provisions of the Single Audit Act of 1984 (as amended in 1996) and the provisions of U.S. Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, Audits of State and Local Governments.

#### **Reports to Be Issued**

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue:

1. A report on the fair presentation of the basic financial statements in conformity with generally accepted accounting principles; including an opinion on the fair presentation of the supplementary schedule of expenditures of federal awards "in-relation-to" the audited financial statements
2. A report on compliance and internal control over financial reporting based on an audit of the financial statements
3. A report on compliance and internal control over compliance applicable to each major federal program and assist with the preparation and submission of the Data Collection Form

The schedule of expenditures of federal awards and related auditor's reports, as well as the reports on the internal control structure and compliance are not to be included in the CAFR, but are to be issued separately.

In the required reports on internal controls, the auditor shall communicate any significant deficiencies found during the audit. A significant deficiency shall be defined as a deficiency, or a combination of deficiencies in internal control, which is less severe than a material weakness, yet important enough to merit attention by those charged with governance. In addition, the following conditions shall be considered reportable:

Reportable conditions that are also material weaknesses shall be identified as such in the report. Non-reportable conditions discovered by the auditors shall be reported in a separate letter to management, which shall be referred to in the reports on compliance and internal controls. The reports on compliance and internal controls shall include all instances of noncompliance.

Auditors shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the City Manager, Chief Financial Officer and Assistant Chief Financial Officer.

Auditors shall assure themselves that the Audit Committee is informed of each of the following:

1. The auditor's responsibility under generally accepted auditing standards
2. Significant accounting policies
3. Management judgments and accounting estimates
4. Significant audit adjustments
5. Other information in documents containing audited financial statements
6. Disagreements with management
7. Management consultation with other accountants
8. Major issues discussed with management prior to retention
9. Difficulties encountered in performing the audit

### **Special Considerations**

1. The auditors may be requested to provide other types of services, collectively referred to as "special projects." Examples of such services include additional audits or reviews, cost studies, and consulting services.

The City of Allen will send its comprehensive annual financial report to the Government Finance Officers Association of the United States and Canada for review in their Certificate of Achievement for Excellence in Financial Reporting program. The auditor may be required to provide special assistance to the City of Allen to meet the requirements of that program.

### **Regulation Updates and CPE Provisions**

The Auditor shall provide the Finance Department staff with information on regulatory changes that would affect the City and its operations. Examples would be timely notification of changes proposed or initiated by GASB, FASB, or GAO.

## **OTHER INFORMATION AND REQUIREMENTS**

### **A. Prior Audit**

In the event this agreement is assigned to another audit firm, the Professional agrees to allow a review of prior year's work papers by the assignee. The assignee may have access to prior year's audit reports if they wish, by contacting the Chief Financial Officer.



**B. Work Area**

A separate workspace in close proximity to the accounting records will be provided. Photocopy machines, phone, and a fax machine will be made available; however, long distance charges will be billed back to the audit firm.

**C. Audit Work Timing**

Any preliminary work prior to closing accounts must occur and be concluded prior to September 30 of each year. Post-closing work may commence on or about November 15. Completion of fieldwork should be accomplished no later than December 23.

Date for release of the CAFR for printing shall be no later than March 8 of the respective year after the end of fieldwork.

**D. Contractual Agreements**

The contract to be awarded shall be for the provision of services as requested herein at the proposed fees submitted in Exhibit "B". This is considered an all-inclusive, not-to-exceed fee estimate. The City shall agree to make interim payments of each annual fee based on percentage of work performed, or an agreed upon schedule.

**E. Working Papers**

All working papers and reports must be retained for a minimum of three (3) years after the fiscal year end, unless the Professional is notified in writing by the City of Allen of the need to extend the retention period. The auditor shall make available all original working papers for examination by authorized representatives of Federal and State agencies, the City's Chief Financial Officer, Assistant Chief Financial Officer, Controller and any other entity to which access has been granted in writing by the City's Chief Financial Officer. In addition, the Professional shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing financial significance.

**F. Non-appropriation Provision**

The City may cancel the contract should the present or any future City Council not appropriate funds in any fiscal year for the payment of this agreement. No penalty shall attach in the event of any such non-appropriation. In the event of non-appropriation, the City shall give the Professional advance written notice before cancellation of the contract, and the City shall not be obligated to make any payments beyond the end of the fiscal year (related to a subsequent fiscal year).

**G. Conflict of Interest**

The Professional agrees to comply with the conflict of interest provisions of the City Charter and Code of Ordinances. The Professional agrees to maintain current, updated disclosure of information on file with the City Secretary throughout the term of this contract.

**EXHIBIT "B"**

PROFESSIONAL'S QUOTE

May 25, 2016

**EXHIBIT "B"**  
**PROFESSIONAL'S QUOTE**

May 25, 2016

Mr. Eric Cannon  
Chief Financial Officer  
City of Allen  
305 Century Parkway  
Allen, Texas 75013

Re: Cost Proposal for the City of Allen for Professional Auditing Services

Dear Mr. Cannon:

On behalf of Weaver and Tidwell, L.L.P. (Weaver), Certified Public Accountants and Consultants, please find below our cost proposal for the City of Allen (City) for the fiscal years ending September 30, 2017, 2018 and 2019; with the option to audit the City's financial statements for the fiscal years ending September 30, 2020 and 2021.

The total, all-inclusive, maximum price for the years 2017 through 2021 are outlined below.

Service	2017	2018	2019	2020	2021
Financial Audit of the financial statements of the City for the years ending September 30 (single audit not included but is not to exceed \$7,500)	\$67,000	\$67,000	\$68,500	\$68,500	\$68,500

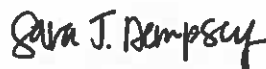
We appreciate your continued consideration in working with Weaver and truly value the relationship we have developed with the City. We have outlined some of the advantages we feel are important to the City in your consideration of continuing this relationship.

**Audit Efficiencies**

We have been able to maintain relatively constant fees over the past several years and would be pleased to do so as estimated above through the 2021 fiscal year end. We are able to maintain our fees due to the institutional knowledge we have gained over our years of service coupled with a rotation of new personnel on to the engagement throughout the years. Weaver has been able to rotate the entire engagement team throughout the years while still maintaining enough continuity of the engagement team to perform effective and efficient audits. Weaver's reengineering process looks for more efficient and effective audit approaches each year. This reengineering process along with rotation of personnel ensures our audit approach does not become stale. We have also been able to streamline the report writing process with integration of the City's trial balances into our electronic auditing systems, minimizing the demands of the City's employees in the report writing process.

If there are any questions, please feel free to contact me at 972.448.6958 or via email at [sara.dempsey@weaver.com](mailto:sara.dempsey@weaver.com).

Sincerely,



Sara Dempsey, CPA  
Engagement Partner, Weaver  
12221 Merit Dr., Ste. 1400  
Dallas, TX 75251

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
--

**AGENDA DATE:**

November 8, 2016

**SUBJECT:**

Authorize the City Manager to Execute an Arena License Agreement with the Championship Sports Group Inc, Doing Business as Texas Revolution, a Texas Limited Liability Company to Base a Professional Championship Indoor Football League (CIFL) Team at the Allen Event Center.

**STAFF RESOURCE:**

David Angeles, General Manager, Allen Event Center

**ACTION PROPOSED:**

Authorize the City Manager to Execute an Arena License Agreement with the Championship Sports Group Inc, doing business as Texas Revolution, a Texas limited liability company to Base a professional Championship Indoor Football League (CIFL) team at the Allen Event Center.

**BACKGROUND**

The Texas Revolution are entering their fifth season of football play at the Allen Event Center under existing ownership. The team currently plays in the Championship Indoor Football League, a twelve team indoor football league in the United States of America.

The prior Arena License Agreement with the existing team ownership, Championship Sports Group Inc, came to an end at the conclusion of the 2016 CIFL season. The present ownership is currently in good standing with the Allen Event Center and City of Allen.

Championship Sports Group Inc, wishes to continue the Texas Revolution's relationship with the City of Allen and play its CIFL seasons at the Allen Event Center. The Texas Revolution play 7 home games a year and historically games align well with the building availability. The license agreement is for a term of one (1) year with option for reoccurring one (1) year renewals if mutually agreeable between City and Team for the same terms. The team has agreed to provide a Twenty Five Thousand Dollar Letter of Credit to the City of Allen and a Twenty Five Thousand Dollar Deposit toward the Arena License Fee.

**BUDGETARY IMPACT**

The Allen Event Center has already budgeted for fiscal year 2017 accounting for the Texas Revolution to play pre-season, regular season and playoff games at the Allen Event Center.

**STAFF RECOMMENDATION**

Staff recommends the City Council authorize the City Manager to execute an Arena License Agreement with

Championship Sports Group Inc, doing business as Texas Revolution, a Texas limited liability company to base a professional Championship Indoor Football League (CIFL) team at the Allen Event Center.

**MOTION**

***I make a motion to Authorize the City Manager to Execute an Arena License Agreement with Championship Sports Group Inc, doing business as Texas Revolution, a Texas limited liability company to base a professional Championship Indoor Football League (CIFL) team at the Allen Event Center.***

**ATTACHMENTS:**

Arena License Agreement

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

**ARENA LICENSE**

This Arena License (the "License") is made by and between the City of Allen, Texas (hereinafter referred to as "City") and Championship Sports Group, Inc., dba Texas Revolution, a Texas limited liability company (hereinafter referred to as "Team") ( each a "Party" or collectively the "Parties"), acting by and through their respective authorized officers.

**WITNESSETH:**

**WHEREAS**, City is the owner of a multi-purpose sports and entertainment facility in the City of Allen, Texas (the "Facility"); and

**WHEREAS**, City has hired a ticketing services company as the exclusive ticket seller for the Facility ("Ticketer"); and

**WHEREAS**, Team desires to use the Facility for indoor football games for the Championship Indoor Football League (the "League"); and

**WHEREAS**, the Parties previously entered into an Arena License Agreement which has terminated;

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

**Article I**  
**Definitions**

In this License, the following words and phrases have the following meanings:

"Applicable Game Hours" means from one (1) hour before the start of each of Team's exhibition, regular season and play-off games to one (1) hour after the conclusion thereof, regardless as to when the City decides to open or close the Facility to the public.

"Applicable Usage Hours" means from two (2) hours before the start of each of Team's exhibition, regular season and play-off games to two (2) hours after the conclusion thereof, regardless as to when the City decides to open or close the Facility to the public.

"Base Level of Service" means the services, personnel, and use of equipment set forth in Exhibit "B".

“Business Day” means any day which is not a Saturday, Sunday or holiday recognized by the City for which the main offices of the City of Allen are closed.

“City” shall mean the City of Allen, Texas.

“Complimentary Ticket” means a ticket that is not sold, including in sponsorship package or traded in kind for any value whatsoever, but distributed as a free ticket for the purpose of promoting games or events.

“Concession Revenue” means gross revenue generated from Concessions during the specified food and beverage period, less City’s costs, expenses, applicable sales and use taxes, and gratuities, if any.

“Concessions” means the sale or distribution of food and beverages (including alcoholic beverages) in the Facility by City, or person or entity contracted by City. Concessions do not include the sales of event merchandise.

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

“Event of Default” has the meaning given to it in Section 5.1.

“Excluded Areas” means the following areas of the Facility: (i) all “sit-down” restaurant or bar areas within the Facility where food and/or beverages are prepared and/or served for consumption within such premises; (ii) Concessions areas; (iii) any office/retail areas used by City or designated by City from time to time for licensing to third parties; (iv) Facility common areas and meeting rooms (to include the exterior plazas); (v) the community ice rink facility; and (vi) all other areas within the Facility including, but not limited to, areas designated by City and used for storage, security, maintenance or other operational purposes.

“Facility” shall mean the Allen Event Center located at 200 E. Stacy Road, Allen, Texas 75002, not including the Excluded Areas.

“Game Drop Count” shall mean the number of attendees entering the building and verified by either electronically scanned or stubbed tickets as confirmed by the City.

“League” means the Championship Indoor Football League.

“License Fee” means the fees set forth in Exhibit “A”.

“Office/Retail Areas” mean the areas within the Facility that City has leased for office and retail purposes.

“Premium Seats” means suite and loge seating within the Facility.

“Team” shall mean the Championship Sports Group Inc., a Texas limited liability company d/b/a Texas Revolution, a member of the Championship Indoor Football League.

“Ticketer” means the company contracted by the City, from time to time, to sell tickets for seats at the Facility, from time to time.

## **Article II**

### **Grant of License**

#### **2.1     Grant.**

(a)     Upon the terms and conditions set forth in this License, and subject to Team’s continued satisfaction and compliance with the terms and conditions set forth herein, City hereby grants to Team, and Team hereby takes and accepts from City, an exclusive license to use the Facility (except for the Excluded Areas) during Applicable Usage Hours during the League season during the Term of this License for the purposes of: (i) playing Team’s League exhibition, regular season and play-off home games; (ii) holding Team’s practices subject to availability as determined by the City; (iii) use of designated rooms as Team’s dressing room, visiting team’s dressing room, a game official’s room, a hospitality room for scouts and members of the media, a Team office, all on the day of event only; and (iv) any other use specifically permitted under this License (collectively the “Permitted Use”). The Permitted Use for exhibition, games and play-off games shall be limited to Applicable Game Hours. The public is not admitted to the Facility until the Applicable Game Hours. Admission of the public to the Facility prior to or after the Applicable Game Hours or for practices is not covered by the Base Level of Service. If the Team desires to admit the public prior to and after the Applicable Game Hours Team shall pay such charges and fees for additional Facility personnel and costs, as determined by the City.

(b)     **Term.** The initial term of this License shall commence on the Effective Date and ending on August 1, 2017, unless sooner terminated as provided herein (“Initial Term”). Notwithstanding any other provisions hereof, Team or City, may terminate this License without cause upon thirty (30) days prior written notice to the other Party to be effective at the expiration date of the then current Term.

**2.2     Option to Renew.** If no Event of Default on the part of Team exists and it is mutually agreed by the Parties, Team shall have the option to extend the term of this License for additional terms of one (1) year each (each a “Renewal Term”) to begin on August 1 of the calendar year immediately following the expiration of the Initial Term or a Renewal Term, as applicable, and ending on the immediately following July 31 of the calendar year. The Team shall notify City in writing of its intention to extend the term of the License not less than thirty (30) days prior to the expiration of the then current Term. Such notice must indicate if Team will



exercise Premium Level Option as described in Exhibit "D". The word "Term" as used herein shall include the Initial Term and all Renewal Terms.

2.3 **Scheduling.** Not later than August 1 of each year, City and Team shall negotiate the scheduling of Team's League home games for the then ensuing League season. City will use all commercially reasonable efforts each year to accommodate Team in scheduling its games at the Facility. Without limiting the generality of the foregoing, City and Team shall co-operate with each other in good faith with respect to the scheduling of Team's regular season and play-off home games. For the purposes of establishing game dates for Team, the regular League season will occur during the months of February through and including June, with play-offs generally occurring during the month of June ("Arena Football Season"). Confirmation of June playoff dates will not be given until May 1 of current League Season. The schedule may not be changed once a schedule for the League Season has been mutually agreed to by the Parties, and confirmed by the League for the indoor season. City acknowledges that Team does not control the League's scheduling of games. It is acknowledged by the Parties that City will take reasonable measures to maximize the use and profitability of the Facility and that there will be other events held at the Facility that may, from time to time, conflict with dates requested by Team.

2.4 **Practice.** The Team may schedule use of the Facility for its team practices and for visiting teams, but such use is subject to availability and only during normal operating hours. Any practice that is open to the public will not be covered by the Base Level of Service and will require the Team to pay such rates and charges established by the City for additional personnel and other costs for such usage. City understands that practice time on game or exhibition days may be required by the League and shall accommodate requests for such practices on days which the Team is scheduled to play a game at the Facility. The use of the Facility on days on which the Team is not scheduled to play a game at the Facility is subject to availability and not subject to the Base Level of Service and will require the Team to pay such rates and charges established by the City for personnel and other costs (including additional conversion and staffing) incurred for such usage.

2.5 **Food and Beverage.** Team shall exclusively use the food and beverage concession and catering services offered by the City. Team shall not bring or cause to be brought into the Facility any food and beverages. Team shall pay such costs, charges and rates (including deposits) as established by City, from time to time for such food and beverage services, which is subject to the terms and conditions set forth in Exhibit "E". Team shall pay the costs and charges for food and beverage services for each event to the City at the settlement following the applicable event. Team, shall not offer, sell, or provide any sponsor, patron or other person any food and beverage package, coupon or voucher for any exhibition, game or play-off game without the prior written approval of the City and prior payment (or deposit at the discretion of the City) to the City for such food and beverage package, coupon or voucher.

2.6 **City Exclusive Rights.** City shall have, and retain the exclusive right to use and operate the Facility, except for the Permitted Use and other rights granted herein to Team. City's exclusive rights shall include but is not be limited to:

- (a) to grant leases, licenses and sell tickets to use Premium Seats (including "party suites" to be leased on an event-by-event basis) within the Facility that have not been designated by the City for use and sale by the Team;
- (b) to provide for, operate (or contract with others to provide or operate) all restaurants, food and beverage services and Concessions within the Facility;
- (c) to sell permanent and non-permanent advertising rights to third parties for all areas within or on the exterior of the Facility that are part of the building inventory (including the advertising on the center field for the Facility naming rights sponsor, the scoreboards, the LED ribbon board when allowable under contract, including back-lit non-back-lit signs, outdoor plaza space and other promotional and advertising platforms, all at the sole discretion of City or City's agent, but no such advertising shall include or utilize the name or logo of "Texas Revolution" or "Revolution" without the prior written consent of Team which may be granted or withheld in its sole discretion; Team may be granted the right to sell certain advertising or sponsorship rights on commission basis mutually agreed to between Team and City;
- (d) to sell the naming rights to the entire Facility and to seek capital sponsorships of specific components of, or items forming a permanent part of the Facility, such as, but not limited to, the scoreboard, playing field/surface (if owned by City), wall signage, Concessions and pouring rights in respect of non-alcoholic beverages, and all advertising/promotion/or sponsorship material for alcohol as allowed by Texas Alcohol Beverage Commission (all revenue of which shall belong to City). The Party obtaining such naming rights shall be entitled to significant and prominent interior signage locations, established in the reasonable discretion of the City. Each capital sponsor of a specific component of or item forming a part of the Facility shall be entitled to a significant interior sign and, where practicable, such sign shall be located on or near the component or item so sponsored, the elements of which shall be established in the reasonable discretion of the City. All of the revenues from the sale of such naming rights and all of the proceeds of such capital sponsorships and all costs associated with obtaining same, shall be for the account of City exclusively with any marketing company being compensated by City. It is understood that where City sells market category dominance sponsorship contracts, Team shall be included to the extent that Team's exclusive rights are impacted. With approval from City, Team may sell field naming rights if Team agrees to maintain and repair City owned field at a

level deemed acceptable by City, no ownership rights will be transferred to Team and City will retain usage rights;

- (e) to market and use the video board and the LED ribbon board, for the sole purpose of fulfilling City's for the purpose of promoting concession sales, special events and activities at the building; the amount of time and length of usage shall be during the game or exhibition and will be mutually agreed upon by both Parties and shall not exceed a total of 10 minutes during each game;
- (f) to market and use up to fifty percent (50%) of the time or usage of the LED ribbon board during pre-game and post-game to promote Concessions, building events, City special events and activities;
- (g) in City's sole discretion, make available to Team the right to sell non-Team inventory on terms to be agreed to by the Parties;
- (h) to sell and retain all Facility parking, if applicable;
- (i) to lease common area and meeting space;
- (j) upon request to receive up to forty (40) complimentary tickets per game from Team;
- (k) to charge any broadcast/Internet provider, an origination fee for either broadcast or webcast of event, established by City from time to time;
- (l) to place City name and/or Building logo on the field at mutually agreed location at City's expense;
- (m) to exclusively provide all food and beverage services for the Facility;
- (n) to use the City designated suites, including tickets;
- (o) at City's request, Team may be granted the right to sell certain advertising or sponsorship rights on commission mutually agreed upon between Team and City; and
- (p) all other rights related to the Facility not described in this License or expressly granted to Team.

2.7 **Team's Exclusive Rights.** Team shall in connection with the Permitted Use have the right:

- (a) to receive the revenue for all non-Premium Seats through Ticketer. Team may release unsold seats prior to a game for City to sell on behalf of Team;
- (b) to sell game programs/magazine(s) for Team's games in the Facility during Applicable Game Hours, to sell advertising space therein, to set up a reasonable number of portable kiosks in the Facility, the number and locations to be determined by Team, to sell Team souvenirs bearing the name "Texas Revolution" or "Revolution," the logos or colors of Team, the League or member teams of League;
- (c) to enter into agreements with third parties concerning the broadcasting on radio, television, satellite, broadband or other media, of Team's games played at the Facility; provided such company pays to the City the applicable origination fee. Team shall be responsible for the costs associated with the set-up and/or transmission of such broadcasts;
- (d) to sell Team and/or league or League member team branded souvenirs at locations in the Facility designated by the City;
- (e) to sell advertising rights for the LED ribbon board, the playing field and the dasher boards/side boards and other non-permanent advertising and marketing or distribution of products in the concourse areas, as more particularly described in Section 3.3(a);
- (f) to place one Team logo on the center of the playing field;
- (g) the personal use of the suite (included in the suites designated for use and sale by Team) known as the "Owner's Suite" (twelve seat) during League events including tickets (however, Team shall pay for any food and beverages served in the suite); and the right of first refusal (exercisable only up to fifteen (15) days prior to any particular event) to use such suite or other suite tickets for all non-Football events ticketed by Ticketer at the standard suite single-event prices; and
- (h) to use and sell Premium Seats designated by the City set forth in Exhibit "D".

**2.8 Team Obligations.**

- (a) Team agrees that the name "Allen Texas" and/or "Allen" will be included in all references to the home city of the Texas Revolution and all Team references to the Facility. Team agrees that all of its marketing and promotional material which refers to the home field of the Texas Revolution will contain a reference to the Allen Event Center, logo identification, the Facility address, and Facility main telephone number.

- (b) Team shall provide at its sole costs the turf and field, goals and any other equipment necessary for game operations at the Facility.
- (c) Team shall be responsible for all expenses and costs for use of the Facility for the Permitted Use in excess of the Base Level of Service and the following additional expenses: (i) collection of state and local sales taxes for taxable sales by the Team; (ii) credit card charges or surcharges for Facility Box Office and Ticketer sales; (iii) fees charged by the City as established from time to time, for services, equipment usage, set up, spot light operators, change-over from one type of event to another, housekeeping clean up personnel, stage hand labor, conversions, guest services, audio visual system and operation of said equipment, food and beverage in excess of the Base Level of Service; (iv) catering upon request at rates established by the City from time to time; (v) food and beverage service including food and beverage packages, coupons and vouchers; and (vi) any other service, personnel, or equipment not included in the Base Level of Service.
- (d) Payment of the License Fee.
- (e) Team shall exclusively utilize Ticketer in the sale of all tickets to Team's games played at the Facility.
- (f) Exclusively use the food and beverage services offered by the City in accordance with the terms and conditions set forth in Exhibit "E"; and pay for the cost for such food and beverages for each event to the City at the settlement following the applicable event.

### Article III Financial Terms

#### 3.1 License Fee.

(a) In consideration of the License granted to Team to use the Facility for the Permitted Use during Applicable Game Hours during the Term, Team shall pay to City the License Fee for each exhibition, regular season and play-off game played by Team in the Facility during the League Season during the Term of this License as set forth in Exhibit "A" (the "License Fee"). Team may not sublease or sub license the Facility or any portion thereof to any person, entity or organization. The License Fee for each exhibition, game or play-off game, as the case may be, shall be paid to the City at the Settlement following the applicable event. Failure of the Team to pay, or timely pay, the License Fee to the City for any exhibition, game or play-off game and/or any costs and charges for food and beverages or other services provided by the City shall entitle City to suspend the Team's Permitted Use of the Facility and/or to draw on the of the Letter of Credit, as provided in Section 3.08.



(b) In consideration of the payment of the License Fee the Team shall be entitled to the following: (i) the Permitted Use of the Facility, not including the Excluded Areas; (ii) utilities (electrical and HVAC); and (iii) Base Level of Service.

(c) Any service, personnel or use of equipment provided by the City for any exhibition, game or play-off game which is not included in the Base Level of Service shall be charged at the then rates or fees established by the City, and paid by the Team to City at the Settlement following each such event.

### **3.2 Revenue Sharing with Team.**

(a) City shall pay to the Team at Settlement a percentage of the Concession Revenue set forth in **Exhibit "C"**.

(b) **Prices.** Team shall be entitled to receive pay one hundred percent (100%) of the sale of tickets for non-Premium Seats.

(c) **Season Ticket Printing.** Team shall pay the costs of printing all season ticket books; and the printer ticket stock (individual game tickets, group sales tickets, promotional tickets) used in the offices of the Team.

(d) Team shall have the right to annually audit the applicable Concessions records.

(e) Team shall retain 100% of the net profit from sales of merchandise produced by Team.

### **3.3 Team Inventory.**

(a) Provided Team pays for all associated costs and expenses, Team shall have the right to sell and retain 100% of the revenues from the following inventory items at prices not inconsistent with those used by any City marketing company: all dasher boards, all penalty boxes, all player benches, up to ten (10) pairs of on-playing surface logos and all field logos ("Team Inventory"). The terms of all such sales shall be subject to the prior approval of the City.

(b) Except for Team Inventory, City shall have the exclusive right to sell and retain all permanent advertising and signage as indicated in Section 2.6.

(c) City and Team recognize the Facility and Team are in the same selling environment and, as such, certain accommodations will have to be made in case of cross-promotional sales. The terms of any cross-promotional sale and revenue distribution thereof will be negotiated between City and Team on a facts and circumstances, case-by-case, good faith basis.

3.4 **Inclusions and Exclusions from the License Fee.** In consideration of payment of the License Fee the Team shall not be responsible for paying the following:

- (a) property taxes, if any, assessed against the Facility, except for any property taxes assessed the Team's leasehold interest and personal property in the Facility, if any;
- (b) the costs of Base Level of Service; and
- (c) the costs of operating, maintaining and repairing the Facility in the ordinary course (but not repairs or maintenance required by reason of the negligence of, or misconduct by, Team or any person for whom, in law or otherwise, Team is responsible, or any invitee of Team, including spectators and visiting teams);

In addition to the License Fee, Team shall be responsible for:

- (a) the costs of any personnel, service and equipment in excess of the Base Level of Service during Applicable Usage Hours;
- (b) the costs of food and beverage, referees, linesmen, office officials, and forms of music & entertainment, to include ASCAP, BMI, SESAC, SAG, AFTRA and other applicable licensing fees and reader board/scoreboard operators and associated usage fees;
- (c) its cost of the Team's insurance required herein;
- (d) the costs of repairs and maintenance required by reason of the negligence of or deliberate misconduct by Team, or any person for whom, in law or otherwise, Team is responsible, or any invitee of Team, including spectators and visiting football teams; however, Team shall not be responsible for the costs of repair and maintenance occasioned solely by reason of ordinary wear and tear;
- (e) the cost of any additional electrical wiring or cable accessories related to computer, phone and other means of electronic communication for Team or associated with Team's games;
- (f) the cost of all set up furnishings and equipment, beyond normal and customary locker room furnishings and equipment; and
- (g) any video or studio costs, including labor, that are beyond the Base Level of Service.

3.5 **Revenue Not Subject to Sharing.** City shall be under no obligation to share, nor shall Team have any entitlement to receive any share of:

- (a) Any revenues arising from or pertaining to events held at the Facility outside Applicable Usage Hours or not directly related to Team;
- (b) Any revenues from the sale of naming rights, vendor agreements or any proceeds of capital sponsorships made or obtained by City, unless the City agrees otherwise in writing in advance that a sponsorship has been sold by Team; and,
- (c) Any other Facility revenues not referenced herein.

Team shall be under no obligation to share, nor shall City have any entitlement to receive any share of:

- (a) Revenues arising from the sale of game night programs/magazines and sponsorship promotional items for Team's games in the Facility during Applicable Usage Hours or from the sale of advertising space therein;
- (b) Revenues from the sale of Team's Inventory; and
- (c) Revenues arising from or pertaining to the broadcasting on radio, television or Internet of Team's games played at the Facility; provided the City is paid the applicable origination fee for such broadcast.

3.6 **Payment.** The License Fee and an amount which is owed by City to Team hereunder, or by Team to City hereunder, in respect to any particular exhibition or game played at the Facility, shall be due and payable not later than the fifth (5th) business day after the date the City delivers an itemized statement for the amount(s) claimed to be owed by the City and/or Team for the respective exhibition or game (the "Settlement"). Any amounts due and payable under this License which are not paid when due shall bear interest at the rate of one and one-half percent (1½%) per month, or the highest legal rate, whichever is lower, until fully paid. The City shall provide Team with an appropriate supporting documentation for all charges in a form reasonably acceptable to the Parties. Disputes relating to the content or the amount of the Settlement shall be made in writing within ten (10) business days after receipt of the itemized statement from the City. Any amounts contained in a Settlement which are not disputed within said ten (10) business days shall be deemed approved. The City shall have the right to suspend the Team's Permitted Use without termination of this Agreement and/or draw on the Letter of Credit set forth in Section 3.08 in the event any amount due the City is not timely paid.

3.7 **Audit Rights.** Either Party shall have the right to audit any of the records of the other Party in respect to any revenues, expenses, fees or payments hereunder. Each Party shall make available to the other Party or its representative such information as such Party may

reasonably require for the purposes thereof. The cost of the audit shall be borne by the Party requesting the audit, unless the audit discloses that the amount in question owed to a Party was understated by more than five percent (5%), in which event, the other Party shall pay the reasonable cost of the audit.

### **3.8 Letter of Credit; Suspension of Permitted Use; Deposits.**

(a) During the Term (including any Renewal Term), Team shall provide an irrevocable letter of credit in favor of the City in a form reasonably acceptable to the City with a financial institution approved by the City in the amount of Twenty-Five Thousand Dollars (\$25,000) capable of being drawn by the City in the event the Team fails to pay or timely pay the License Fee or other fee or costs due City, or in the event of an uncured Event of Default by Team (without terminating this License), or in the event of termination of this License based on an uncured Event of Default or breach of this License by Team ("Letter of Credit"). The Team shall have a continuing duty during the Term to maintain such amount of the Letter of Credit in the event the City draws on the Letter of Credit for any reason other than for termination of this License for an uncured Event of Default. The Team shall provide the Letter of Credit within ten (10) business days after the Effective Date, and prior to the commencement of any Renewal Term hereof. Team may not host any public activity in the Facility until a Letter of Credit is in place.

(b) Team shall pay to City a cash deposit of Twenty-Five Thousand Dollars (\$25,000.00) within five (5) business days after the Effective Date to be applied to 2017 Season settlements and forty five (45) days prior to date of the first regular season game for each subsequent Season during the term of this License to be applied to the applicable game settlements ("Cash Deposit").

(c) The amount of the Letter of Credit and the amount of the Cash Deposit may, by mutual written agreement of the Parties, be adjusted provided the combined amount of the Letter of Credit and the Cash Deposit equals Fifty Thousand Dollars (\$50,000.00) and further provided the amount of the Letter of Credit may not be less than Twenty-Five Thousand Dollars (\$25,000.00).

**3.9 No Other Rights Granted.** Team shall have no other rights relative to its use of the Facility other than those rights expressly granted under this License.

## **Article IV Certain Operational Matters**

**4.1 Suite and Seat Licensing.** No person may occupy or use (whether sitting or standing) any Premium Seat during Applicable Game Hours unless such person holds a valid ticket for such seat for the exhibition or game issued by the City or Team in accordance with this License. In addition the holder of a suite is obligated to purchase a number of tickets for play-off

home games equal to the number of fixed seats in such private suite. City shall have the authority to assign appropriate number and location of Bowl and Premium Level seating to ensure adherence to the Americans With Disability Act requirements.

4.2 **Ticket Prices.** Team may establish and revise ticket prices (not including any parking, ticket fee or ticket fee charged by the City) from time to time for admissions to Team's games played at the Facility. Notwithstanding the foregoing, however:

- (a) ticket prices shall be reasonable and competitive having regard to prices for similar tickets in other League arenas;
- (b) a ticket price for a seat in a private suite on a season's ticket basis shall not be higher than the current ticket price for tickets in the suite; and
- (c) the ticket price for a seat or an extra attendee in a private suite on a walk-up basis shall not be higher than the current ticket price for tickets in the suite.
- (d) Single game ticket discount offers or specials must be made available through both the primary and secondary box offices using approved Ticketer. City may waive this option on a case-by-case basis.

4.3 **Complimentary Tickets.** City shall be entitled up to 40 complimentary tickets to each exhibition, regular season and play-off game played by Team in the Facility. Complimentary tickets shall be counted for attendance purposes.

4.4 **Home Games at the Facility.** Team shall, during the Term of this License, play all of its exhibition, pre-season, regular season and play-off games where it is the home team at the Facility except, for exhibition games which, for promotional purposes, Team wishes to play at a location other than the Facility or the home facility of another League team. Except as aforesaid Team shall not, during any portion of the Term of this Agreement, play any League exhibition, regular season or play-off game where it is the home team at any location other than the Facility.

4.5 **Parking.** City within its discretion may provide Team parking spaces in a defined area for use by Team's staff and designated V.I.P.'s subject to City's reasonable approval. If additional costs are incurred, such as parking garage maintenance or cleaning, due to the costs of providing such parking spaces, then such additional costs shall be the responsibility of Team.

4.6 **Exclusive License.** During the Term of this License, City shall not, without the prior written consent of Team in its sole discretion, permit the use of the Facility for the playing of professional indoor football games by others. City will make every effort to include Team in all football related activities included within the Facility.

4.7 **Insurance.**

(a) The Team shall during the Term obtain and maintain in full force and effect at its expense, the following policies of insurance and coverage:

- (1) Commercial General Liability Policy covering bodily injury, death and property damage, including the property of the City, its officers, contractors agents and employees (collectively referred to as the "City") insuring against all claims, demands or actions relating to license, lease or use of the Facility pursuant to this License with minimum limits on a per project basis of not less than One Million Dollars (\$1,000,000) combined single limit and Two Million Dollars (\$2,000,000) aggregate, including products and completed operations coverage with a minimum limit of Two Million Dollars (\$2,000,000), and Personal and Advertising Injury with a minimum per occurrence limit of One Million Dollars (\$1,000,000). This policy shall be primary to any policy or policies carried by or available to the City;
- (2) Workers' Compensation/Employer's Liability Insurance Policy in full accordance with the statutory requirements of the State of Texas and shall include bodily injury, occupational illness or disease coverage with minimum Employer's Liability limits of not less than \$500,000/\$500,000/\$500,000;
- (3) Automobile Liability Insurance Policy covering all operations of the Team pursuant to this License involving the use of motor vehicles, including all owned, non-owned and hired vehicles with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage liability; and
- (4) Excess Liability Insurance Policy with a limit of not less than \$2,000,000. Such insurance shall be in excess of the commercial general liability insurance, business auto liability insurance and employer's liability insurance. This insurance will apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall be provided on a "following form basis". Team waives all rights against the City for recovery of damages to the extent these damages are covered by the umbrella liability insurance obtained by City pursuant to this Agreement. Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

(b) Waiver of Subrogation Rights. The Commercial General Liability, Worker's



Compensation, and Business Auto insurance required pursuant to this License shall provide for waivers of all rights of subrogation against the City;

- (c) Additional Insured Status. With the exception of Worker's Compensation Insurance, all insurance required pursuant to this License shall be endorsed to include and name the City as additional insureds using Additional Insured Endorsements that provide the most comprehensive coverage to the City under Texas law including products/completed operations;
- (d) Certificates of Insurance. Certificates of Insurance and policy endorsements in a form satisfactory to City shall be delivered to City prior to the commencement of the use or entry of the Facility under this License and prior to any Renewal Term hereof. All required policies shall be endorsed to provide the City with 30 days advance notice of cancellation or material change in coverage;
- (e) On every date of renewal of the required insurance policies, the Team shall cause a Certificate of Insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Team shall, within ten (10) business days after written request, provide the City with Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies). The delivery of the Certificates of Insurance and the policy endorsements (including copies of such insurance policies) to the City is a condition precedent to the continuation of the use and occupancy of the Facility by the Team. The failure to provide valid Certificates of Insurance and policy endorsements shall be deemed a default and/or breach of this License; and
- (f) Carriers. All policies of insurance required to be obtained by the Team pursuant to this License shall be maintained with insurance carriers that are satisfactory to City and lawfully authorized to issue insurance in the state of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City. All insurance coverage required herein shall be evidenced by a certificate of insurance and policy endorsement submitted by the Team's insurer or broker. Certificates of Insurance and policy endorsements received from any other source will be rejected.

**4.8 Sale of Facility or Assignment of Facility License or Operating Rights.** The City may sell the Facility and assign this License to the purchaser at any time without the consent of the Team. In the event that City assigns its rights under this License, then provided such third party enters into an agreement with Team assuming the obligations of City under this

License as and from the date of sale or assignment, then City shall be released from all such obligations so assumed.

4.9 **Assignment.** Team may not assign any of its rights, or delegate any of its obligations, in whole or in part without the prior written consent of City, which may be withheld in its sole and absolute discretion and for any or no reason. Any attempted assignment or delegation shall be null and void. In the event of an assignment to which the City has consented, the assignee shall be required to provide a letter of credit as set forth in Section 3.8.

4.10 **City Covenants.** City covenants with Team that, throughout the Term of this License:

- (a) Team shall have quiet enjoyment of the Facility (other than the Excluded Areas) during Applicable Usage Hours;
- (b) City will operate the Facility in compliance with all applicable laws, codes, by-laws and regulations;
- (c) City will apply any operating rules and procedures for the Facility that it may choose to devise and implement to Team and all other users of the Facility in a fair and non-discriminatory manner, such rules and procedures to be reasonable and in keeping with the intent of this License; and
- (d) City will maintain, repair and replace the Facility such that it is at all times in good and proper operating condition save and except for reasonable wear and tear and Team's obligations under this License.

4.11 **Team's Covenants.** Team covenants with City that it shall, throughout the Term of this License, at its sole cost and expense:

- (a) operate Team in a manner consistent with the requirements and practices of the League and its other member teams;
- (b) purchase and maintain insurance in accordance with Section 4.8; and
- (c) maintain its membership and participation in the League.

4.12 **Team's Indemnity.** TO THE FULLEST EXTENT ALLOWED BY LAW THE TEAM SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS, INVITEES, AND EMPLOYEES (COLLECTIVELY THE CITY) FROM AND AGAINST ANY SUITS, ACTIONS, LOSSES, COSTS, EXPENSES, DAMAGES, CLAIMS OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION INCLUDING ALL REASONABLE EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY FEES

ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF A PERSON, OR PROPERTY DAMAGE INCLUDING THE LOSS OF USE OF ANY PROPERTY ARISING FROM OR ALLEGED TO ARISE OUT OF THE USE OF THE FACILITY BY THE TEAM, ITS EMPLOYEES, CONTRACTORS, SUB-CONTRACTORS, AND INVITEES OR THE RESULT OF ANY NEGLIGENT ACT OR OMISSION OR ANY INTENTIONAL ACT OR OMISSION BY THE TEAM, ITS EMPLOYEES, CONTRACTORS, AND SUB-CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE TEAM, ITS CONTRACTORS OR SUB-CONTRACTORS, OR ANYONE FOR WHOSE ACTS THE TEAM MAY BE LIABLE, OR DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT BY THE TEAM, ITS EMPLOYEES, CONTRACTORS AND SUB-CONTRACTORS, OR ANY OF THEIR AGENTS AND EMPLOYEES, OR RESULTING FROM THE BREACH OR DEFAULT OF THIS LICENSE BY THE TEAM, ITS EMPLOYEES, CONTRACTORS, SUB-CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE TEAM OR ANYONE FOR WHOSE ACTS THE TEAM MAY BE LIABLE, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE TEAM, ITS EMPLOYEES, CONTRACTORS OR SUB-CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE TEAM, ITS SUB-CONTRACTORS OR ANYONE FOR WHOSE ACTS THE TEAM OR ITS SUB-CONTRACTOR MAY BE LIABLE, OR THE NEGLIGENCE OR WILLFUL ACT OF ANY SPECTATOR OR OTHER INVITEE OF TEAM.

Indemnification for Employee Injury Claims. WITHOUT LIMITING THE FOREGOING, AND TO THE FULLEST EXTENT PERMITTED BY LAW, TEAM HEREBY INDEMNIFIES AND HOLDS HARMLESS THE CITY FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF THE TEAM, ITS CONTRACTORS, OR SUB-CONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY, IT BEING THE EXPRESSED INTENT OF THE TEAM AND THE CITY THAT IN SUCH EVENT THE TEAM IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS NOT ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF TEAM'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS CONTRACTORS OR SUB-CONTRACTORS. WITH REGARD TO CLAIMS AGAINST ANY PARTY SEEKING INDEMNITY UNDER THIS LICENSE WHICH ARE MADE BY AN EMPLOYEE OF THE TEAM, ITS CONTRACTORS, AND SUB-CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE TEAM, ITS CONTRACTORS AND SUB-CONTRACTORS, OR ANYONE FOR WHOSE ACTS THE TEAM, ITS CONTRACTORS OR SUB-CONTRACTORS MAY BE LIABLE. THE INDEMNIFICATION OBLIGATION UNDER THIS LICENSE SHALL NOT BE LIMITED BY ANY LIMITATION ON AMOUNT OR TYPE OF DAMAGES,

COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE TEAM, ITS CONTRACTORS OR SUBCONTRACTORS OR ANY OTHER EMPLOYER UNDER WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER SIMILAR EMPLOYEE BENEFIT ACTS. THE TEAM SHALL PROCURE LIABILITY INSURANCE COVERING TEAM'S OBLIGATIONS UNDER THIS SECTION.

INDEMNIFICATION FOR COPYRIGHT INFRINGEMENT CLAIMS. IN ADDITION TO THE INDEMNIFICATION PROVIDED ABOVE, THE TEAM HEREBY INDEMNIFIES, AND HOLDS HARMLESS THE CITY FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE AND ATTORNEYS' FEES ARISING OUT OF OR RELATING TO ANY CLAIM AGAINST THE CITY ASSERTING INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH TEAM'S USE OF THE FACILITY EXCEPT TO THE EXTENT THE INFRINGEMENT IS CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE CITY INDEMNITEES.

IT IS AGREED WITH RESPECT TO ANY LEGAL LIMITATIONS NOW OR HEREAFTER IN EFFECT AND AFFECTING THE VALIDITY OR ENFORCEABILITY OF THE INDEMNIFICATION OBLIGATIONS UNDER THIS LICENSE OR THE ADDITIONAL INSURED REQUIREMENTS UNDER THE INSURANCE REQUIRED BY THIS LICENSE, SUCH LEGAL LIMITATIONS ARE MADE A PART OF THE CONTRACTUAL OBLIGATIONS AND SHALL OPERATE TO AMEND THE OBLIGATIONS TO THE MINIMUM EXTENT NECESSARY TO BRING THE PROVISION INTO CONFORMITY WITH THE REQUIREMENTS OF SUCH LIMITATIONS, AND AS SO MODIFIED, THE OBLIGATIONS SHALL CONTINUE IN FULL FORCE AND EFFECT.

THE INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS LICENSE SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LICENSE FOR A PERIOD OF FOUR (4) YEARS.

#### **Article V Miscellaneous**

- 5.1 **Default.** The following occurrences shall be considered "Events of Default":
- (a) Team shall fail to pay any amount due hereunder to City when due and such default shall continue for a period of more than fifteen (15) days after written notice thereof has been given to the Party responsible for such payment;
  - (b) Team shall fail to perform any other of its covenants or obligations hereunder and such default shall continue for a period of more than thirty (30) days after written notice thereof has been given to it;

- (c) Team shall: (i) become insolvent or generally not pay its debts as such debts become due; (ii) admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or (iii) institute or have instituted against it any proceeding seeking (x) to adjudicate it as bankrupt or insolvent, (y) any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or (z) the entry of an order for the appointment of a receiver, trustee or other similar official for it or for any substantial part of its assets, and in each such case such proceeding is not terminated, stayed or set aside within a period of sixty (60) days after it is instituted; or
- (d) City fails to perform any of its covenants or obligations hereunder and such default shall continue for a period of more than thirty (30) days after written notice thereof to City.

If an Event of Default shall occur, the non-defaulting Party shall deliver written notice given to the defaulting Party and if such Event of Default is timely cured, the non-defaulting Party, without prejudice to any other right or remedy that may be available to the non-defaulting Party, whether under this License or otherwise at law or in equity, may terminate this License.

5.2 **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflict of law rules. Exclusive venue for any action 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.

5.3 **Entire Agreement.** This License represents the entire agreement of the Parties hereto concerning the subject matter thereof to date and supersedes all previous documentation, agreements and correspondence between them pertaining to the same subject matter.

5.4 **Successors.** This License shall inure to the benefit of and be binding upon the respective successors and permitted assigns of each of the Parties hereto and of City.

5.5 **Notices.** Any notice required or permitted to be delivered hereunder shall be sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or by courier or otherwise hand delivered and shall be deemed delivered on the date of actual receipt:

To City:

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

With a copy to:

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

To Team:

Championship Sports Group, Inc., dba Texas Revolution  
Attn: Tommy Benizio  
190 E. Stacy Rd. Suite 1312  
Allen, TX 75002

or such other address as such Party may from time to time designate by notice in writing to the other Parties.

5.6 **Force Majeure.** The performance of the respective Parties hereto and their respective obligations hereunder shall be subject to force majeure, including, but not limited to, insurrections, riots, wars and warlike operations, explosions, epidemics, strikes, shortages of supply, fires, accidents, acts of any public enemy or any similar occurrence beyond such Party's reasonable control, but the inability to make a monetary payment required by this License shall not of itself be an event of force majeure. Any Party temporarily excused from performance hereunder by any such circumstance shall use its best efforts to avoid, remove or cure such circumstances and shall resume performance with the utmost dispatch when such circumstances cease to apply. Any Party claiming force majeure as a reason for delay in performance shall give prompt notice in writing thereof to the other Party or Parties.

5.7 **Survival.** 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 termination of this License, including Sections 4.13 and Article 5, shall survive expiration or termination of this License.

5.8 **Counterparts and Facsimile Execution.** This License may be executed by the execution of one or more counterparts of the execution pages and the initialing of one or more

counterparts of each page, which will be taken together and constitute the License, and one or more of such counterparts may be delivered by facsimile transmission.

5.9 **Recitals.** The recitals to this License are incorporated herein.

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

5.11 **Exhibits.** Any exhibits to this License are incorporated herein by reference for all purposes wherever reference is made to the same.

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

5.13 **Representations.** Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that is granted and assumed under this License.

5.14 **Amendment.** This Agreement may only be amended by the mutual written agreement of the Parties. City Manager is authorized to execute any amendments to this Agreement and any instruments related thereto.

*(Signature page to follow)*



EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

City of Allen, Texas

By: \_\_\_\_\_  
Peter H. Vargas, City Manager

Attest:

By: \_\_\_\_\_  
Shelley George, City Secretary

Approved as to Form:

By: \_\_\_\_\_  
Peter G. Smith, City Attorney

EXECUTED on this 26 day of OCTOBER, 2017.

Championship Sports Group, Inc.,  
dba Texas Revolution

By: Tom Benizio  
Tommy Benizio, President  
Championship Sports Group, Inc.

## Exhibit "A"

### **License Fee for each exhibition, game or play-off Game.**

Base Fee ..... \$7,750  
Premium Seat Option.....\$0  
Base Level Service Fee .....\$4,000  
Box Office Credit Card Fees .....\$100  
Box Office Staff Fees .....\$300  
**Total Game/Event License Fee...\$12,150.00**

### **Administrative Fee**

A \$3.50 Administrative Fee will be added to all Primary Box Office Sales, Phone Sales and Internet Sales. Internet Promotions may waive the \$3.50 Administrative Fee. Secondary Box Office Sales may choose to waive the \$3.50 Administrative Fee.

For each ticket where an Administrative Fee has been collected, Team will be credited \$1.75 to be applied against License Fee.

**Exhibit "B"**  
**Base Level Service**

- Base Game Conversion (set & strike)\*
- Base Housekeeping (in-game & post game)
- Base Guest Services related to ticket taking / attendants / BOH\*
- Base Audio/Visual (1 Technician for Usage Hours and Building AV inventory as is 10/1/2015)
- Food and Beverage promotions limited to (2) game promotions per season agreed upon by Parties for regular season or playoff date.
- Items above & beyond those determined as "Base" will be at the expense of the Team

**Base Game Conversion Includes:**

- (2) Party Booths 10 x 16 (with tables and chairs on the North or South Concourse) \*
- (2) Meeting Rooms (standard tables & chairs)
- (2) Glass/Field/Presidential Suites on Floor (12 people) \*
- (1) Press Box (2 broadcast locations with connections) \*
- (2) 4 hour use of building outside of games for special events
  - Set up not included
  - 2 event attendants will be provided
  - Event not to exceed 100 attendees
- (10) Kiosks Booths (4 on the South Concourse and 6 on the West Concourse) \*
  - Includes table, chairs and backdrop. (Booths unoccupied at game time will be removed)
  - Additional booth available for purchase based on space availability
- (1) Merchant Booth (located in corner adjacent to box office) \*
- Arena with sports playing surface and retractable seats extended with exception of limits due to permanent dasher boards, benches, penalty box, etc.

\*Covers normal and standard event and operations with no additional pre-game or post-game events or activities. Item is capped at rate under normal and standard event operations. Any additional items or services shall be charged at the then rates and fees established by the City, and paid by City.

**Exhibit “C”  
Revenue Sharing**

Team shall be entitled to the following percentage of the Concession Revenue:

- Drop Count up to 4000 - 15%
- Drop Count of 4001-5000 - 20%
- Drop Count of 5001 or more - 25%

License shall be entitled to the following percentage of Concession Revenue for Premium Seats:

- Designated Premium Seats - 15%

\*Percentages are determined from Net Revenue (Gross Revenue – Expenses – Tax)

## **Exhibit "D"**

### **Premium Seats**

Team shall have the right to exercise option to sell the Premium Seats designated herein subject to the terms and conditions set forth in this Exhibit D on a per season option. The designated Premium Seats do not include any Suites or Loge seats subject to a prior contract, and does not include any food and beverages.

#### Suites:

Team is designated all available suites seats except for the suites retained by City and for which previous contracts exist.

City retains the following suites:

- North Side:
  - 208 (MGH), 209 (Naming Rights), 214 (AEC Building Use)
- South Side:
  - 221 (Team Owners Suite), 222 (COA Use)
  - 228 and 229 (Party Suite; which may be sold unless otherwise noted).

#### Loge:

- Team designated Loge Seats – 118 west/ 20 east
  - West Loge inventory = Entire 118 seats
  - East Loge inventory = Partial inventory of 20 seats
    - Determined annually, on or before October 1, based on Team game production needs.

#### Other Restrictions:

- Team is choosing to exercise option for use of suite/loge seat for games only
- No food included (separate packages available for purchase)
- Full season suite holders will have first right of refusal for similar seats for other events at market value. Combined with other City arena tenants, held premium level seats will not exceed 50% of available premium inventory.
- Team shall be responsible for collection of all applicable taxes.
- Team shall provide one (1) Premium Level representative.
- Team shall have exclusive right to sell birthday party suite packages during Team games.
- Suites 209 & 214 will be for entertainment of City existing clients, COA Boards, COA functions and sponsors but will not be sold in competition with Team Inventory unless approved by Team. Although, Suite 209 may be sold by City in conjunction with Building Naming Rights or Large Sponsorship.

**Exhibit "E"**  
**Food and Beverage**

**Specials**

Dates and content of food and beverage specials shall be determined and agreed to by the Parties at least 45 days prior to the Team's first home game during the League Season.

Special items sold at a discount for promotional purposes are non-commissionable.

**Number of Concession locations**

The number and placement of Concession locations for food and beverage during the Applicable Usage Hours shall be at the sole discretion of the City. Standard amount of Concession locations for a sporting event consists of 5 fixed Concession locations and additional portables as determined by the City. Any additional Concession locations or portables requested by the Team are not covered by the Base Service Level.

**Meal Vouchers**

Food and beverage voucher/coupon offerings and pricing shall be agreed to the Parties at least 45 days prior to the Team's first home game during the League Season. Coupon/voucher sales are restricted to groups of 10 or more and are valid only for the specific event. City shall honor only City approved coupons/vouchers. City approved food and beverage coupons/vouchers may be redeemed for food and beverage at the Concessions at the face value thereof by patrons without change back. Team shall pay to City the face value of all food and beverage coupon/vouchers redeemed by patrons at the Facility at the settlement following each exhibition, game or play-off game, as the case may be. Team is responsible for the payment of any counterfeit coupons/vouchers redeemed by its patrons. The quantity of coupon/ voucher sales shall be reported to City 48 hours prior to scheduled event in order to facilitate efficient distribution of food and beverage.

**Team Cash Coupons**

Team cash coupon shall be agreed to by the Parties at least 45 days prior to the Team's first home game during the League Season. Only City approved Team cash coupons may be redeemed for food and beverage at the Concessions at the face value thereof by patrons without change back. Team shall pay to City the face value of all Team Cash coupons redeemed by patrons at the Facility at the settlement following each exhibition, game or play-off game, as the case may be. Team is responsible for the payment of any counterfeit Team cash coupons redeemed by its patrons. The quantity of Team cash coupons shall be reported to City 48 hours prior to scheduled event.

**Sampling**

Food or Beverage sampling may be conducted by Team sponsors at locations determined by City

and only after approval by the City Director of Food and Beverage prior to the applicable event.

### **Scout Fundraiser Sales**

Any food or beverage funding raising sales conducted by organizations shall be approved by the Director of Food and Beverage prior to event and shall be at such locations approved by the Director.

### **VIP Bars**

The request for VIP bars shall be submitted 72 hour prior to the event and will be honored subject to availability. Team shall pay the costs and charges for VIP Bars at the then current rates established by the City and paid at the settlement following the applicable event. The City may require a deposit for such service.

### **Team agrees to adhere to Building F&B policies, including but limited to:**

#### **Allen Event Center Serving Ice Policy**

In order to protect the sanitary standards that Allen Event Center works to maintain, the following policies are set forth to confirm a general understanding of AEC procedures.

The Allen Health Department is the local agency that regulates all phases of the health and sanitary regulations in Allen Texas. The Event Center policy is in place to support and adhere to the regulations put in place by the Allen Health Department and ensures all user groups (Teams, Licensees, Vendors, etc.) have a general understanding of limitations and standards.

1. TEAMS/LICENSEE/VENDORS **are NOT permitted** access to the kitchen or F&B back of the house areas.
  - a. Ice will be bagged and made available to Teams or Licensee.
  - b. If ice is needed for an event, pre orders must be arranged with the Food & Beverage department at least 24 hours in advance of the event.
  - c. Ten (10) – 20 pound bags of ice will be supplied to the Team/Licensee/Vendors at no cost.
  - d. Additional bags will be charged at seven dollars (\$7) per 20 pound bag.
  - e. Team members, interns and 3rd party vendors are prohibited from entering the kitchen or back of the house serving areas. These are food preparatory areas and sanitary standards must be preserved.
  - f. The present user of the facility on any particular day will have discretion on the distribution of allotted ice bags and usage of machine ice.

#### **Allen Event Center Outside Food & Beverage Policy**



In order to protect the investment of capital and labor of all vendors and Allen Event Center (AEC) Food and Beverage division, the following policies are set forth to confirm a general understanding of AEC procedures.

The Texas Alcoholic Beverage Commission (TABC) is the state agency that regulates all phases of the alcoholic beverage industry in Texas. The duties of the commission include regulating sales, taxation, importation, manufacturing, transporting, and advertising of alcoholic beverages. The below Event Center policy is in place to support the regulations put in place by the TABC and ensure all user groups (Teams, Licensees, Vendors, etc.) have a general understanding of limitations and standards.

1. TEAMS/LICENSEE **are permitted to** bring in non-building sponsor non-alcoholic beverage and food for home/visiting team post game meals or staff use.
  - a. Items must not leave the back of house area and be used in this area only.
  - b. Items must be delivered BOH at Command and will not be allowed into the building at any other location.
  - c. Items are not to be in Public view
2. TEAMS/LICENSEE **are NOT permitted to** bring outside vendor food into the owners suite or FOH areas.
  - a. FOH or Premium Level food must be purchased through building F&B Division and can be selected from a concessionaire currently operating in the building or the AEC F&B Division. Exceptions must be approved in writing 15 days in advance from AEC F&B Director, Assistant General Manager or General Manager.
3. TEAMS/LICENSEE **are NOT permitted to** bring outside alcohol into AEC.
  - a. Teams/Licensee **cannot under any circumstances** bring outside alcoholic beverages into AEC pursuant to TABC regulation (Sec. 28.06). Alcohol served on the permitted premises must be purchased by License holder. License holder must hold an invoice as proof of purchase.
4. TEAMS/LICENSEE **are NOT permitted** to bring donated alcohol, supplies or equipment into AEC.
  - a. Teams **cannot** bring in any supplies or equipment that is donated by a beer or spirits distributor pursuant to TABC regulation (Sec. 102.07).
5. TEAMS/LICENSEE **are NOT permitted to** sell Alcoholic beverages.
  - a. Alcohol is prohibited from being sold by anyone other than AEC personnel or agents thereof on AEC property licensed by the TABC.

6. Approved Third party vendors must possess City of Allen Health Department Certificate for respective event.
  - a. A health certificate must be obtained from the City of Allen Health Department prior to operating any food and beverage site on AEC property.
7. All 3rd Party Food & Beverage vendors must be approved by AEC Director of Food and Beverage
  - a. Submission of menu, sample of proposed product and pricing must be presented to AEC Director of Food and Beverage for approval prior to permission being granted to sell at AEC.
  - b. Required payment by 3rd Party vendors.
  - c. Negotiated payment or buyout must be received from vendors selling Food and Beverage products on AEC property.
8. AEC has absolute authority to select what food and beverage can be served on AEC property. All approved vendors must adhere to all local, state and federal laws.
9. Sampling and the portion size will be considered for approval by AEC Director of Food & Beverage on an event by event basis.
10. Teams / Licensee are permitted to use AEC Third Party Concession Vendors specific for catering purposes, but NOT FOR RESALE, in the below areas with approval from AEC Director of Food & Beverage:
  - a. Press Box Media, for the purpose of hosting league and media officials

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
--

**AGENDA DATE:**

November 8, 2016

**SUBJECT:**

Authorize the City Manager to Purchase of Nineteen (19) New Cisco Switches from CDW-G through an Interlocal Agreement with the State of Texas Department of Information Resources ("DIR") for the Amount of \$69,499.34.

**STAFF RESOURCE:**

Kevin Cameron, Interim Director, Information Technology

**ACTION PROPOSED:**

Authorize the City Manager to Purchase of Nineteen (19) New Cisco Switches from CDW-G through an Interlocal Agreement with the State of Texas Department of Information Resources ("DIR") for the Amount of \$69,499.34.

**BACKGROUND**

This purchase is to replace nineteen (19) Cisco network switches which were purchased in 2007. The current switches have reached capacity and will no longer be maintained or serviced by the vendor.

This equipment connects network devices including desktop computers, network printers, etc. throughout various city facilities back to the City Hall Data Center.

This is accomplished through an Interlocal Agreement with the State of Texas Department of Information Resources ("DIR") for the purpose of purchasing selected information technology items.

**BUDGETARY IMPACT**

This item is included in the FY 2016-2017 Adopted Budget.

**STAFF RECOMMENDATION**

Staff recommends City Council authorize the purchase of nineteen (19) new Cisco Switches from CDW-G through an Interlocal Agreement with the State of Texas Department of Information Resources ("DIR") for the Amount of \$69,499.34.

**MOTION**

*I make a motion to authorize the purchase of nineteen (19) new Cisco Switches from CDW-G through an Interlocal Agreement with the State of Texas Department of Information Resources ("DIR") for the*

*Amount of \$69,499.34.*

**ATTACHMENTS:**

CDW-G Quote #HLCM290

DIR-TSO-2542

# QUOTE CONFIRMATION



DEAR TRACY JOHNSON,

Thank you for considering CDW•G for your computing needs. The details of your quote are below. [Click here](#) to convert your quote to an order.

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
HLCM290	10/10/2016	CISCO ONE	5933646	\$69,499.34

## IMPORTANT - PLEASE READ

**Special Instructions:** TAX: MULTIPLE TAX JURISDICTIONS APPLY  
TAX: CONTACT CDW FOR TAX DETAILS

QUOTE DETAILS				
ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
<b>Cisco ONE Catalyst C2960X-48FPD-L - switch - 48 ports - managed - desktop</b> Mfg. Part#: C1-C2960X-48FPD-L UNSPSC: 43222612 TAX: ALLEN, TX .0000% \$.00 Contract: Texas Cisco DIR TSO 2542 (DIR-TSO-2542)	19	3732911	\$3,177.50	\$60,372.50
<b>Cisco SMARTnet extended service agreement</b> Mfg. Part#: CON-SNT-2948FPDL UNSPSC: 81111812 Electronic distribution - NO MEDIA TAX: ALLEN, TX .0000% \$.00 Contract: Texas Cisco DIR TSO 2542 (DIR-TSO-2542)	19	3732914	\$377.29	\$7,168.51
<b>Cisco ONE Foundation - license</b> Mfg. Part#: C1FPCAT29002K9 UNSPSC: 43232915 TAX: ALLEN, TX .0000% \$.00 Contract: Texas Cisco DIR TSO 2542 (DIR-TSO-2542)	19	3671937	\$79.49	\$1,510.31
<b>Cisco SMARTnet Software Support Service - technical support - for C1FPCAT29</b> Mfg. Part#: CON-ECMU-C1FPC292 UNSPSC: 86101601 Electronic distribution - NO MEDIA TAX: ALLEN, TX .0000% \$.00 Contract: National IPA Technology Solutions (130733)	19	3673585	\$23.58	\$448.02

PURCHASER BILLING INFO		SUBTOTAL	\$69,499.34
<b>Billing Address:</b> CITY OF ALLEN ACCTS PAYABLE 305 CENTURY PKWY ONE ALLEN PLAZA ALLEN, TX 75013-8042 <b>Phone:</b> (972) 727-0117 <b>Payment Terms:</b> Net 30 Days-Govt State/Local		SHIPPING	\$0.00
		GRAND TOTAL	\$69,499.34
		Please remit payments to:	
DELIVER TO			

**Shipping Address:**  
CITY OF ALLEN  
IT DEPARTMENT  
305 CENTURY PKWY  
ALLEN, TX 75013-8042

**Shipping Method:** DROP SHIP-GROUND

CDW Government  
75 Remittance Drive  
Suite 1515  
Chicago, IL 60675-1515

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Lena Pekaj

(866) 567-1653

lenapek@cdwg.com

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**Amendment Number 3**  
**to**  
**Contract Number DIR-TSO-2542**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**Cisco Systems, Inc.**

This Amendment Number 3 to Contract Number DIR-TSO-2542 ("Contract") is between the Department of Information Resources ("DIR") and Cisco Systems, Inc. ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2. Term of Contract**, is hereby amended as follows:  
DIR and Vendor hereby agree to extend the term of the Contract through May 5, 2017. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for one additional one-year term.
2. **Appendix A. Standard Terms and Conditions For Product and Related Services Contracts**, is hereby deleted in its entirety and replaced with Appendix A. Standard Terms and Conditions For Product and Related Services Contracts version 09/24/2015, as attached hereto.
3. **Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts, version 09/24/2015.**

**A. Section 3. Definitions, G. Purchase Order** is hereby replaced in its entirety as follows:

**Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument). The terms of this agreement supersedes any terms printed on Customer's Purchase Order and any Purchase Order terms are null and void.

**B. Section 4. General Provisions, D. Assignment** is hereby replaced in its entirety as follows:

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another Texas state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

**C. Section 5. Intellectual Property Matters** is hereby replaced in its entirety as follows:

This contract does not contemplate, authorize or support acquisition of custom software products or services. If Vendor and Customer seek to contract for such product or service, they must use a separate contract or seek amendment with DIR of this contract.



If DIR and Vendor decide to authorize customized software or hardware products; then the intellectual property language will be negotiated and applied.

**D. Section 7. Contract Fulfillment and Promotion, A. Service, Sales and Support of the Contract** is hereby replaced in its entirety as follows:

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote services available under the Contract. Vendor shall use its commercially reasonable efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for services available under the Contract shall be processed through the Contract.

**E. Section 7. Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information** is hereby replaced in its entirety as follows:

**1) Vendor Website**

Within thirty days of the effective date of the Contract, Vendor will establish and maintain a website specific to the product and service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include: the product and services categories offered, product and service specifications (if applicable), Contract pricing, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology (ICT) Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

**2) Accurate and Timely Contract Information**

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within thirty (30) business days after written notification by DIR.

**3) Website Compliance Checks**

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated in Section 4 of the Contract.

**4) Website Changes**

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

**5) Use of Access Data Prohibited**

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict DIR or Customer access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

**6) Responsibility for Content**

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

**F. Section 7. Contract Fulfillment and Promotion, G. Vendor and Order Filler Logo** is hereby replaced in its entirety as follows:

In the event DIR should need use of Vendor Logo, written mutually agreed upon criteria will be coordinated with Vendor.

**G. Section 8. Purchase Orders, Invoices, Payments, C. Customer Price,** is hereby replaced in its entirety:

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for Vendor's products or services available under this Contract are provided at a lower price to: (i) an eligible Customer in Texas who is not purchasing those products or services under this Contract or (ii) any other Texas entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price prospectively. This requirement applies to products or services quoted directly by Cisco Systems, Inc. for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Upon either Customer's notice to Vendor, or Vendor's notice to Customer that the party(ies) have become aware of this pricing differential and the pricing differential has been confirmed by Vendor or Customer provides reasonable confirmation to Vendor, this Contract shall be amended within ten (10) business days to reflect the lower price.

**H. Section 8. Purchase Orders, Invoices, Payments, H. Changes to Prices,** is hereby replaced in its entirety:

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect once 1) Vendor notifies DIR of any pricing changes and 2) the pricelist has been updated / posted on the DIR webpage.

**I. Section 8. Purchase Orders, Invoices, Payments, L. Transfer of Title** is hereby added to this section as follows:

Transfer of Title shall occur upon acceptance of goods. Customer shall have five (5) business days after delivery to accept product. Absent written rejection within the five (5) business days, product will be deemed accepted without waiving the right to return product as set forth under Vendor warranty provisions.

**J. Section 9. Contract Administration, B. Reporting and Administrative Fees** is hereby replaced in its entirety:

**1) Reporting Responsibility**

a) Vendor shall be responsible for reporting all products and services purchased through Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books at DIR's expense.

**2) Detailed Monthly Report**

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all Net Purchase Price for invoices billed under the Contract for the previous month period. Reports shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at [ict.sales@dir.texas.gov](mailto:ict.sales@dir.texas.gov). Reports are due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report. The monthly report shall include, per transaction: the detailed sales for the period, the Order Filler's company name, if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

**3) Historically Underutilized Businesses Subcontract Reports**

a) If Historically Underutilized Businesses are used by Vendor, Vendor shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

**4) DIR Administrative Fee**

a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. Payment of the administrative fee shall be due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. DIR may change the amount of the administrative fee upon thirty (30) days written notice to Vendor without the need for a formal contract amendment.

b) Vendor shall reference the DIR Contract number on any remittance instruments.

**5) Accurate and Timely Submission of Reports**

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within ten (10) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval, such approval not unreasonably withheld.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at DIR's expense.

c) Failure to timely submit three (3) reports within any rolling twelve (12) month period may, at DIR's discretion, result in termination of Vendor's Contract.

**K. Section 9. Contract Administration, C. Records and Audit, paragraph 3) is hereby amended as follows:**

Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers thirty (30) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) days of receipt.

**L. Section 10. Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions is hereby replaced in its entirety as follows:**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR PERMITTED ASSIGNEES, FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED REASONABLE COSTS, ATTORNEY FEES, AND EXPENSES resulting from bodily injury (including death) or damage to tangible property to the extent directly arising out of, or resulting

from any negligent acts or omissions, or willful misconduct of the Vendor or its agents, employees, or subcontractors, in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**M. Section 10. Vendor Responsibilities, A. Indemnification, 3) Infringements** is hereby replaced in its entirety as follows:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, from any and all third party claims for infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT.

VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL REASONABLE COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES FOR STATE AGENCY CUSTOMERS. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

Notwithstanding the foregoing, such indemnity shall not apply, and Vendor shall have no liability, for any claim of infringement caused solely by:

- a) Modification of a product by Customer or a third party
- b) The amount or duration of use which Customer makes of the Product, revenue earned by Customer from services it provides that use the Product, or services offered by Customer to external or internal customers
- c) Combination, operation, or use of a product with non-Cisco products, software or business processes
- d) Customer's use of the products after Vendor informs Customer of modifications or a change required to avoid such claims and offers to implement those changes
- e) any modifications made to the Product by the Vendor pursuant to Customer's specific instructions.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

- N. Section 10. Vendor Responsibilities, B. Taxes/Worker's Compensation/ UNEMPLOYMENT INSURANCE, Paragraph 2)** is hereby replaced in its entirety as follows:

VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, REASONABLE ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING REASONABLE ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- O. Section 10 Vendor Responsibilities, C. Vendor Certifications, (vii)** is hereby replaced in its entirety as follows and add (xvi):

(vii) Vendor and its principals are not suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration;

(xvi) represent and warrant that the Customer's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code.

- P. Section 10. Vendor Responsibilities, H. Confidentiality** is hereby replaced in its entirety as follows:

1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

a) Customer and Vendor agree that in connection with this Contract and their relationship, they may obtain Confidential Information. The receiving party shall at all times keep in trust and confidence all such Confidential information, and shall not use such Confidential Information other than as expressly authorized by the disclosing party under this Agreement, nor shall the receiving party disclose any such Confidential Information to third parties without the disclosing party's written consent. Notwithstanding the above, Vendor shall be authorized to disclose Customer's Confidential Information to contractors or employees of a Vendor

entity who have a legitimate business need to have access to such information. As allowed under record and retention policies and laws, the receiving party shall immediately return to the disclosing party all Confidential Information (including copies thereof) in the receiving party's possession, custody, or control upon termination or expiration at any time and for any reason of this Agreement. The obligations of confidentiality shall not apply to information which (a) has entered the public domain, except where such entry is the result of the receiving party's breach of this Agreement; (b) prior to disclosure hereunder was already rightfully in the receiving party's possession; (c) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party. The receiving party will be authorized to disclose Confidential Information pursuant to a valid order issued by a court or government agency, provided that the receiving party provides (i) prior written notice to the disclosing party of such obligation and (ii) the opportunity to oppose such disclosure. Customer may disclose information necessary to comply with the Texas Public Information Act.

Vendor shall not disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of the Customer. Any press release or publication by Vendor regarding this Agreement is subject to prior review and written approval of DIR and Customer. Customer may publish the contract in its customary manner or as required by law or for the conducting of public business.

**Q. Section 10. Vendor Responsibilities, J. Background and/or Criminal History Investigation** is hereby replaced in its entirety as follows:

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers requiring such investigations. Subject to Customer underwriting the costs incurred for investigations of Vendor's personnel who voluntarily elect to undergo such screening to perform Services, Customer will interface directly with such personnel regarding scheduling the testing and results. Customer understands and agrees that such testing results shall not be communicated directly to Cisco. However, to the extent Customer requires additional candidates for such screening, Cisco will direct volunteers to Customer for follow up. If any Vendor employee refuses to so agree to an investigation, such employee may be denied access to Customer's premises. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

**R. Section 10. Vendor Responsibilities, K. Limitation of Liability** is hereby replaced in its entirety as follows:

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, incidental, indirect, lost revenue or lost profits, or consequential damages, whether arising in contract, tort (including negligence) or otherwise even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount



paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement.

**S. Section 10. Vendor Responsibilities, N. Required Insurance Coverage is hereby replaced in its entirety as follows:**

As a condition of this Contract with DIR, Vendor shall provide certificates of insurance, or other proof of insurance, reflecting the maintenance of the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A.M. Best's financial rating of A- or better and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. In the event Vendor receives notice of cancellation of coverage, Vendor shall promptly replace such coverage so that no lapse in insurance occurs. The minimum acceptable insurance provisions are as follows:

**1) Commercial General Liability**

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured; but only to the extent of liabilities falling within Vendor's contractual and indemnity obligations pursuant to this Agreement; and
- d) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer, but only to the extent of liabilities falling within Vendor's contractual and indemnity obligations pursuant to this Agreement.

**2) Workers' Compensation Insurance**

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

**3) Business Automobile Liability Insurance**

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per

person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation, but only to the extent of liabilities falling within Vendor's contractual and indemnity obligations pursuant to the terms of this Agreement;
- b) Definition of Insured to include those parties to whom Vendor owes contractual liability coverage.

**T. Section 11. Contract Enforcement, B. Termination, 2) Absolute Right is hereby replaced in its entirety as follows:**

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

**U. Section 11. Contract Enforcement, C. Force Majeure is hereby replaced in its entirety as follows:**

DIR, Customer, Vendor or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

**V. Appendix D, End User License Agreement to DIR-TSO-2542 the following applies:**

The following terms of Vendor's End User License Agreement shall have the same priority as the terms of this final contract document: SECTIONS HEREIN ENTITLED "LICENSE", "GENERAL LIMITATIONS", "SOFTWARE, UPGRADES AND ADDITIONAL COPIES", "PROPRIETARY NOTICES", "CUSTOMER RECORDS" AND "IDENTIFIED COMPONENTS".

All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be this Amendment Number 3, then Amendment Number 2, then Amendment Number 1 and then the Contract.

**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than May 5, 2016.

**Cisco Systems, Inc.**

**Authorized By:** Signature on File

**Name:** Phil Lozano

**Title:** Director, Finance

**Date:** 04/27/2016

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** Signature on File

**Name:** Dale Richardson

**Title:** Chief Operations Officer

**Date:** 05/04/2016

**Office of General Counsel:** Signature on File 05/04/2016

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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<b>AGENDA DATE:</b>	November 8, 2016
<b>SUBJECT:</b>	Receive the Investment Report for the Period Ending September 30, 2016
<b>STAFF RESOURCE:</b>	Eric Cannon, Chief Financial Officer Dana Thornhill, Controller

### **BACKGROUND**

Under the Public Funds Investment Act (the Act) the investment officer of an entity must prepare and submit to the governing body a written report of investment transactions for all funds covered by this chapter for the preceding reporting period. The report must be submitted quarterly. The attached report, for the period ending September 30, 2016, meets that requirement of the Act.

The Act requires that the following information be presented in the report: beginning market value, ending market value for the period, book value at the beginning and end of the reporting period, the fund type invested and the maturity date.

The Act also requires that the report be prepared and signed by an authorized investment officer verifying that the information presented is accurate.

The investment report summarizes all investment types and provides a summary of total investments by fund group. Government investments are listed separately and show changes in book and market value during this period. A list of definitions of terms used in the report is also included.

### **STAFF RECOMMENDATION**

This report should be placed on the Council agenda as an information item. No action is necessary.

### **ATTACHMENTS:**

Investment Report for the Period Ending September 30, 2016  
Certify Investment Report  
Definition of Terms

**CITY OF ALLEN**  
**Investment Report**  
**July 1, 2016 to September 30, 2016**

**Summary of Investments by Type**

Type	Value of all Investments 6/30/2016		Value of all Investments 9/30/2016	
	Book	Market	Book	Market
Government Agencies	\$ 59,190,026	\$ 59,193,332	\$ 54,680,323	\$ 54,573,922
TexPool	\$ 66,568,276	\$ 66,568,276	47,301,327	47,301,327
Certificates of Deposit	\$ 33,522,744	\$ 33,522,744	33,604,556	33,604,556
Municipal Bonds	\$ 1,544,312	\$ 1,540,445	1,291,771	1,288,613
<b>TOTAL</b>	<b>\$ 160,825,357</b>	<b>\$ 160,824,796</b>	<b>\$ 136,877,978</b>	<b>\$ 136,768,419</b>

**Summary of Total Investment Book Value by Fund Group**

	<u>6/30/16</u>	<u>9/30/16</u>
General Fund	\$ 32,704,155	\$ 22,603,662
Enterprise Funds	25,446,883	28,520,106
Capital Projects Funds	35,144,912	32,011,539
Debt Service Funds	12,182,447	1,034,378
Special Revenue Funds	37,658,218	35,446,162
Internal Service Funds	16,081,813	15,652,895
Trust and Agency Funds	1,606,929	1,609,237
<b>TOTAL</b>	<b><u>\$ 160,825,357</u></b>	<b><u>\$ 136,877,978</u></b>

Note: Addition differences due to rounding.

City of Allen  
Government Agencies, Commercial Paper, and Certificates of Deposit

Maturity Date	Purchase Date	Type	Broker	CUSIP	Value at 6/30/16		Value at 9/30/16	
					Book	Market	Book	Market
08/15/16	05/21/13	Muni Bonds	COM	7987643P9	\$ 252,152	\$ 250,390	\$ -	\$ -
12/28/16	02/21/14	FHLB	FES	3130A0C65	\$ 999,836	\$ 1,000,779	\$ 1,001,378	\$ 1,000,678
01/09/17	01/09/14	CD	ANB	9625880	\$ 3,054,925	\$ 3,054,925	\$ 3,060,473	\$ 3,060,473
01/20/17	01/20/15	CD	TSB	11974	\$ 3,116,353	\$ 3,116,353	\$ 3,123,182	\$ 3,123,182
01/30/17	10/30/14	FFCB-called	GS	3133EEAE0	\$ 1,002,600	\$ 1,000,033	\$ -	\$ -
02/15/17	10/02/12	Muni Bonds	COM	133303ZP5	\$ 303,500	\$ 302,655	\$ 301,404	\$ 301,293
04/03/17	04/02/14	CD	COB	3851-11575978	\$ 1,531,545	\$ 1,531,545	\$ 1,535,059	\$ 1,535,059
04/09/17	04/09/15	CD	TSB	11999	\$ 2,018,123	\$ 2,018,123	\$ 2,021,822	\$ 2,021,822
07/03/17	04/05/16	CD	COB	3851-11575960	\$ 1,012,564	\$ 1,012,564	\$ 1,014,110	\$ 1,014,110
07/30/17	07/30/14	CD	ANB	3134G7GW5	\$ 1,524,103	\$ 1,524,103	\$ 1,527,247	\$ 1,527,247
08/09/17	05/09/13	FFCB	FES	3133ECP24	\$ 1,002,416	\$ 1,000,001	\$ 1,000,640	\$ 998,796
08/14/17	08/13/15	CD	COB	3851-11577974	\$ 2,517,804	\$ 2,517,804	\$ 2,522,859	\$ 2,522,859
09/29/17	02/10/14	FHLMC	GS	3137EADL0	\$ 1,002,169	\$ 1,004,784	\$ 999,641	\$ 1,003,116
10/09/17	07/08/15	CD	COB	3851-11577560	\$ 2,520,252	\$ 2,520,252	\$ 2,525,430	\$ 2,525,430
10/26/17	10/26/15	FHLB	COM	3130A6LZ8	\$ 1,001,065	\$ 1,000,356	\$ 1,002,604	\$ 999,109
11/13/17	08/13/15	CD	COB	3851-11578014	\$ 2,520,410	\$ 2,520,410	\$ 2,526,204	\$ 2,526,204
11/28/17	05/28/13	FNMA	CS	3136G1M55	\$ 1,000,336	\$ 1,000,066	\$ 1,002,305	\$ 999,139
02/15/18	11/18/15	Muni Bonds	COM	463813ZV0	\$ 988,660	\$ 987,400	\$ 990,367	\$ 987,320
03/09/18	11/04/15	FHLB	CS	313378A439	\$ 1,015,474	\$ 1,011,662	\$ 1,012,213	\$ 1,008,153
03/14/18	01/29/16	FFCB	CS	3133EFSG3	\$ 1,509,029	\$ 1,510,704	\$ 1,504,237	\$ 1,504,349
03/29/18	03/29/16	FHLB	CS	3130A7MB8	\$ 1,503,740	\$ 1,503,659	\$ 1,499,938	\$ 1,501,485
04/09/18	07/08/15	CD	COB	3851-11577552	\$ 2,526,038	\$ 2,526,038	\$ 2,532,696	\$ 2,532,696
04/18/18	04/27/16	FFCB	COM	3133EF3B1	\$ 1,001,634	\$ 1,001,220	\$ 1,003,522	\$ 998,585
05/11/18	05/11/15	CD	COB	3851-11473455	\$ 3,072,205	\$ 3,072,205	\$ 3,081,175	\$ 3,081,175
05/18/18	05/18/16	FHLB	WF	3130A7VW2	\$ 1,001,151	\$ 1,002,574	\$ 1,003,616	\$ 1,001,112
06/06/18	08/07/15	FNMA	COM	3136G06F3	\$ 999,869	\$ 1,000,121	\$ 1,002,611	\$ 999,987
07/13/18	07/13/16	FNMA	CS	3135G0M42	\$ -	\$ -	\$ 1,001,899	\$ 998,380
07/26/18	07/26/13	FHLB-called	FES	313383SG7	\$ 1,006,564	\$ 1,000,890	\$ -	\$ -
07/27/18	11/04/15	FHLMC	CS	3134G73Q2	\$ 1,003,211	\$ 1,000,055	\$ 1,000,695	\$ 999,338
08/13/18	08/13/15	CD	COB	3851-11578006	\$ 5,055,584	\$ 5,055,584	\$ 5,071,364	\$ 5,071,364
08/27/18	08/27/15	FHLMC-called	WF	3134G7UM1	\$ 1,004,193	\$ 1,000,784	\$ -	\$ -
09/21/18	09/21/15	FFCB-called	CS	3133EFDF1	\$ 2,006,434	\$ 2,000,766	\$ -	\$ -
10/26/18	10/29/15	FNMA	CS	3136G2RD1	\$ 1,001,713	\$ 1,001,444	\$ 1,004,226	\$ 1,000,233
10/29/18	10/29/15	FFCB	CS	3133EFLY1	\$ 1,001,485	\$ 1,003,258	\$ 1,003,776	\$ 1,000,074
11/02/18	11/02/15	FFCB	COM	3133EFMA2	\$ 1,001,545	\$ 1,001,153	\$ 1,004,058	\$ 998,636
12/28/18	06/28/16	FHLMC	COS	3134G9WB9	\$ 2,050,112	\$ 2,053,909	\$ 2,055,164	\$ 2,047,015
01/11/19	01/11/16	CD	COB	3851-11575564	\$ 3,052,838	\$ 3,052,838	\$ 3,062,937	\$ 3,062,937
02/22/19	02/22/16	FFCB	CS	3133EFYS0	\$ 1,004,029	\$ 1,002,257	\$ 1,001,112	\$ 1,000,111
02/27/19	01/29/16	FNMA	CS	3136FTP37	\$ 1,023,585	\$ 1,023,383	\$ 1,020,225	\$ 1,017,036
03/29/19	03/29/16	FFCB	CS	3133EFV38	\$ 2,006,233	\$ 2,003,556	\$ 1,999,897	\$ 2,000,604
03/29/19	03/29/16	FHLMC	WF	3134G8TV1	\$ 1,003,042	\$ 1,001,919	\$ 999,950	\$ 1,000,294
04/02/19	01/29/16	FFCB	CS	3133ECKP8	\$ 1,002,272	\$ 1,009,098	\$ 1,005,230	\$ 1,004,973
04/15/19	03/24/16	FHLMC	COM	3137EADZ9	\$ 1,003,051	\$ 1,008,497	\$ 1,005,823	\$ 1,004,441
04/26/19	04/26/16	FFCB	CS	3133EF4Y0	\$ 1,001,753	\$ 1,004,273	\$ 1,004,219	\$ 1,000,611
05/16/19	05/16/16	FHLMC	CS	3134G9DK0	\$ 1,001,447	\$ 1,001,421	\$ 1,004,405	\$ 1,000,734
05/16/19	05/16/16	FHLMC	WF	3134G9DK0	\$ 1,001,752	\$ 1,001,421	\$ 1,004,405	\$ 1,000,734
06/14/19	02/01/16	FHLB	COM	31337REE5	\$ 2,031,147	\$ 2,045,266	\$ 2,036,677	\$ 2,031,648
06/27/19	06/27/16	FFCB	WF	3133EGGS8	\$ 1,500,148	\$ 1,500,794	\$ 1,504,586	\$ 1,498,925
07/19/19	07/19/16	FNMA	CS	3136G3VN2	\$ -	\$ -	\$ 1,503,647	\$ 1,495,169
08/01/19	11/04/15	FHLMC	CS	3137EADK2	\$ 1,501,440	\$ 1,518,402	\$ 1,497,006	\$ 1,510,887
08/26/19	02/26/16	FNMA	CS	3136G2YB7	\$ 1,004,486	\$ 1,000,508	\$ 1,001,142	\$ 1,000,334
08/26/19	02/26/16	FNMA	WF	3136G2YB7	\$ 1,004,486	\$ 1,000,508	\$ 1,001,142	\$ 1,000,334
09/09/19	09/11/15	FFCB-called	WF	3133EFCG0	\$ 1,004,617	\$ 1,002,164	\$ -	\$ -
09/25/19	10/14/15	FHLB	CS	3130A6GD3	\$ 1,513,724	\$ 1,508,907	\$ 1,507,408	\$ 1,506,440
10/15/19	10/15/15	FNMA-called	CS	3136G2NA1	\$ 1,002,972	\$ 1,000,100	\$ -	\$ -
10/22/19	10/22/15	FFCB	COM	3133EFLA3	\$ 1,002,219	\$ 1,010,560	\$ 1,005,275	\$ 1,006,031
11/25/19	11/25/15	FNMA	CS	3136G2SU2	\$ 933,167	\$ 927,069	\$ 929,649	\$ 925,598
11/26/19	05/26/16	FNMA	CS	3136G3LV5	\$ 1,001,256	\$ 1,003,525	\$ 1,004,581	\$ 1,001,740
12/30/19	06/30/16	FHLB	CS	3130A8JZ7	\$ 1,000,000	\$ 1,001,361	\$ 1,003,007	\$ 1,000,227
02/03/20	02/03/16	FFCB	CS	3133EFXM4	\$ 1,509,176	\$ 1,504,677	\$ 1,503,394	\$ 1,501,292
02/24/20	02/24/16	FFCB	COM	3133EFZT7	\$ 1,004,830	\$ 1,001,604	\$ 1,001,279	\$ 1,000,995
03/30/20	03/30/16	FFCB	COM	3133EFV20	\$ 1,003,671	\$ 1,001,633	\$ 999,893	\$ 1,001,367
03/30/20	03/30/16	FFCB	WF	3133EFV20	\$ 1,003,671	\$ 1,001,633	\$ 999,893	\$ 1,001,367
05/19/20	05/19/16	FHLB	COM	3130A7VV4	\$ 1,001,684	\$ 1,002,907	\$ 1,005,380	\$ 1,001,561
06/29/20	06/29/16	FFCB	WF	3133EGHP3	\$ 1,000,039	\$ 1,001,726	\$ 1,003,538	\$ 1,000,608
06/29/20	06/29/16	FFCB	CS	3133EGHP3	\$ 1,000,039	\$ 1,001,726	\$ 1,003,538	\$ 1,000,608
11/09/20	11/09/15	FFCB	CS	3133EFNM5	\$ 1,002,379	\$ 1,001,563	\$ 1,006,813	\$ 1,000,357
04/13/21	04/20/16	FHLB	COM	3130A7QM1	\$ 1,003,135	\$ 1,002,831	\$ 1,006,797	\$ 1,001,337
06/30/21	06/30/16	FNMA	WF	3136G3ED5	\$ 1,000,000	\$ 999,913	\$ 1,003,943	\$ 999,688
06/30/21	06/30/16	FNMA	WF	3136G3ED5	\$ 1,000,000	\$ 999,913	\$ 1,003,943	\$ 999,688
					\$ 94,257,082	\$ 94,256,521	\$ 89,576,650	\$ 89,467,091

Agencies	\$ 59,190,026	\$ 59,193,332	\$ 54,680,323	\$ 54,573,922
Municipal Bonds	\$ 1,544,312	\$ 1,540,445	\$ 1,291,771	\$ 1,288,613
Certificates of Deposit	\$ 33,522,744	\$ 33,522,744	\$ 33,604,556	\$ 33,604,556

ANB	American National Bank	FP	First Public
BC	Benchmark Securities	GS	Gilford Securities
BOA	Bank of America	LB	Legacy Bank
CB	Cathay Bank	SWS	Southwest Securities
CS	Coastal Securities	TSB	Texas Security Bank
COB	Comerica Bank	VP	View Point Bank
COM	Comerica Securities	WF	Wells Fargo
FES	First Empire Securities	ZB	Zions Natl Bank

Note: Addition differences due to rounding.

CITY OF ALLEN

Quarterly Investment Report

July 1, 2016 through September 30, 2016

We certify that the information presented in the attached quarterly investment report for the period ending September 30, 2016 is correct to the best of our knowledge. We further certify that the investments are in compliance with (a) the investment strategy contained in the City's investment policy and (b) the relevant provisions in the Public Funds Investment Act.

(signature on executed copy)  
Eric Cannon, Chief Financial Officer

(signature on executed copy)  
Joanne Stoehr, Assistant Chief Financial Officer

(signature on executed copy)  
Dana Thornhill, Controller

(signature on executed copy)  
Tru Nguyen, Senior Accountant II



## DEFINITION OF TERMS

**Treasury Bill** - A short-term, non-interest-bearing promissory note sold to investors at a discount by the U.S. government to finance its debt.

**Treasury Bond Strip** - Treasury bond which has been stripped of its coupons. It pays interest only at maturity.

**Federal Agricultural Mortgage** (Farmer Mac) – Created by Congress to improve the availability of mortgage credit to America's farmers, ranchers and rural homeowners, businesses and communities.

**Federal Home Loan Mortgage** (Freddie Mac) - A shareholder owned government sponsored enterprise established by Congress to provide a continuous flow of funds to mortgage lenders through the purchase of mortgage loans. To finance its mortgage purchase activities, Freddie Mac offers and sells its securities to investors directly and through selected dealers, underwriters and underwriting syndicates.

**Federal National Mortgage Assoc.** (Fannie Mae) - A shareholder owned corporation that is now regulated by an office within the Department of Housing and Urban Development. Fannie Mae purchases residential mortgage loans from primary lenders, thereby replenishing those institutions' supply of mortgage funds. To finance its loan purchases, Fannie Mae issues securities which are sold through select dealers and dealer banks.

**Federal Home Loan Bank** - Is comprised of the 12 Federal Home Loan Banks and the Office of Finance under the supervision of the Federal Housing Finance Board, an independent agency in the executive branch of the U.S. Government. The primary function of the Bank System is to serve the public with the purpose of enhancing the availability of residential mortgage credit by providing a readily available, low cost source of funds to its member institutions.

**Farm Credit** - Is a nationwide system of lending institutions which provides credit and related services to farmers, ranchers, producers and harvesters of aquatic products, rural homeowners, certain farm-related businesses, agricultural and aquatic cooperatives, rural utilities and to certain foreign or domestic entities in connection with international transactions.

**Purchase Price** - The amount paid for an investment.

**Par Amount** - The face value of an investment or the amount that will be paid if the investment is held to maturity.

**Book Value** - The purchase price of an investment plus interest which has accrued to a certain point in time.

**Market Value** - The face or par value of an investment multiplied by the premium or discount quoted on the valuation date.

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
--

**AGENDA DATE:**

November 8, 2016

**SUBJECT:**

Conduct a Public Hearing and Adopt an Ordinance to Establish Planned Development No. 125 and Adopt Development Regulations, a Concept Plan, and Building Elevations, for Lot 1, Block A, Allen High School Addition, and a 6.248+/- Acre Portion of Land Situated in the Peter Wetsel Survey, Abstract No. 990, Generally Located North of Main Street and East of Jupiter Road. [Community Facilities - Lowery Freshman Center Redevelopment]

**STAFF RESOURCE:**

Ogden "Bo" Bass, AICP  
Director of Community Development

**PREVIOUS COUNCIL ACTION:**

Combination Plat - Approved October, 1982

**BOARD COMMISSION ACTION:**

On November 1, 2016, the Planning and Zoning Commission voted 7 in favor (Commissioners Cocking, Trahan, Hollingsworth, Platt Jr., Mangrum, Orr, and Ogrizovich) and 0 opposed to recommend approval of this request, with the following addition: City Staff shall have the authority to approve alternative screening in the form of masonry columns with wrought iron fencing along the eastern side of the property.

**ACTION PROPOSED:**

Adopt an Ordinance to Establish Planned Development No. 125 and Adopt Development Regulations, a Concept Plan, and Building Elevations, for Lot 1, Block A, Allen High School Addition, and a 6.248+/- Acre Portion of Land Situated in the Peter Wetsel Survey, Abstract No. 990, Generally Located North of Main Street and East of Jupiter Road.

**BACKGROUND**

The property is generally located north of Main Street and east of Jupiter Road. The property to the north is zoned Planned Development No. 6 Shopping Center and further north (across Pebblebrook Drive), the property is zoned Community Facilities. The properties to the east are zoned Single-Family Residential R-4, Single-Family Residential R-5, and Planned Development PD No. 5 Shopping Center. To the south (across Main Street), the properties are zoned Shopping Center and Planned Development No. 89 Shopping Center. The properties to the west (across Jupiter Road) are zoned Shopping Center, and further to the west (across Greenville Avenue), zoned Planned Development No. 10 Multi-Family MF-12, and Multi-Family MF-18.

The applicant is proposing to change the zoning from Community Facilities and Planned Development No. 6 Shopping Center to a Planned Development with a base zoning of Community Facilities, and adopt Development Regulations, a Concept Plan, and Building Elevations for the Lowery Freshman Center.

The development/redevelopment will occur on the approximately 39.74± acre property for the Lowery Freshman Center, which will be subdivided into two lots - Lot 1R and Lot 2. On Lot 1R, the existing building (which is approximately 70,428± square feet, with 17 classrooms) and tennis courts will remain. The portable buildings on this lot will be removed. On Lot 2, the existing building will be demolished. The proposed building will be approximately 313,600± square feet, with 63 classrooms. A turf practice field is also proposed on the eastern side of Lot 2. The existing stadium and existing buildings north of the stadium will remain.

The total parking provided for both lots exceeds the Allen Land Development Code (ALDC) parking requirement. Additionally, two loading areas are proposed for the building on Lot 2. There is a loading area on the eastern side of the building, and a loading area on the northern side of the building.

Screening for the property will consist of sections of an eight foot (8') Pre-cast Concrete wall and an eight foot (8') wrought-iron screening fence on the eastern property line adjacent to the existing single-family development. The Development Regulations reflect the Planning & Zoning Commission's recommendation for City Staff to have the authority to approve alternative screening in the form of masonry columns with wrought iron fencing along the eastern side of the property.

There are eight (8) points of access into the development. There are two (2) points of access on Main Street, two (2) points of access on Jupiter Road, two (2) points of access on Greenville Avenue, and two (2) points of access on Pebblebrook Drive. Pebblebrook Drive will also be widened with this development.

The building elevations (for the proposed building on Lot 2) show brick and stone as the primary exterior building materials. The exterior building materials also include glass and metal elements. The building will be two stories, with a general height of 68' (at the highest architectural feature).

The development regulations include language regarding the screening and traffic improvements, among other regulations.

On November 1, 2016, the Planning and Zoning Commission recommended approval of the request.

### **LEGAL NOTICES**

Public Hearing Sign - Installed October 21, 2016  
Public Hearing Notices - Installed October 21, 2016  
Newspaper Notice - October 20, 2016

### **STAFF RECOMMENDATION**

Staff recommends approval of the request.

### **MOTION**

***I make a motion to Adopt Ordinance No. \_\_\_\_\_ to establish Planned Development No. 125 and adopt Development Regulations, a Concept Plan, and Building Elevations, for Lot 1, Block A, Allen High School Addition, and a 6.248+/- acre portion of land Situated in the Peter Wetsel Survey, Abstract No. 990, for the Lowery Freshman Center.***

**ATTACHMENTS:**

Ordinance

Property Notification Map

Draft Minutes

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE ZONING REGULATIONS AND ZONING MAP, AS PREVIOUSLY AMENDED, BY GRANTING A CHANGE IN ZONING FROM COMMUNITY FACILITIES “CF” AND PLANNED DEVELOPMENT “PD” NO. 6 SHOPPING CENTER “SC” TO PLANNED DEVELOPMENT “PD” NO. 125 FOR A 39.7432± ACRE TRACT OF LAND DESCRIBED IN EXHIBIT “A” HERETO CONSISTING OF A 4.278± ACRE AND A 1.970± ACRE TRACT OF LAND OUT OF THE PETER WETSEL SURVEY, ABSTRACT NO. 990, AND LOT 1, BLOCK A, ALLEN HIGH SCHOOL ADDITION; ADOPTING DEVELOPMENT REGULATIONS, A CONCEPT PLAN, AND BUILDING ELEVATIONS; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Planning and Zoning Commission and the governing body of the City of Allen, Texas, in compliance with the laws of the State of Texas and the Ordinances of the City of Allen, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, the City Council has concluded that the Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Texas, as previously amended, should be further amended as follows:

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

**SECTION 1.** The Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Texas, as amended, be further amended by granting a change in zoning from Community Facilities “CF” and Planned Development “PD” No. 6 Shopping Center “SC” to Planned Development “PD” No. 125 for the 39.7432 acre tract of land, described in Exhibit “A,” attached hereto and incorporated herein by reference (“the Property”).

**SECTION 2.** The Property shall be developed and used only in accordance with the applicable provisions of the Allen Land Development Code, as amended (“ALDC”) except as modified by the following Development Regulations:

- A. BASE ZONING DISTRICT:** The Property shall be developed and used only in accordance with provisions applicable to the Community Facilities District “CF” except as otherwise provided in this Ordinance.
- B. CONCEPT PLAN:** The Property shall be developed in general conformance with the Concept Plan attached hereto as Exhibit “B,” and incorporated herein by reference. Minor modifications to streets that do not alter the general alignment shown on the Concept Plan may be made at the time of plat approval.
- C. BUILDING ELEVATIONS:** Buildings to be constructed on the Property shall be developed in general conformance with the height, materials, and architectural style set forth on the Building Elevations attached hereto as Exhibit “C,” and incorporated herein by reference.

**D. SCREENING:** Screening shall be constructed and/or installed along the boundaries of the Property in general conformance with the Concept Plan attached hereto as Exhibit "B." Notwithstanding the foregoing to the contrary, the owner of the Property may construct the screening wall along the eastern boundary of the Property with a wrought iron appearance and masonry columns upon written approval of the Director of Community Development following submission and review of design documents submitted by the Property owner for alternative screening design.

**E. TRAFFIC IMPROVEMENTS:**

1. Driveway Curb Radii, throat lengths, and spacing shall be in accordance with the Concept Plan attached hereto as Exhibit "B."
2. Pebblebrook Drive shall be widened and constructed to a collector-width street satisfying the standards as set forth in Section 8.05.2 of the ALDC, and accepted by the City, prior to issuance of a certificate of occupancy for the new school to be constructed on the Property.

**SECTION 3.** To the extent of any irreconcilable conflict with the provisions of this Ordinance and other ordinances of the City of Allen governing the use and development of the Property and which are not expressly amended by this Ordinance, the provisions of this Ordinance shall be controlling.

**SECTION 4.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, or of the Allen Land Development Code, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said Ordinance or the Allen Land Development Code, as amended hereby, which shall remain in full force and effect.

**SECTION 5.** An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Allen Land Development Code Zoning Regulations, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 6.** Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in Allen Land Development Code Zoning Regulations as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

**SECTION 7.** This Ordinance shall take effect immediately from and after its passage and publication of the caption in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 8<sup>TH</sup> DAY OF NOVEMBER 2016.**

**APPROVED:**

\_\_\_\_\_  
**Stephen Terrell, Mayor**

**APPROVED AS TO FORM:**

**ATTEST:**

\_\_\_\_\_  
**Peter G. Smith, City Attorney**  
(kbl:11/1/16:81029)

\_\_\_\_\_  
**Shelley B. George, City Secretary**

**EXHIBIT "A"**  
**DESCRIPTION OF PROPERTY**

WHEREAS, Allen Independent School District is the owner of a tract of land situated in the Peter Wetzel Survey, Abstract Number 990, City of Allen, Collin County, Texas, and being all of Lot 1, Block A, Allen High School Addition, an addition to the City of Allen, Collin County, Texas, as recorded in Volume C, Page 448 of the Plat Records, Collin County Texas, and all of a 4.278 acre tract of land as recorded in Clerk's File Number 20160418000459840 and all of a 1.970 acre tract of land as recorded in Clerk's File Number 20160512000581590 and being more particularly described

BEGINNING at an "X" cut found in an interior ell corner of said Lot 1, Block A, also being the northwest corner of Lot 1, Block 1, Mr. Quik Addition, as recorded in Volume C , Page 499 of said plat records;

THENCE, South 01°00'00" West, with an east line of said Lot 1, Block A, and the west line of said Lot 1, Block 1, for a distance of 240.00 feet to a 1/2 inch iron rod set with a yellow cap stamped "CORWIN ENG. INC." in the north right of way line of Main Street (110' R.O.W.), a right of way plat as recorded in Volume H, Page 670 in said plat records;

THENCE, North 89°25'00" West, with said north line, for a distance of 670.00 feet to a 1/2 inch iron rod set with a yellow cap stamped "CORWIN ENG. INC." in the south line of said Lot 1, Block A;

THENCE, North 44°12'18" West, departing said north line and with said south line, for a distance of 49.31 feet to a 1/2 inch iron rod set with a yellow cap stamped "CORWIN ENG. INC." in the east line of Jupiter Road (65' R.O.W.) and the west line of said Lot 1, Block A;

THENCE, North 01°00'00" East, with the west line of said Lot 1, Block A, passing at 930.09 feet the southeast corner of Tract 5, Allen Towne Center, an addition to the City of Allen, Collin County, Texas, as recorded in Volume E, Page 139 in said Plat Records, and continuing with the east line of said Tract 5 and said west line for a total distance of 1264.80 feet to a 1/2 inch iron rod set with a yellow cap stamped "CORWIN ENG. INC." in the east right of way line of Greenville Avenue (Variable R.O.W.) also being the most westerly northwest corner of Lot 1, Block A;

THENCE, South 89°25'00" East, with said east line and the north line of said Lot 1, Block A, for a distance of 2.20 feet to a 1/2 inch iron rod set with a yellow cap stamped "CORWIN ENG. INC." at the southwest corner of said 4.278 acre tract;

THENCE, North 30°47'45" East, departing said north line and with said east line and with the west line of said 4.278 acre tract, for a distance of 212.03 feet to Texas Department of Transportation Monument found;

THENCE, South 60°07'37" East, with said east and west lines for a distance of 10.04 feet to Texas Department of Transportation Monument found;

THENCE, North 30°52'37" East, with said east and west lines for a distance of 379.21 feet to a 1/2 inch iron rod set with a yellow cap stamped "CORWIN ENG. INC." at the northwest corner of said 4.278 acre tract, also being in the south line of said 1.970 acre tract;

THENCE, North 59°08'00" West, with said south and east lines, for a distance of 10.19 feet to a Texas Department of Transportation Monument found at the southwest corner of said 1.970 acre tract;

**EXHIBIT "A"**  
**DESCRIPTION OF PROPERTY cont.**

THENCE, North 30°52'35" East, with the west line of said tract and said east line, for a distance of 217.78 feet to a 1/2 inch iron rod set with a yellow cap stamped "CORWIN ENG. INC." at the northwest corner of said 1.970 acre tract, also being the southwest corner of Phase 1 Pebblebrook Village, an addition to the City of Allen, Collin County, Texas, as recorded in Volume C, Page 513 in said Plat Records;

THENCE, South 59°08'00" East; departing said east line and with the north line of said 1.970 acre tract and the south line of said Phase 1 Pebblebrook Village Addition, for a distance of 394.09 feet to a 1/2 inch iron rod set with a yellow cap stamped "CORWIN ENG. INC." at the southeast corner of said Phase 1 Pebblebrook Village Addition, also being in the west line of said Lot 1, Block A;

THENCE, North 30°52'00" East, with the east line of said Phase 1 Pebblebrook Village and the west line of said Lot 1, Block A, for a distance of 260.81 feet to an "X" cut set in concrete at the northeast corner of said Phase 1 Pebblebrook Village, also being the most northerly northwest corner of said Lot 1, Block A, also being in the south line of Pebblebrook Drive (60' R.O.W.), being on a curve to the left having a radius of 751.58 feet, a tangent of 78.24 feet and a central angle of 11°53'08";

THENCE, with said curve to the left and said south line and the north line of said Lot 1, Block A, for an arc distance of 155.91 feet (Chord Bearing South 84°10'26" East) to a 1/2 inch iron rod set with a yellow cap stamped "CORWIN ENG. INC.";

THENCE, North 89°53'00" East, with said south and north lines, for a distance of 290.35 feet to a 1/2 inch iron rod set with a yellow cap stamped "CORWIN ENG. INC." at the northeast corner of said Lot 1, Block A, also being the west line of Fountain Park Second Section, an addition to the City of Allen as recorded in Volume 8, Page 67, in said Plat Records, being on a curve to the right having a radius of 67.00 feet, a tangent of 18.57 feet and a central angle of 30°58'57";

THENCE, with said curve to the right and the east line of said Lot 1, Block A and the west line of said Fountain Park Second Section, for an arc distance of 36.23 feet (Chord Bearing South 15°22'32" West – 35.79 feet) to a 1/2 inch iron rod set with a yellow cap stamped "CORWIN ENG. INC.";

THENCE, South 30°52'00" West, with said east and west lines, passing at 6.71 feet, the southwest corner of said Fountain Park Second Section, also being the northwest corner of Fountain Park Third Section, an addition to the City of Allen, Collin County, Texas, as recorded in Volume B, Page 127 in said plat records, and continuing with the west line of said Fountain Park Third Section for a total distance of 619.37 feet to a 1/2 inch iron rod set with a yellow cap stamped "CORWIN ENG. INC." on a curve to the left having a radius of 750.00 feet, a tangent of 200.03 feet and a central angle of 29°52'00";

THENCE, continuing with said east and west lines and with said curve to the left for an arc distance of 390.95 feet (Chord Bearing South 15°56'00" West – 386.54 feet) to a 1/2 inch iron rod set with a yellow cap stamped "CORWIN ENG. INC.";

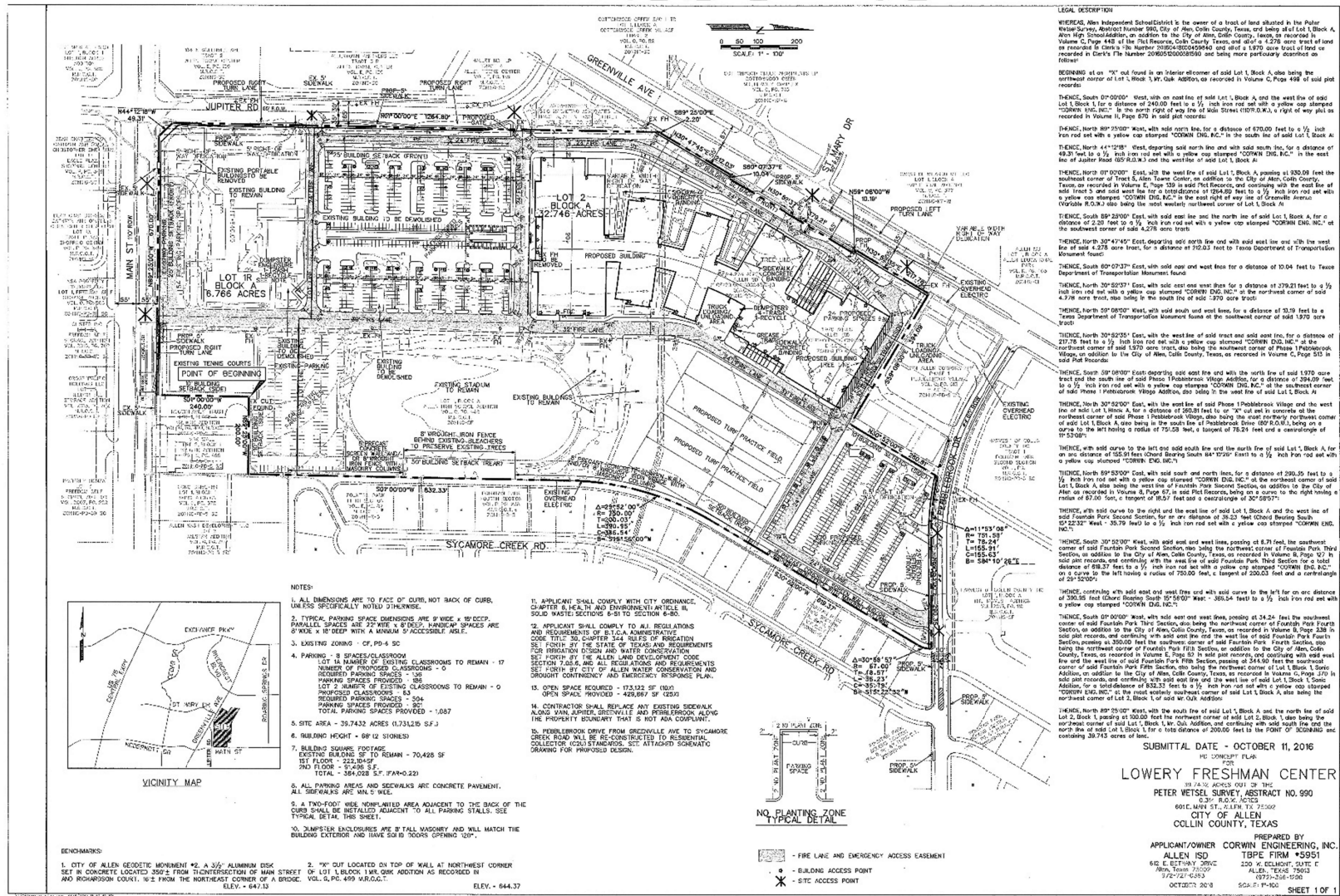
THENCE, South 01°00'00" West, with said east and west lines, passing at 34.24 feet the southwest corner of said Fountain Park Third Section, also being the northwest corner of Fountain Park Fourth Section, an addition to the City of Allen, Collin County, Texas, as recorded in Volume B, Page 238 in said plat records, and continuing with said east line and the west line of said Fountain Park Fourth Section, passing at 350.00 feet the southwest corner of said Fountain Park Fourth Section, also being the northwest corner of Fountain Park Fifth Section, an addition to the City of Allen, Collin County, Texas, as recorded in Volume E, Page 82 in said plat records, and continuing with said east line and the west line of said Fountain Park Fifth Section, passing at 344.90 feet the southwest corner of said Fountain Park Fifth Section, also being the northwest corner of Lot 1, Block 1, Sonic Addition, an addition to the City of

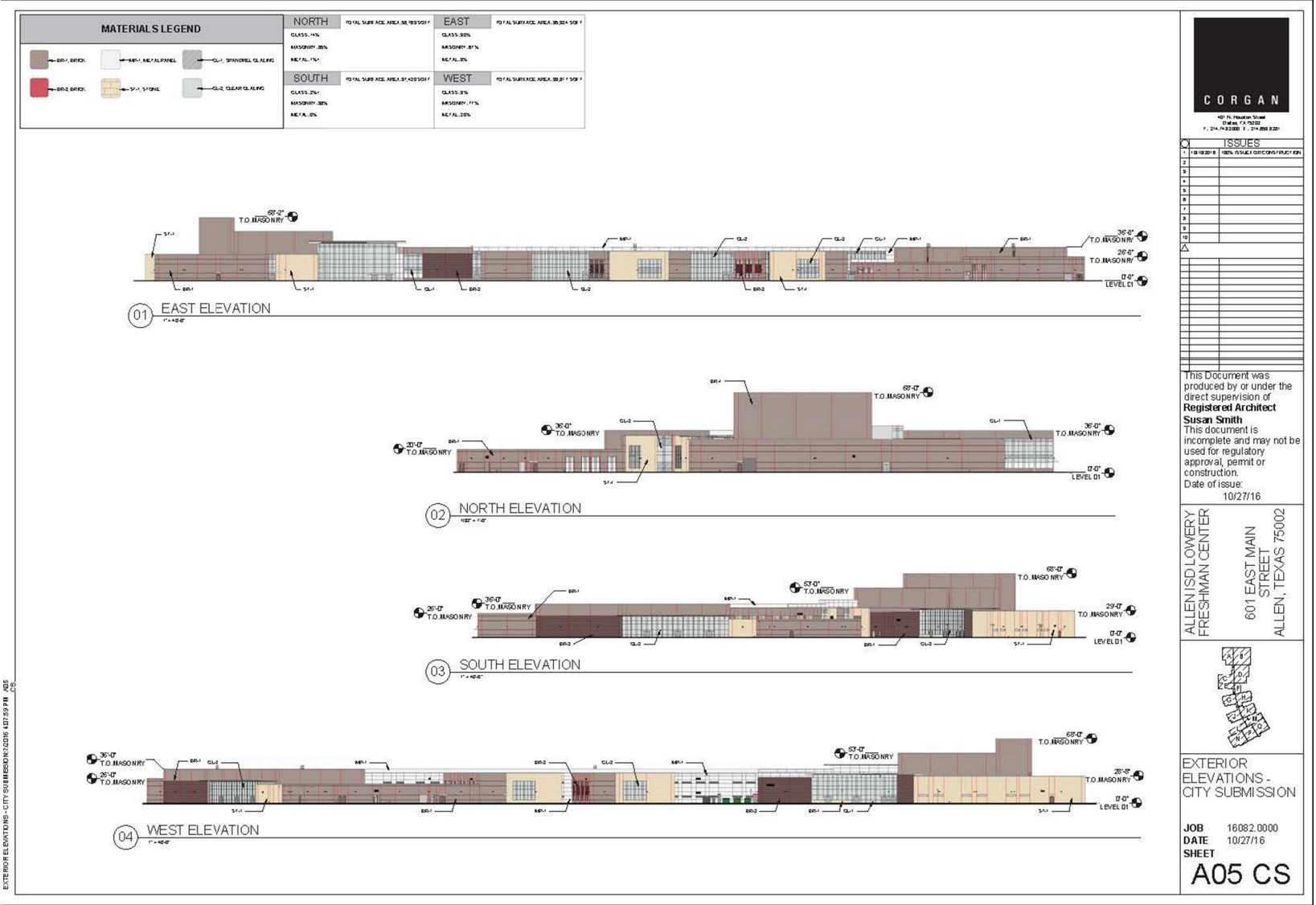


**EXHIBIT "A"**  
**DESCRIPTION OF PROPERTY cont.**

Allen, Collin County, Texas, as recorded in Volume G, Page 370 in said plat records, and continuing with said east line and the west line of said Lot 1, Block 1, Sonic Addition, for a total distance of 832.33 feet to a 1/2 inch iron rod set with a yellow cap stamped "CORWIN ENG. INC." at the most easterly southeast corner of said Lot 1, Block A, also being the northwest corner of Lot 2, Block 1, of said Mr. Quik Addition;

THENCE, North 89°25'00" West, with the south line of said Lot 1, Block A and the north line of said Lot 2, Block 1, passing at 100.00 feet the northwest corner of said Lot 2, Block 1, also being the northeast corner of said Lot 1, Block 1, Mr. Quik Addition, and continuing with said south line and the north line of said Lot 1, Block 1, for a total distance of 200.00 feet to the POINT OF BEGINNING and containing 39.7432 acres of land.





**EXHIBIT "C"**  
**BUILDING ELEVATIONS**

EXTERIOR ELEVATIONS - CITY SUBMISSION - 10/27/16 10:59 PM A05 CS





Property Ownership Notification

**Lowery Freshman Center**  
601 E. Main St.

### Map Legend

- 200' Notification Buffer
- Railroad
- Public Rezone
- CollinCAD Parcels

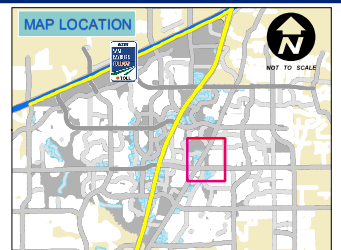


0 210 420 630  
Feet

Community Development - GIS

Date Saved: 9/23/2016

NOTE: This map is only for illustration purpose only, please contact the City of Allen Planning & Development Department for specific rules and regulations.





## **November 1, 2016 Planning and Zoning Commission Meeting Minutes**

Public Hearing – Conduct a Public Hearing and consider a request to establish a Planned Development and adopt Development Regulations, a Concept Plan, and Building Elevations, for Lot 1, Block A, Allen High School Addition, and a 6.248+/- acre portion of land situated in the Peter Wetsel Survey, Abstract No. 990; generally located north of Main Street and east of Jupiter Road. (Z-9/30/16-96) [Lowery Freshman Center]

Mr. Bo Bass, Director of Community Development came forward to present the case. He stated that this request is being initiated by the Allen Independent School District (AISD) in order to replace Planned Development (PD) 6, which has been in existence since 1981. He provided a vicinity map and said that the site is generally located north of Main Street and east of Jupiter Road and is commonly known as the Lowery Freshman Center, formerly Allen High School. He highlighted the fact that this is an important AISD facility and worthy of substantial investment to renovate and expand in the future, which is the essence of this case. He provided an overview of the existing site pointing out the major buildings and facilities as they exist today and remaining undeveloped property. He stated that if the proposal is approved by the City Council, the new PD will encompass both the existing facilities and the vacant property, a total of 39.7± acres. He explained the structure of PD-6 and the requirement to have all subsequent site plans approved by the Commission following a public hearing. He said that was a common practice when the PD was approved in 1981. However, the present day PD process includes a detailed concept plan review and requires two public hearings prior to approval, thus the process envisioned in 1981 is essentially being met through the current public hearing process and additional site plan approval by the Commission is no longer necessary. He then highlighted the surrounding zoning districts and land uses. He showed the proposed concept plan for the subject property and stated that it is a complex project so he would break down all the different elements in the remainder of his presentation to make it easier to understand. First, he pointed out that a portion of the site is currently zoned Shopping Center (SC), which is not an appropriate zoning category for a school site. To that end, if approved, the proposed PD would rezone the entire site to a base district of Community Facility (CF). He then showed a graphic indicating the portions of the site that are to remain, be removed and where new development is proposed. He stated that the main portion that will remain is the 70,428 sq. ft. building off Main Street that houses 17 classrooms, the tennis courts and stadium as well as field house buildings north of the stadium. The rest of the existing structure will be demolished and redeveloped to provide better circulation and parking. The new development will occur on the rest of the site with a 313,600 ± sq. ft. building that will house approximately 63 classrooms, as well as new practice turf areas and additional parking. All total the complex will have eight points of access. He then discussed the proposed screening standards and the public input received by the school district when they conducted their public meetings with surrounding residents. He said, that ultimately the school districts desires to provide appropriate screening and may utilize a combination of masonry walls and wrought iron fencing for a portion of the screening to respect existing tree lines. Ultimately, City Staff is supportive of either as it is an improvement over the existing chain linked fence that exists today. He then provided a map indicating the drop off/pick up circulation patterns for the facilities for both buses and parents. He provided color elevations and an overview of the proposed PD regulations, which generally encompass the concept plan, building elevation, screening and traffic improvements discussed throughout the presentation. He reiterated that if any major changes occur, then the school district will be required to come back through the PD process to request amendments. He highlighted the fact that the traffic improvements will be implemented to the greatest extent possible given the site constraints and that the proposal has been fully vetted by the Engineering, Fire Department and CWD and deemed acceptable. He stated that concerns have been raised regarding the effect the traffic will have on Pebblebrook Dr. and that the City in conjunction with the school district will participate in the widening of Pebblebrook from the existing 31 ft. right of way to 27 feet to allow for 3 lanes of traffic. He stated that Staff is in support of the proposal and recommends approval.

Chairman Jeff Cocking stated that before the Commission moved on to questions and the public hearing he wanted to ask a clarifying legal question. He said that it was his understanding that only 6 of the total 39.7 acres was currently zoned SC and the public hearing notice only mentions 6 acres specifically, so is it okay that they are considering a rezoning for all 39.7 acres. City Attorney, Kevin Laughlin, addressed the question stating that the public hearing notice calls out the 6.248 ± acres specifically because it is not platted, but the remainder of the area is called out by its platted legal description which is Lot 1, Block A of the Allen High School Addition. Because the legal description is used it is not necessary to call out the acreage specifically. All together it is 39.7 ± acres, so the description used on the public hearing notice is sufficient. With that Chairman Cocking opened up asked the Commission if they had any questions for staff. Commissioner John Ogrizovich asked where crossing guards would be stationed. Mr. Bass deferred to the school district to answer the question since it was operational in nature. Chairman Cocking added to the question asking how the district will handle traffic as the project is phased since it will be necessary to complete portions of the project while school is actively in session. Daniel Pitcock, Chief Operations Officer for AISD, came forward to address the Commission. He explained the construction phasing stating that there will not be interference between the two projects. The new building will be open and operational before additional demolition occurs to balance the traffic patterns and parking. With no additional questions from the Commission Chairman Cocking opened the public hearing. With no one wishing to speak he closed the public hearing and asked for questions/comments from the Commission. Commissioner Ogrizovich stated that he thought it was great and looked forward to a new school. Commissioner Michael Orr ask for further clarification about the traffic plan and widening for Pebblebrook. City Engineer, Chris Flannigan, came forward to address the traffic questions. He reiterated that Engineering has worked closely with the school district to achieve desirable traffic patterns and roadway improvements. Commissioner Orr asked if there were going to be any improvements to Greenville Ave. or just Pebblebrook Dr. Mr. Flannigan stated that there will be a deceleration lane added to Greenville to aid in traffic movements turning into the school as well as a crosswalk installed at the St. Mary Drive intersection. Commissioner Shirley Mangrum stated that she supports the project and that it's making a great school even greater. Commissioner Luke Hollingsworth asked if more discussion was needed on the screening walls. Mr. Pitcock stated that the school districts intends to be flexible in order to offer the best screening possible that fits in with the desires of the neighborhood and existing natural features of the site. Chairman Cocking stated that as the development regulations read the district is committed to a masonry wall with the exception of a portion of the wall by the stadium that can be wrought iron. If they want more flexibility it will need to be written into the PD. Mr. Bass confirmed that interpretation is correct and the Commission can recommend that Council approve a provision to allow Staff to approve alternative screening at the time of site plan instead of it having to comeback through the Planning and Zoning Commission process at that time. Second Vice Chair Stephen Platt asked why the Commission would offer that if it has not been formally requested by the school district. Chairman Cocking asked if the school district wanted that flexibility. Mr. Pitcock stated that the district would appreciate the flexibility to be able to provide a masonry wall or masonry columns with wrought iron. Chairman Cocking asked about future traffic signal plans. Mr. Flannigan stated that they will have to wait and see what the real travel demand is in and out of the site, but will continue studying the area closely. Second Vice Chair Platt asked about the unintended traffic patterns of parents trying to save time and drop off at an unauthorized point and then proceed towards Rivercrest. Mr. Flannigan stated that it can be addressed through additional signage and enforcement procedures and the City and school district are in continual communication about these matter in order to address them as the needs arise. With no additional questions Chairman Cocking called for a motion.

Motion: Upon a motion by Commissioner Ogrizovich, and a second by Commissioner Mangrum, the Commission voted 7 IN FAVOR, and 0 OPPOSED to recommend approval of a request to establish a Planned Development and adopt Development Regulations, a Concept Plan, and Building Elevations, for

Lot 1, Block A, Allen High School Addition, and a 6.248+/- acre portion of land situated in the Peter Wetsel Survey, Abstract No. 990; generally located north of Main Street and east of Jupiter Road with the following condition: City Staff shall have the authority to approve alternative screening in the form of masonry columns with wrought iron fencing along the eastern side of the property. (Z-9/30/16-96) [Lowery Freshman Center]

DRAFT

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:**

November 8, 2016

**SUBJECT:**

Conduct a Public Hearing and Adopt an Ordinance Amending the Development Regulations for Planned Development No. 54 and Adopt a Concept Plan, Landscape Plan, and Building Elevations for a 2.387± Acre Tract of Land Generally Located Northeast of Walmart Supercenter, South of Curtis Lane and West of US Highway 75. [Corridor Commercial-Tru by Hilton Hotels]

**STAFF RESOURCE:**

Madhuri Mohan, AICP  
Senior Planner

**PREVIOUS COUNCIL ACTION:**

PD-54 - Approved May, 1993  
PD-54 - Amended July, 1999

**BOARD COMMISSION ACTION:**

On October 18, 2016, the Planning and Zoning Commission voted 7 in favor (Commissioners Cocking, Trahan, Hollingsworth, Platt Jr., Mangrum, Orr, and Ogrizovich) and 0 opposed to recommend approval of this request.

**ACTION PROPOSED:**

Adopt an Ordinance Amending the Development Regulations for Planned Development No. 54 and Adopt a Concept Plan, Landscape Plan, and Building Elevations for a 2.387± Acre Tract of Land Generally Located Northeast of Walmart Supercenter, South of Curtis Lane and West of US Highway 75.

**BACKGROUND**

The property is generally located south of Curtis Lane and west of US Highway 75 (and commonly known as 1553 N. Central Expressway). The property to the north is zoned Corridor Commercial. The properties to the west and south are zoned Planned Development PD No. 54 Corridor Commercial. To the east (across US Highway 75), the property is zoned Community Facilities.

The applicant is proposing to develop the 2.387± acre tract for a proposed limited service hotel. The property (Lot 2, Block A) is zoned Planned Development PD No. 54 Corridor Commercial. The applicant is proposing to amend the Development Regulations, and adopt a Concept Plan, Landscape Plan, and Building Elevations for the property.

The Concept Plan shows a four (4) story hotel with a building area of approximately 43,768 square feet. A total of 95 guest rooms are proposed. The building elevations show the four (4) story hotel with a maximum height of approximately 50 feet. The exterior building materials include stucco, brick, and stone, and are 100%



masonry.

There are a total of two (2) access points into the development; both through the Firelane Lane/Public Access Easement on the south. A cross access easement is also provided on the north.

The number of parking spaces as well as the provided landscaping exceeds the requirements of the Allen Land Development Code (ALDC). The site design also complies with all requirements of Section 6.06.3 "Hotels" of the ALDC.

The development regulations include specific regulations relating to the Landscape Plan and the driveway on US 75. The primary reason for the request is to permit required street trees to be located in alternative locations on the property due to conflict with utilities and easements along US Highway 75. Additionally, the existing driveway on US Highway 75 shall be removed by the developer.

On October 18, 2016, the Planning and Zoning Commission recommended approval of the request.

### **LEGAL NOTICES**

Public Hearing Sign - Installed October 7, 2016  
Public Hearing Notices - Mailed October 7, 2016  
Newspaper Notice - October 20, 2016

### **STAFF RECOMMENDATION**

Staff recommends approval of the request.

### **MOTION**

***I make a motion to Adopt Ordinance No. \_\_\_\_\_ to amend the Development Regulations for Planned Development No. 54 and Adopt a Concept Plan, Landscape Plan, and Building Elevations for a 2.387± acre tract of land generally located northeast of Walmart Supercenter for Tru by Hilton Hotels.***

### **ATTACHMENTS:**

Ordinance  
Property Notification Map  
Draft Minutes from the October 18, 2016 P&Z Meeting

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE AND ZONING MAP, AS PREVIOUSLY AMENDED, BY AMENDING THE DEVELOPMENT REGULATIONS AND ADOPTING A CONCEPT PLAN, LANDSCAPE PLAN, AND BUILDING ELEVATIONS FOR LOT 2, BLOCK A, WAL-MART SUPERCENTER, LOCATED IN AND SUBJECT TO THE REGULATIONS OF TRACT ONE OF PLANNED DEVELOPMENT NO. 54 CORRIDOR COMMERCIAL “CC”; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Planning and Zoning Commission and the governing body of the City of Allen, Texas, in compliance with the laws of the State of Texas and the ordinances of the City of Allen, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, have concluded that Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Texas, as previously amended, should be amended.

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

**SECTION 1.** The Allen Land Development Code Zoning Regulations and the Zoning Map of the City of Allen, Collin County, Texas, as previously amended, be further amended by amending, as set forth in Section 2, below, the development regulations relating to the use and development described as Lot 2, Block A, Wal-Mart Supercenter, an addition to the City of Allen, Collin County, Texas, according to the plat thereof recorded in Volume 2010, Page 127, Map Records, Collin County, Texas, (“the Property”) presently subject to the development and use regulations of Tract One of Planned Development No. 54 Corridor Commercial “CC.”

**SECTION 2.** The Property shall be developed and used in accordance with the development regulations of Tract One of Planned Development No. 54 Corridor Commercial “CC” and the applicable provisions of the Allen Land Development Code (“ALDC”), except to the extent modified as follows:

- A. CONCEPT PLAN:** The Property shall be developed in general conformance with the Concept Plan attached hereto as Exhibit “A,” and incorporated herein by reference. Minor modifications to streets that do not alter the general alignment shown on the Concept Plan may be made at the time of Site Plan approval.
- B. LANDSCAPE PLAN:** The Property shall be developed with the landscaping set forth in the Landscape Plan attached hereto as Exhibit “B,” and incorporated herein by reference. The location of required trees, including street trees, may be adjusted to avoid conflicts with existing or planned utilities and easements without the requirement of enacting an amendment to the Landscape Plan provided the minimum number of required trees is planted and the new location is approved by City’s Director of Parks and Recreation or designee.
- C. BUILDING ELEVATIONS:** Buildings constructed on the Property shall be designed and developed in general conformance with the Building Elevations attached hereto as Exhibit “C,” and incorporated herein by reference.

- D. DRIVEWAY ON US 75:** The existing driveway located on US 75 service road shall be removed by the developer upon issuance of a permit by Texas Department of Transportation Permit (TXDOT) Permit, provided TXDOT authorizes such work. The owner or developer of the Property shall make application to remove said driveway prior to issuance of a Certificate of Occupancy for the building to be constructed on the Property.
- E. SPECIAL ZONING PROVISIONS:** ALDC Section 6.06.3 “Hotels” shall apply to the use and development of the Property, except that the exterior walls shall be 100% masonry.

**SECTION 3.** To the extent of any irreconcilable conflict with the provisions of this Ordinance and other ordinances of the City of Allen governing the use and development of the Property and which are not expressly amended by this Ordinance, the provisions of this Ordinance shall be controlling.

**SECTION 4.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, or of the Allen Land Development Code Zoning Regulations, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said Ordinance or the Allen Land Development Code Zoning Regulations, as amended hereby, which shall remain in full force and effect.

**SECTION 5.** An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Allen Land Development Code Zoning Regulations, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 6.** Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in Allen Land Development Code Zoning Regulations of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

**SECTION 7.** This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 8<sup>TH</sup> DAY OF NOVEMBER 2016.**

**APPROVED:**

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**Stephen Terrell, MAYOR**

**APPROVED AS TO FORM:**

**ATTEST:**

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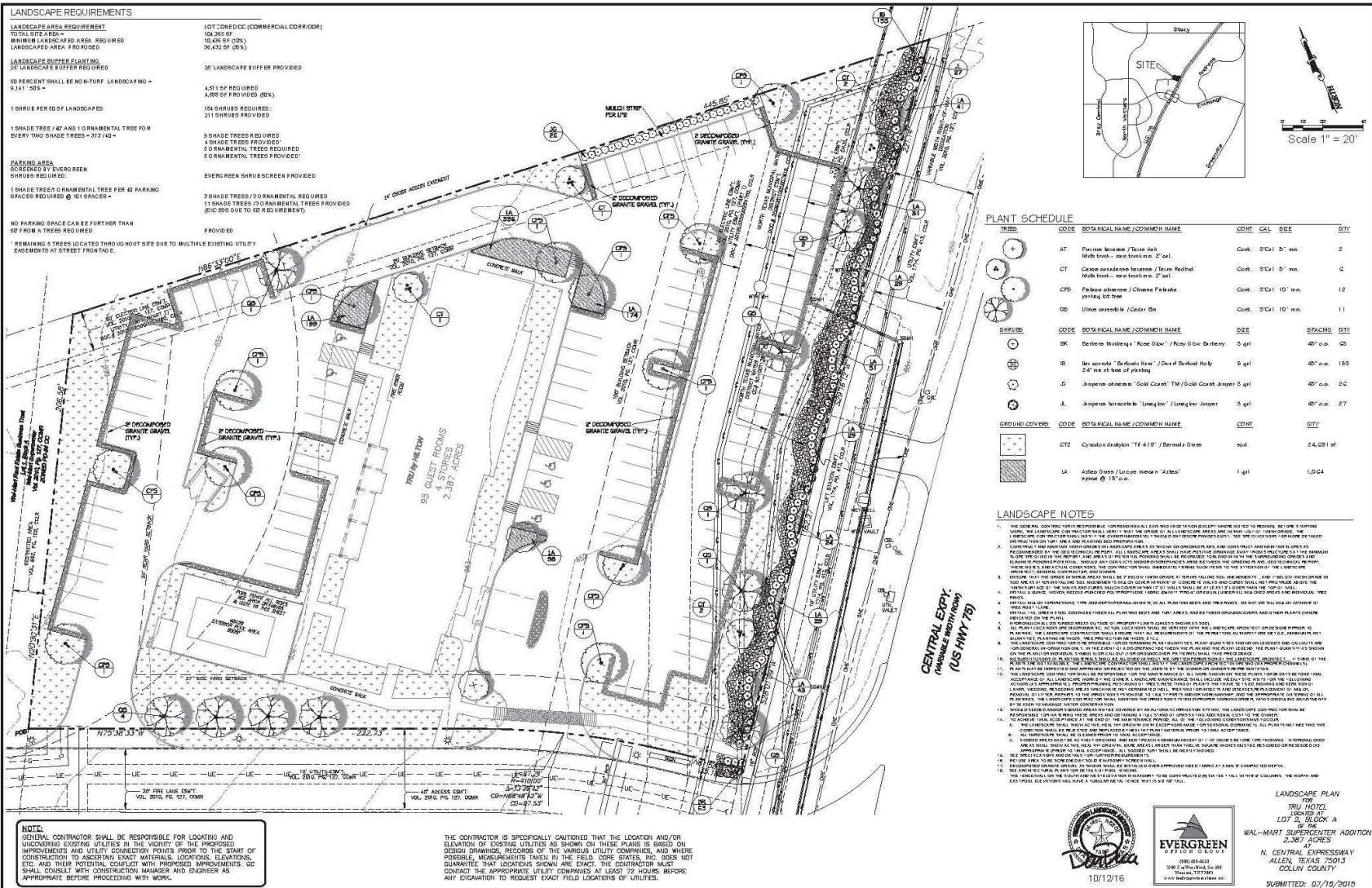
**Peter G. Smith, CITY ATTORNEY**  
(kbl:10/31/16:81031)

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**Shelley B. George, TRMC, CITY SECRETARY**

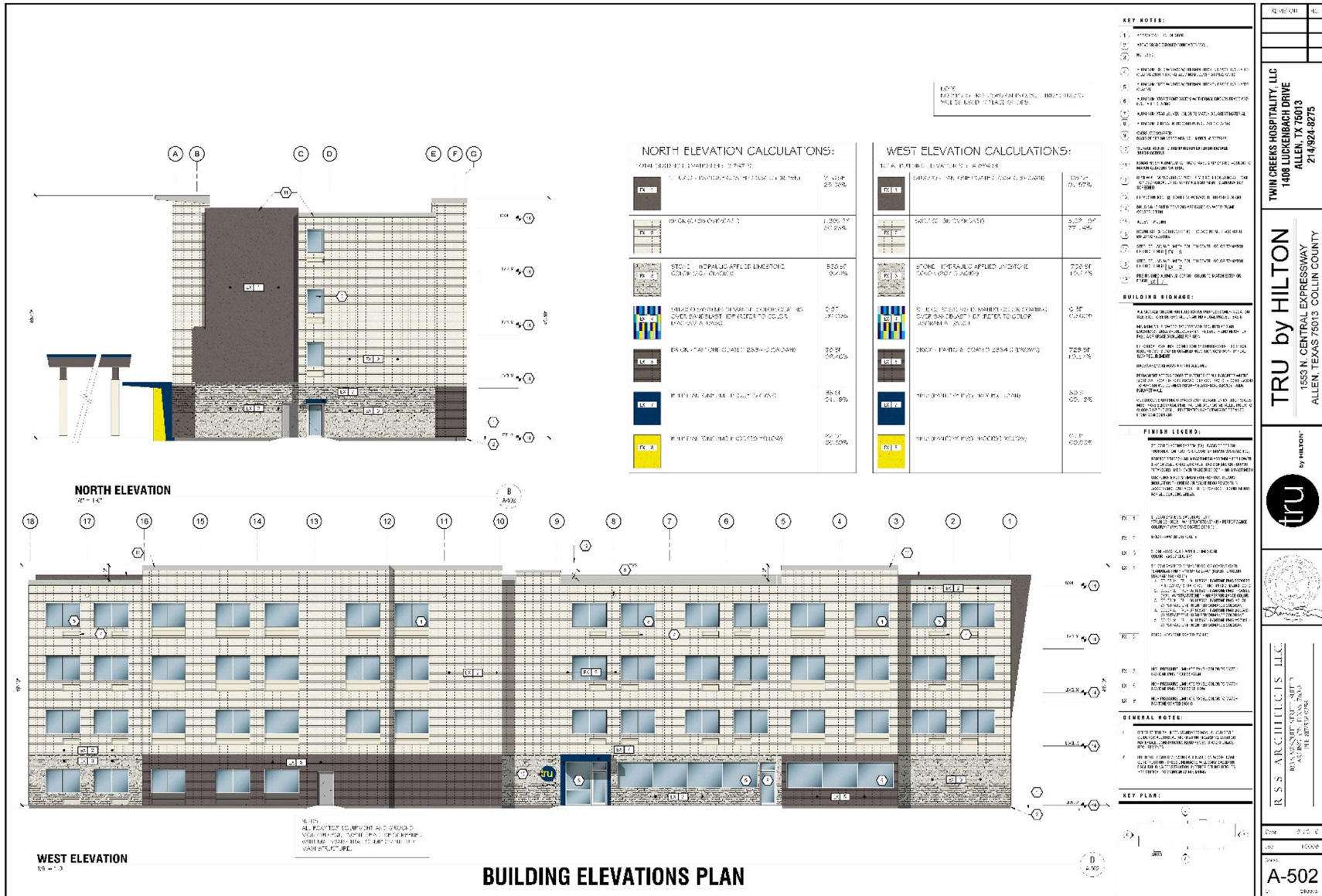


**EXHIBIT "B"**  
**LANDSCAPE ELEVATIONS**















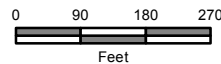


Property Ownership Notification

Tru By Hilton

### Map Legend

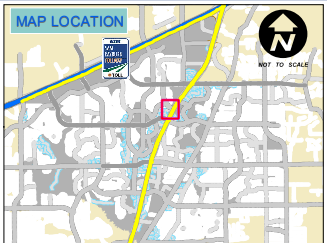
-  200' Notification Buffer
-  Railroad
-  Public Rezone
-  CollinCAD Parcels



Community Development - GIS

Date Saved: 9/28/2016

NOTE: This map is only for illustration purpose only, please contact the City of Allen Planning & Development Department for specific rules and regulations.





## **October 18, 2016 Planning and Zoning Commission Meeting Minutes**

Public Hearing – Conduct a Public Hearing and consider a request to amend the development regulations for Planned Development No. 54, and adopt a Concept Plan, Landscape Plan, and Building Elevations for Lot 2, Block A, Wal-Mart Supercenter; generally located south of Curtis Lane and west of US Highway 75 (and commonly known as 1553 N. Central Expressway). (Z-8/1/16-64) [Tru by Hilton Hotels]

Ms. Mohan, Senior Planner, presented the item to the Commission. She stated that the item is a Planned Development Amendment for PD No. 54. Ms. Mohan said that the property is generally located south of Curtis Lane and west of US Highway 75 (and commonly known as 1553 N. Central Expressway). The property to the north is zoned Corridor Commercial CC. The properties to the west and south are zoned Planned Development PD No. 54 Corridor Commercial CC. To the east (across US Highway 75), the property is zoned Community Facilities CF.

The applicant is proposing to develop the 2.387± acre tract for a limited service hotel. The property (Lot 2, Block A) is zoned Planned Development PD No. 54 Corridor Commercial CC. The applicant is proposing to amend the Development Regulations, and adopt a Concept Plan, Landscape Plan, and Building Elevations for the property.

Ms. Mohan said that the Concept Plan shows a four story limited service hotel with a building area of approximately 43,768 square feet. A total of 95 guest rooms are proposed.

There are a total of two access points into the development; both through the Firelane Lane/Public Access Easement on the south.

Ms. Mohan said that staff received a letter of opposition regarding the cross access point to the north. She said that this access point is provided because the cross access point encourages cross connection to the property to the north. She said that there are currently no plans for the property to the north. She said that this access point to the north is not a requirement.

The number of parking spaces, as well as the provided landscaping, exceeds the requirements of the Allen Land Development Code (ALDC). The site design also complies with all requirements of Section 6.06.3 “Hotels” of the ALDC. She said that Section 6.06.3 includes regulations such as exterior building materials, meeting rooms, and the size of swimming pools.

Ms. Mohan said that the building elevations show a four story hotel with a maximum height of approximately 50 feet. The exterior building materials include stucco, brick, and stone, and are 100% masonry. The development regulations include specific regulations relating to the Landscape Plan and the driveway on US 75. The primary reason for this zoning request is to permit required street trees to be located in alternative locations on the property due to conflict with utilities and easements along US Highway 75. Additionally, the existing driveway on US Highway 75 is to be removed by the developer.

Chairman Cocking opened the Public Hearing.

Maxwell Fischer, 900 Jackson St., Dallas, Texas, Applicant, spoke in favor of the request. He discussed the Tru by Hilton Hotel and discussed the hotel features, amenities, and the building elevations. He also described the landscape plan and the easements.

Sharon Mayer, 6309 Chelsea Way, Garland, Texas, spoke in favor of the request. She is a member of the City of Allen Chamber of Commerce. She requested that the Commission support the request.

Fred Phillips, 5055 Spring Valley #450, Addison, Texas, spoke in opposition of the request. He voiced concerns regarding the 24 ft. access easement and was concerned about ingress and egress vehicle traffic from the hotel into the property to the north.

Chairman Cocking closed the Public Hearing.

The following residents submitted citizen responses:

- John Baker, 1507 Bethlehem Rd., Allen, Texas – Opposed
- Bobby Patel, 1553 N. Central Expy., Allen, Texas – Support

1<sup>st</sup> Vice-Chair Trahan asked for clarification regarding the connection to Curtis Ln. and asked if the connection is mandatory.

Ms. Mohan said that the connection is not mandatory, but the cross access point provides an option to connect the two properties in the future.

Commissioner Ogrizovich asked if this would be the first Tru by Hilton hotel in the area.

Mr. Fischer said yes.

**Motion:**

**Upon a motion by Commissioner Hollingsworth, and a second by Commissioner Mangrum, the Commission voted 7 IN FAVOR, and 0 OPPOSED to approve a request to amend the development regulations for Planned Development No. 54, and adopt a Concept Plan, Landscape Plan, and Building Elevations for Lot 2, Block A, Wal-Mart Supercenter; generally located south of Curtis Lane and west of US Highway 75 (and commonly known as 1553 N. Central Expressway). (Z-8/1/16-64) [Tru by Hilton Hotels]**

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:**

November 8, 2016

**SUBJECT:**

Conduct a Public Hearing and Adopt an Ordinance Amending Planned Development No. 73 to Change the Base Zoning from Shopping Center to Single-Family Residential R-7, and Adopt a Concept Plan, Building Elevations, and Development Regulations, Relating to a 19.4817+/- Acre Portion of Lot 2A, Block B, The Village at Allen. [St. Andrews Park - Single-Family Residential]

**STAFF RESOURCE:**

Ogden "Bo" Bass, AICP  
Director of Community Development

**PREVIOUS COUNCIL ACTION:**

PD Created - September, 1998  
PD Amended - November, 2006  
PD Amended - October, 2007  
PD Amended - July, 2010

**BOARD COMMISSION ACTION:**

On October 18, 2016, the Planning and Zoning Commission Voted 7 in Favor (Commissioners Cocking, Trahan, Hollingsworth, Platt Jr., Mangrum, Orr, and Ogrizovich) and 0 Opposed to Table this Request.

On November 1, 2016, the Planning and Zoning Commission Voted 5 in Favor (Commissioners Trahan, Hollingsworth, Mangrum, Orr, and Ogrizovich) and 2 Opposed (Platt and Cocking) to Recommend Approval of this Request with some modifications to the development regulations related to screening, parking and the width of Street A.

**ACTION PROPOSED:**

Adopt an Ordinance Amending Planned Development No. 73 to Change the Base Zoning from Shopping Center to Single-Family Residential R-7, and Adopt a Concept Plan, Building Elevations, and Development Regulations, Relating to a 19.4817+/- Acre Portion of Lot 2A, Block B, The Village at Allen.

**BACKGROUND**

The property is generally located southeast of Andrews Parkway. The properties to the north (across Andrews Parkway) and west are zoned Planned Development PD. No. 73 Shopping Center. The properties to the south and east are zoned Single-Family Residential R-5.

The property is currently zoned Planned Development PD. No. 73 Shopping Center, which allows the following range of uses to name a few: office, retail, restaurant, medical clinic, department or discount stores. The applicant is requesting to change the base zoning from Shopping Center to Single Family Residential District R-7 for a single-family residential subdivision, and to adopt Development Regulations, a Concept Plan, an Open Space Exhibit, and Building Elevations for the property.

The proposed development is approximately 19.48± acres. The Concept Plan shows two minimum typical lot sizes, 45'X95' and 50'X90'. A total of 62 front-entry lots are provided (with approximately 44% with 45' width and 56% with 50' width). The minimum lot size provided is 4,275 square feet, with a minimum dwelling unit size (excluding the garage) of 1,550 square feet.

The Concept Plan and Open Space Exhibit show eight (8) Home Owner Association lots. Approximately 1.85± acres of open space is provided, exceeding the required open space requirement, per the Allen Land Development Code.

There are three (3) access points for the property. Two (2) primary access points for the development are located on Andrews Parkway. There is also a gated, emergency access drive on Andrews Parkway. A 5' sidewalk is required and proposed along Andrews Parkway, which will connect to the existing sidewalk on the west. The applicant will also provide crosswalk striping along Andrews Parkway for connectivity between this proposed residential development to the adjacent Village at Allen development.

A hike and bike trail currently exists around the detention pond to the south. The trail currently continues to the north along the eastern side of the property. This development will remove this portion of the trail and relocate it internal to the site. The trail will continue to the north along Street E, and continue further to the east along Andrews Parkway.

Screening for the property will consist of an eight foot (8') masonry screening wall along Andrews Parkway. An eight foot (8') masonry or pre-cast screening wall will also be constructed along the western property boundary adjacent to Top Golf. An eight foot (8') wall and trees exist along the eastern and southern boundaries of this development - these will remain with this development (and this is reflected in the Development Regulations).

The building elevations show the primary building material as stone, brick, stucco, cement fiber board, and composition shingle roofing. The garage doors will be constructed of carriage hardware design and the driveways will be washed or exposed aggregate. Elevations vary between one and two stories. The developer has stipulated that any windows on a second floor of the rear elevation of Lots 1-18, Block E will either be transom windows or constructed of opaque glass, which is reflected in the Development Regulations.

The development regulations establish design criteria that includes language regarding screening (including the existing wall and trees to remain), lot design criteria, building setbacks, sidewalks, drainage, provision for cluster mailboxes, language regarding no parking, and off-street improvements.

The applicant has been requested to make contact with surrounding properties throughout the staff review process.

On October 18, 2016, the Planning and Zoning Commission tabled the request to the November 1, 2016, in which the Planning & Zoning Commission meeting recommended the following changes to the development regulations:

- C. "Screening": Through further research, the applicant has discovered that adjustments need to be made to a box culvert on the property. These adjustments have been vetted and supported by the Engineering Department. Accordingly, an approximate 50' portion of the existing screening wall on the

eastern side of the property will be removed and replaced (with materials and installation techniques to match the existing wall).

- J. "No Parking": This provision has been specified to state that parking is not permitted on Street A (except for the head-in parking provided), within the firelane and access easement along Lots 1-6, Block E, or anywhere required by the Fire Marshall. The parking restriction will be marked by curb striping.
- L. "Street A": A regulation regarding Street A to be 28' wide (as measured from back-of-curb) has been added.

Based on the Planning and Zoning Commission's direction, staff conducted research regarding noise complaints. Since the opening of Top Golf in 2011 to date:

- Code Enforcement received four noise complaints.
- The Police Department received 12 noise complaints.

On November 1, 2016, the Planning and Zoning Commission recommended approval of the request.

### **LEGAL NOTICES**

Public Hearing Sign - Installed October 7, 2016  
Public Hearing Notices - Mailed October 7, 2016  
Newspaper Notice - October 20, 2016

### **STAFF RECOMMENDATION**

Staff recommends approval of the request.

### **MOTION**

***I make a motion to Adopt Ordinance No. \_\_\_\_\_ Amending Planned Development No. 73 to Change the Base Zoning from Shopping Center to Single-Family Residential R-7, and Adopt a Concept Plan, Building Elevations, and Development Regulations, Relating to a 19.4817+/- Acre Portion of Lot 2A, Block B, The Village at Allen, for St. Andrews Park.***

### **ATTACHMENTS:**

Ordinance  
Property Notification Map  
Draft Minutes from the October 18, 2016 P&Z Meeting  
Draft Minutes from November 1, 2016 P&Z Meeting

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE AND ZONING MAP, AS PREVIOUSLY AMENDED, RELATING TO THE USE AND DEVELOPMENT OF A 19.4817± ACRE TRACT OF LAND OUT OF THE HENRY WETSEL SURVEY, ABSTRACT NO. 1026 AND A PORTION OF LOT 2A, BLOCK B, THE VILLAGE AT ALLEN DESCRIBED IN EXHIBIT “A” HERETO AND PRESENTLY ZONED PLANNED DEVELOPMENT “PD” NO. 73 FOR SHOPPING CENTER “SC” BY CHANGING THE BASE ZONING TO SINGLE-FAMILY RESIDENTIAL “R-7” AND ADOPTING DEVELOPMENT REGULATIONS, A CONCEPT PLAN, OPEN SPACE EXHIBIT, AND BUILDING ELEVATIONS; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Planning and Zoning Commission and the governing body of the City of Allen, Texas, in compliance with the laws of the State of Texas and the ordinances of the City of Allen, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, have concluded that Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Texas, as previously amended, should be amended.

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

**SECTION 1.** The Allen Land Development Code Zoning Regulations and the Zoning Map of the City of Allen, Collin County, Texas, as previously amended, be further amended by amending in accordance with Section Two, below, the development and use regulations of Planned Development No. 73 Shopping Center “SC” relating to the development and use of the 19.4817± acre tract of land described in Exhibit “A,” attached hereto and incorporated herein by reference (“the Property”).

**SECTION 2.** The Property shall be developed and used in accordance with the applicable provisions of the Allen Land Development Code, as amended (“ALDC”), except to the extent modified as follows:

- A. BASE ZONING DISTRICT:** The Property shall be developed and used only in accordance with the Single Family Residential “R-7” standards of the ALDC, except as otherwise provided herein.
- B. CONCEPT PLAN:** The Property shall be developed in general conformance with the Concept Plan attached hereto as Exhibit “B,” and incorporated herein by reference (“the Concept Plan”). Minor modifications to streets that do not alter the general alignment shown on the Concept Plan may be made at the time of plat approval.

**C. SCREENING:**

- (1) Screening shall be constructed and/or installed along the boundaries of the Property in general conformance with the Concept Plan. No building permit shall be issued until the fence permit has been issued and construction of the screening wall has commenced. No final inspection will be conducted until the Director of Community Development or designee has determined that construction and installation of all required screening has been completed.
- (2) The screening wall located along the eastern and southern boundaries of the subject Property on the effective date of this ordinance will remain and not be demolished, but may be repaired as necessary. Notwithstanding the foregoing to the contrary, a 50-foot portion of the existing screening wall located on the eastern boundary of the Property may be removed in order to accommodate modifications to be made to an existing box culvert in accordance with plans approved by the City Engineer; provided, however, the removed section shall be reconstructed with materials and installation techniques substantially similar to the remaining portions of the existing wall, such replacement to be completed not later than ninety (90) days after completion and acceptance by the City Engineer of the work on the box culvert but, in any case, prior to issuance of any final inspections for buildings constructed on the Property.
- (3) The existing trees located along the eastern and southern boundaries of the Property will remain and may not be removed. Diseased and dying trees, or trees destroyed by windstorm or other natural causes, are not required to be replaced.

**D. BUILDING ELEVATIONS:**

- (1) The residential units constructed on the Property shall be developed in general conformance with the materials (both in style and mix) and architectural style set forth in the Building Elevations attached hereto as Exhibit "C," and incorporated herein by reference.
- (2) Residential units with the same building elevation shall not be constructed more frequently than every fourth (4<sup>th</sup>) lot on the same side of the street (i.e. same elevations must be constructed on lots separated by at least three lots with different elevations).
- (3) Garage doors shall be of carriage hardware design.
- (4) Driveways shall be washed, exposed aggregate.
- (5) Any windows on a second floor of the rear elevation of Lots 1 through 18, Block E, must be one or both of the following:
  - (a) Transom windows; and/or
  - (b) Opaque Glass

**E. LOT DESIGN CRITERIA:** The lot design criteria for the Property shall be as follows:

- (1) Minimum Lot Depth: Ninety (90) feet; provided, however, the minimum lot depth of Lots 1, 7, and 13, Block B, and Lots 1 and 7, Block C, shall be as shown on the Concept Plan.
- (2) Minimum Lot Area: 4,275 square feet
- (3) Minimum Dwelling Unit Size: 1,550 square feet (excluding floor area of garage)
- (4) Maximum Lot Coverage: 65%



- F. BUILDING SETBACKS:** The minimum building setbacks for buildings constructed on the Property shall be as follows:
- (1) Front Yard Setback: 10 feet
  - (2) Corner Lot Side Yard Setback: 5 feet
  - (3) Garage Setback: 20 feet (to face of the structure)
- G. SIDEWALKS:** In accordance with ALDC Section 8.05.5.1, sidewalks shall be constructed or reconstructed along Andrews Parkway, the completion of which shall occur prior to the issuance of the first building permit for any residential dwelling unit to be constructed on the Property. A sidewalk will not be required along the southern side of Street D.
- H. DRAINAGE:** Lot to lot drainage is prohibited.
- I. CLUSTER MAILBOXES:** Cluster mailboxes are to be provided as shown on the Concept Plan subject to United States Postal Service (USPS) approval.
- J. NO PARKING:** No on-street parking is allowed along Street A except where designated parallel or head-in parking is provided, within the fire lane and access easement along Lots 1-6, Block E, or anywhere that parking is otherwise prohibited by the Fire Marshal. The parking restriction will be marked by curb striping.
- K. OFF STREET IMPROVEMENTS:** The developer shall improve Andrews Parkway for pedestrian crossing.
- L. STREET A:** Street A shall be 28-ft wide (as measured from back-of-curb), and as shown on the Concept Plan.

**SECTION 3.** To the extent of any irreconcilable conflict with the provisions of this Ordinance and other ordinances of the City of Allen governing the use and development of the Property and which are not expressly amended by this Ordinance, the provisions of this Ordinance shall be controlling.

**SECTION 4.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, or of the Allen Land Development Code Zoning Regulations, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Allen Land Development Code Zoning Regulations, as amended hereby, which shall remain in full force and effect.

**SECTION 5.** An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Allen Land Development Code Zoning Regulations, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 6.** Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in Allen Land Development Code Zoning Regulations of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

**SECTION 7.** This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 8<sup>TH</sup> DAY OF NOVEMBER 2016.**

**APPROVED:**

\_\_\_\_\_  
**Stephen Terrell, MAYOR**

**APPROVED AS TO FORM:**

**ATTEST:**

\_\_\_\_\_  
**Peter G. Smith, CITY ATTORNEY**  
(kbl:10/31/16:81034)

\_\_\_\_\_  
**Shelley B. George, TRMC, CITY SECRETARY**

**EXHIBIT "A"**  
**DESCRIPTION OF PROPERTY**

Being a 19.4817 acre tract of land situated in the Henry Wetsel Survey Abstract No. 1026, in the City of Allen, Collin County, Texas and being a portion of Lot 2A, Block B of The Village at Allen, an addition to the City of Allen, Texas according to the plat thereof recorded in Volume 2009, Page 78 of the Plat Records of Collin County, Texas, and a portion of that certain tract of land described in a deed to The Village at Allen LP, recorded in Instrument Number 20070305000304230, Official Public Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod set for the northeast corner of Lot 3, Block A, Allen Station Business Park, Phase III, an addition to the City of Allen, Texas according to the plat thereof recorded in Volume 2011, Page 260 of the Plat Records of Collin County, Texas, and being an interior corner of said Lot 2A, Block B

THENCE S 88° 06' 22" E, crossing said Lot 2A, Block B, a distance of 194.70 feet to a 5/8 inch iron rod found with plastic cap stamped "BDD" for corner;

THENCE N 66° 01' 42" E, crossing said Lot 2A, Block B, a distance of 245.62 feet to a 5/8 inch iron rod set for corner;

THENCE N 57° 24' 23" E, crossing said Lot 2A, Block B, a distance of 224.05 feet to a 1/2 inch iron rod set for corner;

THENCE N 21° 49' 28" E, crossing said Lot 2A, Block B, a distance of 74.89 feet to a 1/2 inch iron rod set for corner;

THENCE N 02° 11' 09" W, crossing said Lot 2A, Block B, a distance of 97.49 feet to a 1/2 inch iron rod set for corner;

THENCE N 09° 22' 37" W, crossing said Lot 2A, Block B, a distance of 64.34 feet to a 1/2 inch iron rod set for corner;

THENCE N 00° 05' 17" E, crossing said Lot 2A, Block B, a distance of 105.70 feet to a 1/2 inch iron rod set for corner, said point being in the north line of said Lot 2A, Block B, and being in the south right-of-way line of Andrews Parkway (a Variable width right-of-way);

THENCE N 88° 00' 00" E, along the north line of said Lot 2A, Block B, and the south right-of-way line of said Andrews Parkway, a distance of 306.13 feet to a 5/8 inch iron rod found with plastic cap stamped "BDD" for corner, said point being the beginning of a curve to the right having a radius of 238.50 feet, a delta angle of 10° 34' 59";

THENCE along the north line of said Lot 2A, Block B, and the south right-of-way line of said Allen Station Parkway, and along said curve to the right an arc distance of 44.05 feet, a chord bearing and distance of S 86° 42' 32" E, 43.99 feet to a 5/8 inch iron rod found with plastic cap stamped "BDD" for corner, said point being the beginning of a curve to the left having a radius of 261.50 feet, a delta angle of 15° 48' 13";

THENCE along the north line of said Lot 2A, Block B, and the south right-of-way line of said Allen Station Parkway, and along said curve to the left, an arc distance of 72.13 feet, a chord bearing and distance of S 89° 19' 10" E, 71.90 feet to a 5/8 inch iron rod found with plastic cap stamped "BDD" for corner, said point being the beginning of a curve to the left having a radius of 622.00 feet, a delta angle of 17° 55' 16";

THENCE along the north line of said Lot 2A, Block B, and the south right-of-way line of said Allen Station Parkway, and along said curve to the left, an arc distance of 194.55 feet, a chord bearing and distance of N 73° 49' 05" E, 193.76 feet to a 5/8 inch iron rod found with plastic cap stamped "BDD" for corner;

THENCE N 25° 08' 32" W, along the north line of said Lot 2A, Block B, and the south right-of-way line of said Allen Station Parkway, a distance of 10.00 feet to a 5/8 inch iron rod found with plastic cap stamped "BDD" for corner, said point being the beginning of a curve to the left having a radius of 612.00 feet, a delta angle of 19° 45' 21";

THENCE along the north line of said Lot 2A, Block B, and the south right-of-way line of said Allen Station Parkway, an arc distance of 211.02 feet, a chord bearing and distance of N 54° 58' 47" E, 209.98 feet to a 1/2 inch iron rod set for corner;

THENCE S 69° 17' 31" E, crossing said Lot 2A, Block B, a distance of 104.64 feet to a 1/2 inch iron rod set for corner, said point being in the west line of Red Farm Addition, an addition in the City of Allen, according to the plat thereof recorded in Cabinet L, Page 589, Plat Records, Collin County, Texas;

THENCE S 20° 42' 29" W, along the common line of said Lot 2A, Block B, and said Red Farm Addition, a distance of 53.70 feet to a 1/2 inch iron rod set for the common corner of said Red Farm Addition, and Spring Meadow, an addition in the City of Allen, Texas according to the plat thereof recorded in Cabinet M, Slide 485, of the Plat Records of Collin County, Texas;

THENCE S 20° 54' 44" W, along the common line of said Lot 2A, Block B, and said Spring Meadow, a distance of 1281.13 feet to a 5/8 inch iron rod with plastic cap stamped "BDD" found for the common corner of said Lot 2A, Block B, and said Spring Meadow;

THENCE N 66° 01' 53" W, along the common line of said Lot 2A, Block B, and said Spring Meadows, a distance of 1132.16 feet to a 5/8 inch iron rod with plastic cap stamped "BDD" found for corner, said point being the common corner of said Lot 2A, Block B, and said Spring Meadow, and being in the east line of said Lot 3, Block A;

THENCE N 00° 28' 13" E, along the common line of said Lot 2A, Block B, and said Lot 3, Block A, a distance of 73.32 feet to the POINT OF BEGINNING and containing 848,623 square feet or 19.4817 acres of land more or less.





**EXHIBIT "C"**  
**LANDSCAPE PLAN**



**ST. ANDREWS PARK**

LANDSCAPE PLAN  
OCTOBER 2016 | SCALE: 1" = 60'



**EXHIBIT "D"**  
**BUILDING ELEVATIONS**

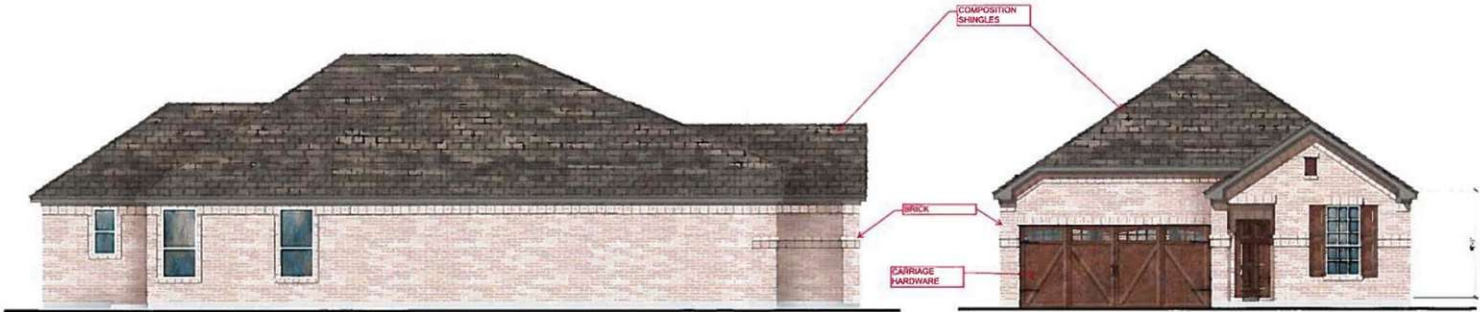
PLAN A



RIGHT SIDE ELEVATION

REAR ELEVATION

Elevation	Total Sq. Ft.	Required 75%	Provided
Front	232		232 100%
Left	525		525 100%
Rear	211		211 100%
Right	488		488 100%
Total	1456	1092	1456 100%



LEFT SIDE ELEVATION

FRONT ELEVATION

PLAN: 134.1647-B



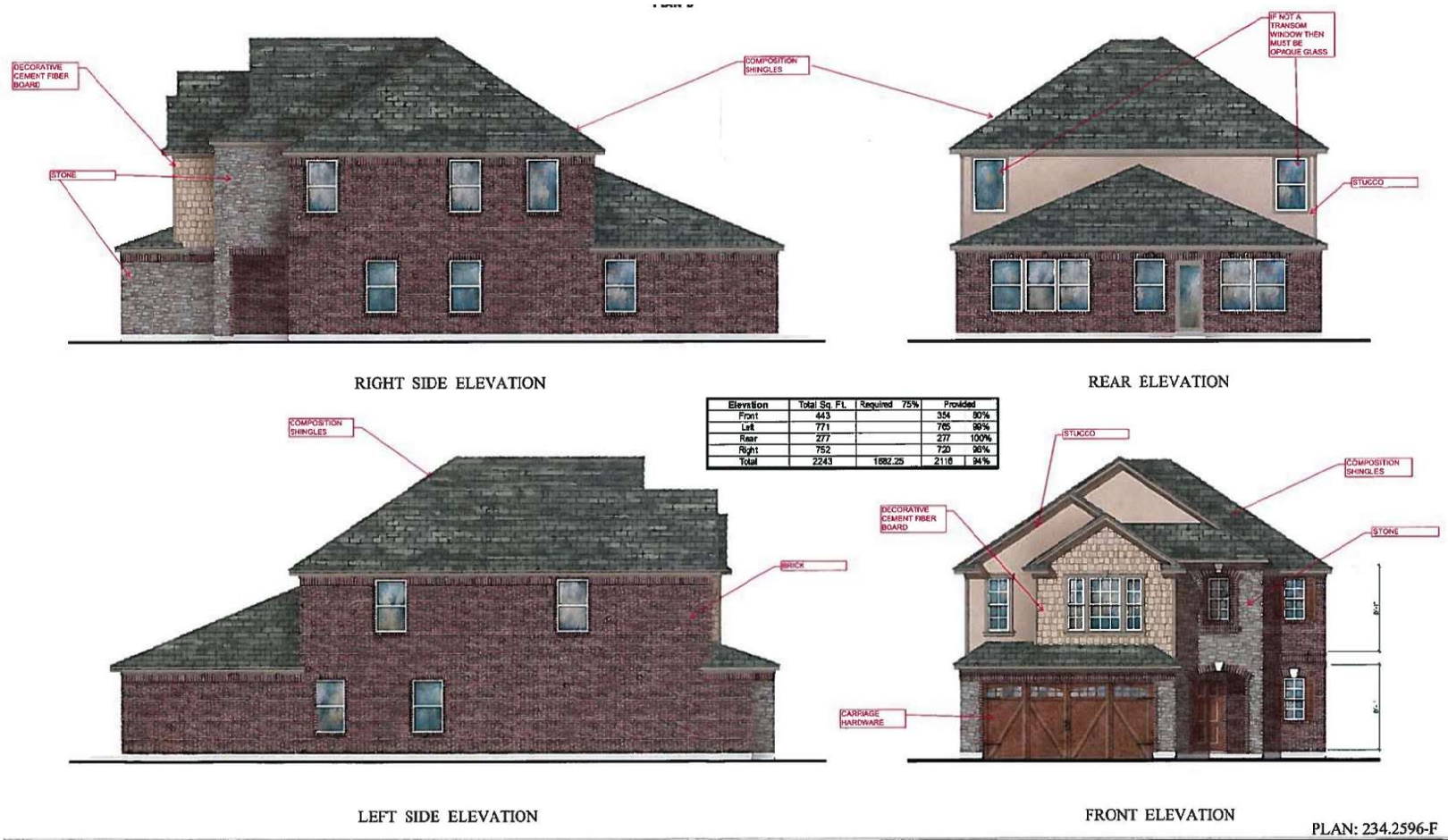
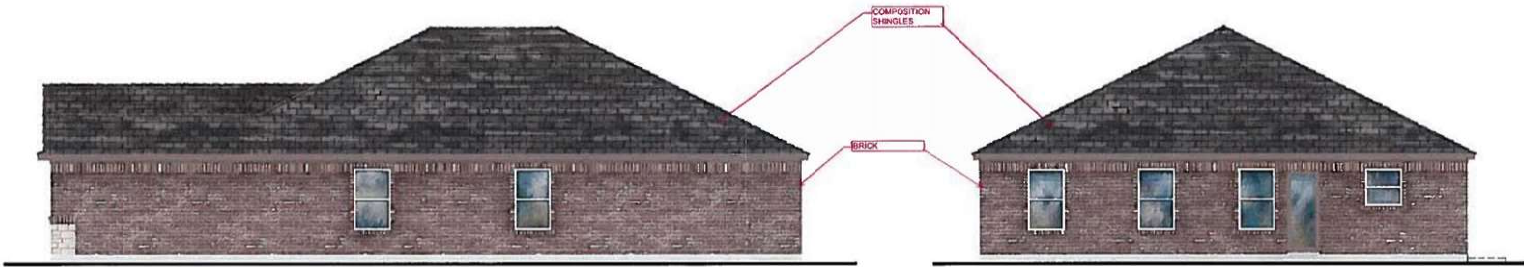


EXHIBIT "D"  
BUILDING ELEVATIONS cont.

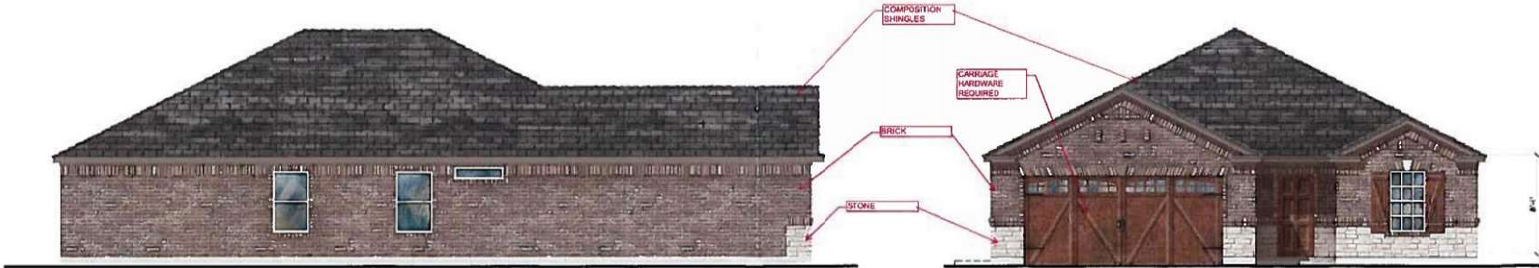
PLAN C



RIGHT SIDE ELEVATION

REAR ELEVATION

Elevation	Total Sq. Ft.	Required 75%	Provided
Front	230	172.5	230 100%
Left	423	317.25	423 100%
Rear	224	168	224 100%
Right	427	320.25	427 100%
Total	1304	978	1304 100%



LEFT SIDE ELEVATION

FRONT ELEVATION

PLAN D



RIGHT SIDE ELEVATION



REAR ELEVATION

Elevation	Total Sq. Ft.	Required 75%	Provided
Front	513	384.75	513 100%
Left	663	518.75	663 100%
Rear	322	241.5	322 100%
Right	646	484.5	646 100%
Total	2174	1630.5	2174 100%



LEFT SIDE ELEVATION



FRONT ELEVATION

PLAN: 239.2715-D







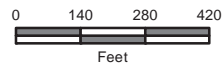


Property Ownership Notification

St. Andrews

### Map Legend

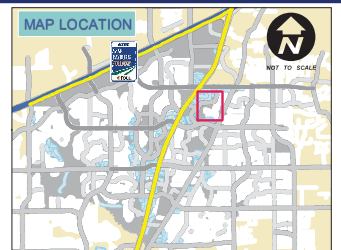
-  200' Notification Buffer
-  Railroad
-  Public Rezone
-  CollinCAD Parcels



Community Development - GIS

Date Saved: 10/6/2016

NOTE: This map is only for illustration purpose only, please contact the City of Allen Planning & Development Department for specific rules and regulations.





## **October 18, 2016 Planning and Zoning Commission Meeting Minutes**

Public Hearing – Conduct a Public Hearing and consider a request to amend the Planned Development and change the base zoning from Shopping Center SC to Single-Family Residential R-7, and adopt a Concept Plan, Building Elevations, and Development Regulations, relating to a 19.4817+/- acre tract of land located in the Henry Wetsel Survey, Abstract No. 1026, and a portion of Lot 2A, Block B, The Village at Allen; generally located southeast of Andrews Parkway. (Z-6/8/16-47) [St. Andrews Park]

Ms. Mohan, Senior Planner, presented the item to the Commission. She stated that this a Planned Development Amendment for a tract of land located in the Henry Wetsel Survey and a portion of Lot 2A, Block B, The Village at Allen. She said that the property is generally located southeast of Andrews Parkway. The properties to the north (across Andrews Parkway) and west are zoned Planned Development PD. No. 73 Shopping Center SC, the location of the Village at Allen Development and Top Golf. The properties to the south and east are zoned Single-Family Residential R-5, the Spring Meadow Subdivision.

Ms. Mohan said that the property is currently zoned Planned Development PD. No. 73 Shopping Center SC, which allows the following range of uses to name a few: office, retail, restaurant, medical clinic, department or discount stores. The property is considered infill and has remained vacant. The applicant is requesting to change the base zoning from Shopping Center SC to Single Family Residential District R-7 for a single-family residential subdivision, and to adopt Development Regulations, a Concept Plan, an Open Space Exhibit, and Building Elevations for the property.

Ms. Mohan said that the proposed development is approximately 19.48± acres. The Concept Plan shows two minimum typical lot sizes, 45'X95' and 50'X90'. A total of 62 front-entry lots are provided (with approximately 44% with 45' width and 56% with 50' width). The minimum lot size provided is 4,275 square feet, with a minimum dwelling unit size (excluding the garage) of 1,550 square feet.

There are three access points for the property. Two primary access points for the development are located on Andrews Parkway. There is also a gated, emergency access drive on Andrews Parkway. A 5' sidewalk is required and proposed along Andrews Parkway, which will connect to the existing sidewalk on the west. The applicant will also provide crosswalk striping along Andrews Parkway for connectivity between this proposed residential development to the adjacent Village at Allen development.

Ms. Mohan said that the Concept Plan and Open Space Exhibit show eight Home Owner Association lots. Approximately 1.85± acres of open space is provided, exceeding the required open space requirement, per the Allen Land Development Code.

Ms. Mohan said a hike and bike trail currently exists around the detention pond to the south. The trail currently continues to the north along the eastern side of the property. This development will remove this portion of the trail and relocate it internal to the site. The trail will continue to the north along Street E, and continue further to the east along Andrews Parkway.

Screening for the property will consist of an eight-foot masonry screening wall along Andrews Parkway. An eight-foot masonry or pre-cast screening wall will also be constructed along the western property boundary adjacent to Top Golf. An eight-foot brick wall and trees exist along the eastern and southern boundaries of this development - these will remain with this development (and this is reflected in the Development Regulations).

Ms. Mohan said that the building elevations show the primary building material as stone, brick, stucco, cement fiber board, and composition shingle roofing. The garage doors will be constructed of carriage hardware design and the driveways will be washed or exposed aggregate. Elevations vary between one and two stories. The developer has stipulated that any windows on a second floor of the rear elevation of Lots 1-18, Block E will either be transom windows or constructed of opaque glass (and this is reflected in the Development Regulations).

Ms. Mohan summarized the proposed Development Regulations:

- Base Zoning District: R-7
- Concept Plan: The Property shall be developed and used only in accordance with the Concept Plan.
- Screening Plan: Screening walls and/or fences shall be constructed on the Property in accordance with the Screening Plan. Construction of screening walls must be completed prior to issuance of CO. The screening wall along the eastern and southern boundaries of the subject Property on the effective date of this ordinance will remain and not be demolished, but may be repaired as necessary.
- Building Elevations: The buildings constructed on the Property shall be designed, developed and used only in accordance with the Building Elevations.
- Lot Design Criteria: Minimum Lot Depth: 90' (except for Lots 1,7,13, Block B and Lots 1 and 7, Block C), Minimum Lot Area: 4,275 sq. ft., Minimum Dwelling Unit Size: 1,550 sq. ft. (excluding floor area of garage), Maximum Lot Coverage: 65%.
- Building Setbacks: Front Yard: 10', Corner Lot Side Yard: 5', Garage Setback: 20' (to face of structure).
- Sidewalks: Sidewalks shall be constructed or reconstructed along Andrews Parkway (to be completed prior to the issuance of the first building permit for any residential dwelling unit to be constructed. A sidewalk will not be required along the southern side of Street D.
- Drainage: Lot to lot drainage is prohibited.
- Cluster Mailboxes: Cluster mailboxes are to be provided, subject the United States Postal Service (USPS) approval.
- No Parking: No on-street parking is allowed in front of Lots 1-12, Block A. The parking restriction will be marked by either pole mounted signs or street striping.
- Off Street improvements: The developer shall improve Andrews Parkway for pedestrian crossing.

Ms. Mohan said that staff received a few letters of opposition regarding the relocation of the existing trail, increase in noise and traffic, and decrease in property values.

Commissioner Mangrum asked about the distance between the back of the houses and Top Golf.

Ms. Mohan said that the distance varies and ranges from 80' to 100'.

Chairman Cocking asked where this was measured?

Ms. Mohan said that the closest area is on the western side, in which measures at 80' from the Top Golf building to the property line.

Commissioner Mangrum clarified that this is the location of the net at Top Golf.

1<sup>st</sup> Vice-Chair Trahan said yes, that is the location of the net.

Commissioner Mangrum asked if there have been any incidents of golf balls flying over the netting.

Ms. Mohan said yes.

Commissioner Mangrum asked how many golf balls fly over the net and how often.

Ms. Mohan said she does not know.

Commissioner Ogrizovich asked if the wall on the east side already exists.

Ms. Mohan said yes, the wall on the east side already exists.

Commissioner Ogrizovich asked who maintains the wall on the east side.

Ms. Mohan said that the Spring Meadow HOA does not own the wall, but maintains the wall. She said she would need to confirm with the applicant.

Commissioner Ogrizovich asked if St. Andrews Park would maintain the wall.

Ms. Mohan said that the maintenance of the wall would be the responsibility of St. Andrews Park once established.

Commissioner Orr asked about the price range of the units for the St. Andrews Park development.

Ms. Mohan said that she would need to ask the applicant.

Commissioner Orr asked what is the largest unit size.

Ms. Mohan said that she would need to ask the applicant.

Chairman Cocking opened the Public Hearing

Steven Chapman, 416 Spring Leaf Ct., Allen, Texas, spoke to the Commission. He voiced concerns regarding the trail and had concerns about the connection of the trail to the south to a vacant lot. He asked for clarification regarding the location of the new trail.

Kristi Watson, 1517 Bethlehem Rd., Allen, Texas, spoke in opposition to the request. She voiced concerns regarding the golf balls in the area. She had concerns about injuries and structural damage from the golf balls. She also voiced concern regarding the noise level in the area. She had concerns regarding property values as well as lack of privacy.

Kellie Stramel, 401 St. Andrews Dr., Allen, Texas, spoke in opposition to the request. She voiced concerns regarding the amount of golf balls in the area. She also discussed the potential for traffic accidents to occur on a blind corner on Andrews Pkwy. on the pedestrian crossing location. She also voiced concerns regarding the re-location of the trail.

Mario Konjarevic, 1550 Bethlehem Rd., Allen, Texas, spoke in opposition to the request. He voiced concerns regarding overcrowding and the lowering of property values of the Spring Meadow Subdivision.

Chairman Cocking closed the Public Hearing.



The following residents submitted citizen responses:

- John Baker, 1507 Bethlehem Rd., Allen, Texas – Opposed
- Cornelia Gallagher, 1501 Bethlehem Rd., Allen, Texas – Opposed
- John Bergesen, 1509 Bethlehem Rd., Allen, Texas – Opposed
- Richard Peters, 421 St. Andrews Pkwy., Allen, Texas – Opposed
- Kim Kennedy, 1515 Bethlehem Rd., Allen, Texas – Opposed
- Dwain Freeburg, 1506 Bethlehem Rd., Allen, Texas – Support

Chairman Cocking asked if a traffic study has been conducted on the property and if there is a blind corner on Andrews Pkwy.

Mr. Chris Flannigan, Director of Engineering, said that the size of the development is not large enough to warrant a Traffic Impact Analysis. He said that the curvature of the roadway on Andrews Pkwy. actually increases visibility because the road curves in front of the driver. He said the location of the proposed pedestrian crossing is further away from the curve. The screening walls and homes are setback further from the right-of-way, creating a wider berth for visibility.

Chairman Cocking said that the original PD Concept Plan showed a three-story office building for this area, which would generate less traffic than what is currently being proposed.

Chairman Cocking asked why the trail is being relocated and for concerns over the connector to the south of the existing pond to the vacant lot.

Mr. Brian Bristow, Assistant Director of Parks and Recreation, provided explanation on how the developer and the Parks and Recreation Department found the best location for the trail. He said that the Parks and Recreation Department considered placing the trail adjacent to the Top Golf property; however, due to the steep slope, as well as underground utilities, this location was not chosen. The trail on the eastern side of the property is still considered a private trail and was not designed or constructed to Parks and Recreation Department's standards regarding visibility concerns and radius standards. The masonry wall also blocks visibility in areas of the trail, which could create unsafe conditions. He said that the final decision was made to move the trail along the west side of the proposed Street E to Andrews Pkwy. This is a 10' wide trail in an easement that the City would maintain. The developer has committed to the appropriate crosswalk indicators and signage to indicate a safe passage through the subdivision. He said that the Parks and Recreation Department sees this as an essential connection to the already grown municipal trail system.

Commissioner Ogrizovich asked about the private trail and asked who built the trail.

Mr. Bristow said the trail was built with the Village at Allen development. He said he is unsure about who owns and maintains the trail. Mr. Bristow said that there has been discussion with the developer regarding the trail along the pond. He said the Parks and Recreation Department has agreed to maintain the trail along the pond if the developer adds access easements on the trail.

Commissioner Ogrizovich asked who designed the original trail.

Chairman Cocking said the Herring Group designed the original trail.

Commissioner Ogrizovich asked if the homes to the east of the trail were already built.

Chairman Cocking said yes.

Chairman Cocking voiced concerns regarding placing a residential property next to Top Golf. Chairman Cocking asked about the concerns regarding golf balls.

Shane Jordan, Applicant, said that he has not noticed golf balls on St. Andrews Park property. Mr. Jordan said that he would work with Top Golf to increase the size of the net to help resolve this issue.

Chairman Cocking asked about the concerns regarding noise and sound.

Mr. Jordan said that he met adjacent residents who provided Mr. Jordan with varying comments. Some of the residents told Mr. Jordan that Top Golf has been a great neighbor. He said that Top Golf has tried to work with the residents to resolve any complaints.

Commissioner Orr asked about the price range and the size of the proposed units.

Mr. Jordan said that the largest house would range from 3,000-3,200 sq. ft. The average lot price is \$121,000 with homes ranging from the upper \$300,000 to \$400,000 range.

1<sup>st</sup> Vice-Chair Trahan said that one of the concerns brought up was regarding the residents changing out the transom windows.

Mr. Jordan said that the transom windows will be part of the Development Regulations and also an HOA requirement.

1<sup>st</sup> Vice-Chair Trahan asked if Code Enforcement would be responsible to ensure the transom windows remain intact.

Mr. Lee Battle, Assistant Director of Community Development, said that Code Enforcement would not issue a Building Permit if the requirements were not met.

1<sup>st</sup> Vice-Chair Trahan confirmed that if residents in the adjacent property see residents changing out the transom windows, then the residents could call Code Enforcement and the HOA.

Chairman Cocking said yes.

1<sup>st</sup> Vice-Chair Trahan asked Julie Doshier, City Attorney, if she had seen a situation in which golf balls or other projectiles had gone over the boundary and into a resident's yard, and if the residents are able to compel the property to raise the netting. He said that he thought it was great that the developer is working with Top Golf to take proactive steps to ensure this does not occur.

Ms. Doshier, City Attorney, said that the owner of the property is responsible to take the issue under consideration.

1<sup>st</sup> Vice-Chair Trahan said that Top Golf does not have to do anything about it.

Ms. Doshier said yes.

1<sup>st</sup> Vice-Chair Trahan said that the two properties are working together before the golf balls become a problem.

Mr. Battle said that the PD for Top Golf establishes a maximum height for the net. To request a greater height in the net would require a zoning amendment.

Mr. Jordan said that he was told by Top Golf that the golf balls have a tracking chip. Top Golf knows who had the golf balls at a certain time. If individuals continue to hit golf balls that go outside of the property, Top Golf will request the individuals to not return to Top Golf. He said that if the golf balls are hitting and rolling down the hill a masonry wall separating the properties.

Chairman Cocking said another question was asked regarding the number of houses in the adjacent subdivisions. He said that Spring Meadow is zoned Single-Family Residential R-5 which allows for 5 houses per acre and St. Andrews Park is zoned Single-Family Residential R-7 which allows for 7 houses per acre.

Commissioner Mangrum said that she cannot support this project because of the golf balls going over the netting. She voiced concern regarding children playing outside on the weekend who may be injured by golf balls, especially the houses on Block A which are very close to the Top Golf netting. She also voiced concerns regarding property damage occurring from the golf balls.

1<sup>st</sup> Vice-Chair Trahan asked about trail access south to the south of this development.

Mr. Bristow said that the plan is to extend the trail to the south to connect with the existing trail.

Commissioner Orr asked about the possibility to remove the masonry wall to the east (west of the Spring Meadow Subdivision) and replace the wall with a different type of fencing.

Ms. Mohan said the main concern was the curvature of the trail on the eastern side.

Mr. Bristow added that the minimum horizontal aligned radius was the concern. Mr. Bristow said that a wrought iron fence could be put in place to prevent the tunnel type effect that the masonry wall has created; however, this area is not well lit.

Chairman Cocking said that the ALDC does not require fencing between two residential properties; however, this fencing was put in place because the St. Andrews Park development was initially planned as an office use. Chairman Cocking said that the residents in the Spring Meadow Subdivision would like the current masonry wall to stay in place.

2<sup>nd</sup> Vice-Chair Platt voiced concerns regarding the St. Andrews Park proximity to Top Golf. He said he was concerned about the noise complaints and safety. He said that he was not comfortable with the location of the St. Andrews Park project.

1<sup>st</sup> Vice-Chair Trahan asked if the residents on Block A of St. Andrews Park could put up a net to help prevent the golf balls from entering the property.

Chairman Cocking said that because of the way that the golf balls may be flying over the netting, the lots further away may be impacted by golf balls.

1<sup>st</sup> Vice-Chair Trahan asked if the residents on the southwest side had any noise complaints.

Chairman Cocking asked Mr. Battle regarding the history of noise complaints.

Mr. Battle said when Top Golf opened, there were some noise complaints, potentially due to the setup of speakers; however, the City has not received any recent noise complaints.

Chairman Cocking said that the Noise Ordinance states that the volume surrounding the property line must be kept at a whisper.

Commissioner Mangrum said that the noise and golf balls from Top Golf will all be channeled in the direction towards St. Andrews Park.

1<sup>st</sup> Vice-Chair Trahan asked if the applicant could discuss the actions to be taken to resolve the issue. He asked if the Commission could move forward, but provide stipulations to the applicant such as increasing the netting.

Ms. Doshier said that the Commission cannot place stipulations on the Top Golf property.

Chairman Cocking asked if the golf balls flying over the netting and potentially injuring residents and damaging property was the main concern of the Commission.

Commissioner Mangrum said the golf balls injuring residents and damaging property was her main concern.

1<sup>st</sup> Vice-Chair Trahan asked if the developer could put up a net to provide something in addition to the wall.

Chairman Cocking said that a net behind Top Golf's net may not be sufficient.

1<sup>st</sup> Vice-Chair Trahan said that any development occurring on this property will likely struggle with being impacted by golf balls and noise from Top Golf.

Chairman Cocking said that Commissioner Mangrum's concerns are more focused about the children being impacted by golf balls. He said that it is the City's duty to safeguard the residents and prevent these potential hazards.

Commissioner Ogrizovich said that he felt like Top Golf's net was already too high and should not be raised more. He said that if golf balls are flying over the net then it is a safety concern.

Chairman Cocking recommended that the Commission require the developer to research the golf balls that are outside of Top Golf's property. He said that the golf balls may be hitting the net and hitting the top of the berm and rolling down or the golf balls are flying over the net. He said that either more facts and data could assist in coming to a resolution.

1<sup>st</sup> Vice-Chair Trahan said that he would be in favor of tabling the project until more questions are answered.

Commissioner Mangrum said her concern is regarding the amount of golf balls that are flying over the netting and how far the golf balls are flying over.

Commissioner Mangrum said that she would be open to tabling the project until more information is gathered regarding golf balls. She asked if Mr. Jordan was willing to work with Top Golf to get more information on if the golf balls are going over the net or rolling under.

Mr. Jordan said that he was unsure how the tracking chip worked on the golf balls and if he would be able to determine if the golf balls flew over or rolled under the net.

Commissioner Hollingsworth said that the best way to determine if the golf balls flew over the net or rolled under would be to stand outside of Top Golf's property and watch the golf balls.

Mr. Battle said that the project is scheduled to go to City Council on November 8<sup>th</sup>. He said the project could go back to P&Z on the November 1<sup>st</sup> meeting.

1<sup>st</sup> Vice-Chair Trahan said he would be interested in knowing if there have been any noise complaints from the area.

Chairman Cocking asked staff to conduct research on the noise complaints.

**Motion:**

**Upon a motion by Commissioner Mangrum, and a second by Commissioner Ogrizovich, the Commission voted 7 IN FAVOR, and 0 OPPOSED to table the request to amend the Planned Development and change the base zoning from Shopping Center SC to Single-Family Residential R-7, and adopt a Concept Plan, Building Elevations, and Development Regulations, relating to a 19.4817+/- acre tract of land located in the Henry Wetsel Survey, Abstract No. 1026, and a portion of Lot 2A, Block B, The Village at Allen; generally located southeast of Andrews Parkway to the November 1<sup>st</sup> Planning and Zoning Commission Meeting.**

**The motion carried.**

## **November 1, 2016 Planning and Zoning Commission Meeting Minutes**

Tabled Item – A request to amend the Planned Development and change the base zoning from Shopping Center SC to Single-Family Residential R-7, and adopt a Concept Plan, Building Elevations, and Development Regulations, relating to a 19.4817+/- acre tract of land located in the Henry Wetsel Survey, Abstract No. 1026, and a portion of Lot 2A, Block B, The Village at Allen; generally located southeast of Andrews Parkway. (Z-6/8/16-47) [St. Andrews Park]

Chairman Jeff Cocking removed the item from the table and stated that at the previous meeting the Commission discussed this item at length and directed Staff and the applicant to provide additional information. Ms. Mohan, Senior Planner, came forward to address the Commission. She provided a vicinity map as a refresher and recapped the main concerns raised at the October 18, 2016 Planning and Zoning Commission Meeting. She said that since that meeting Staff conducted research into noise complaints pertaining to Top Golf. Ms. Mohan stated that since the opening of Top Golf in 2011 the City has received four noise complaints and one light complaint through the Code Enforcement Division and 12 noise complaints through the Police Department. She stated that since the previous meeting the applicant has made modifications to the development regulations in regards to a box culvert on the property that necessitates removing and replacing a 50- foot portion of the existing screening wall. In addition, further clarification was added to the no parking provisions, and detailed dimensions were added for Street A. These dimensions were shown on the concept plan, but are now further clarified in the development regulations for additional emphasis. Chairman Cocking asked for any questions from the Commission and with none asked the developer to come forward to address the concerns regarding public safety from flying golf balls. Shane Jordan, 16475 Suite 540 Dallas Parkway, Addison, TX came forward to address the Commission. He stated that his team has gone out on the property to search for golf balls and found balls in a portion of their property that is generally designated for open space. In addition, Top Golf's ball are considered low flying balls and have chips for tracking, but they are only tracked within the target areas, not outside the property so there is no real way to understand the trajectory. He presented the PGA's average club distances for reference to show average heights and distances which illustrated the unlikelihood of someone being able to hit a ball far enough to actually hit a home based on the proposed concept plan. He showed pictures indicating that there are some holes in Top Golf's netting that may be allowing more balls through then there would be otherwise. He stated that he has spoken to Top Golf about addressing the issue. In addition, he said he had spoken to Top Golf about if the netting can be raised, but it is cost prohibitive and not a viable option. He said that Top Golf surveys the area and can track who the rouge balls are registered to. If there is a recurring pattern of a particular person hitting them over the fence, then corrective action is taken. Commissioner Shirley Mangrum asked if all the numbers are calculated from the ground level or where the higher levels taken into consideration. Mr. Jordan stated that yes they are from ground level so additional feet would be added for additional height, which is why is thinks most of the overages are happening from people slicing on the third level. Commissioner John Ogrizovich stated that he spent some time at Top Golf asking similar questions and is convinced that if a risk exists at all it is for lots 9-12 and if it happened it would be from an unintentional big slice. He went on to say that people who live adjacent to golf course are accustom to that happening frequently. His sense is that this is a normal level of risk and likely less of a risk than people who live next to a typical golf course or driving range. He then went on to ask about the property line on the eastern side and if the individual homeowners would have the wall in their backyards on Block E. Mr. Jordan stated that because of the curvilinear nature of the property it is difficult to call out the exact placement of the wall, but the wall will be maintained by the HOA and any area that falls within the homeowner's backyard will be open for their individual use. They can take their own personal fence to the wall if they so desire. Commissioner Ogrizovich then asked for a ballpark price range for the houses to be built in the subdivision. Mr. Jordan stated high 300's. Chairman Cocking asked if anyone thought there should be additional disclosures required for potential buyers regarding the risks or if it is just buyer

beware and on them to see Top Golf and do their due diligence. Ultimately, it was decided that it the buyers responsibly to be informed since it is such a large and noticeable venues. Second Vice-Chair Stephen Platt stated that he appreciates the developer's research and thinks it's a nice development, but is still concerned about the location and the nuisances that will come from it for potential homeowners. Chairman Cocking summarized that this is an interested dilemma because if this was already a residential neighborhood Top Golf would not be approved, but does it make sense to allow the opposite to happen. He stated that he believes complaints will go up after homeowners live there for a while. With that said, he asked for a motion.

**Motion:**

**Upon a motion by First Vice-Chair Ben Trahan, and a second by Commissioner Ogrizovich, the Commission voted 5 IN FAVOR (Trahan, Hollingsworth, Mangrum, Orr and Ogrizovich), and 2 OPPOSED (Platt and Cocking) to recommend approval to amend the Planned Development and change the base zoning from Shopping Center SC to Single-Family Residential R-7, and adopt a Concept Plan, Building Elevations, and Development Regulations, relating to a 19.4817+/- acre tract of land located in the Henry Wetsel Survey, Abstract No. 1026, and a portion of Lot 2A, Block B, The Village at Allen; generally located southeast of Andrews Parkway.**

**The motion carried.**



<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:**

November 8, 2016

**SUBJECT:**

Consider all Matters Incident and Related to the Issuance and Sale of "Allen Economic Development Corporation Sales Tax Revenue Refunding Bonds, Series 2017A", Including the Adoption of a Resolution Approving the Resolution of the Corporation Authorizing the Issuance of Such Bonds.

**STAFF RESOURCE:**

Eric Cannon, Chief Financial Officer

**BOARD COMMISSION ACTION:**

On October 12, 2016, the Allen Economic Development Corporation Board of Directors Approved a Parameters Resolution Authorizing the Issuance of Sales Tax Revenue Refunding Bonds, Series 2017A.

**ACTION PROPOSED:**

Consider all Matters Incident and Related to the Issuance and Sale of "Allen Economic Development Corporation Sales Tax Revenue Refunding Bonds, Series 2017A", Including the Adoption of a Resolution Approving the Resolution of the Corporation Authorizing the Issuance of Such Bonds.

**BACKGROUND**

At the October 12, 2016, Allen Economic Development Corporation meeting, a parameters resolution was approved authorizing the issuance of Sales Tax Revenue Refunding Bonds, Series 2017A. The bond issue is expected to be in the approximate amount of \$12,790,000.

The bonds are for the purpose of providing funds to refund the 2008 and 2010A outstanding sales tax revenue bonds of the EDC. All refunded bonds will be called for redemption or defeasance in accordance with the legal documents authorizing their issuance. All refunded bonds will be called at a price equal to 100% of the par value.

The total cumulative gross savings from the bond issue is expected to be approximately \$1,497,102 and the Net Present Value savings is expected to be approximately \$1,151,087. The Net Present Value takes into consideration the time value of money and the structuring or timing of the future debt service. The savings of \$1,151,087 represents 9% of the prior issue. The expected savings are still substantial enough to proceed with the refunding issue.

The interest rates today are significantly less than the rates on the existing revenue bonds. The existing interest rates range from 3.5% to 4.5%. The anticipated interest rates for the refunding bonds range from .91% to 3.02%. The existing bond issues mature in 2032 and 2025 and the proposed issue keeps 2032 as the maturity

date.

The sale is expected to be conducted on December 6th. The bond closing is scheduled for January 4th. The Resolution attached approves the Resolution that authorized issuance of the bonds by the AEDC Board of Directors

Also attached is the Paying Agent/Registrar agreement with Bank of New York Mellon.

### **BUDGETARY IMPACT**

The anticipated savings from the refunding is expected to generate fair value saving from cash flow of \$1,497,102 or average annual saving of \$93,569.

### **STAFF RECOMMENDATION**

Staff recommends approval of the Resolution authorizing the issuance of the refunding bonds by the Allen Economic Development Corporation (AEDC) Board of Directors.

### **MOTION**

*I make a motion to adopt Resolution No. \_\_\_\_\_ Approving the Resolution of the Board of Directors of the Corporation Authorizing the Issuance of Sales Tax Revenue Refunding Bonds, Series 2017A.*

### **ATTACHMENTS:**

Resolution

AEDC Presentation

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION by the City Council of the City of Allen, Texas, relating to the "Allen Economic Development Corporation Sales Tax Revenue Refunding Bonds, Series 2017A", including the approval of the resolution of the Board of Directors of the Corporation authorizing the issuance of such Bonds; resolving other matters incident and related to the issuance of such Bonds; and providing an effective date.

WHEREAS, Allen Economic Development Corporation (the "Issuer") has been duly created and organized pursuant to the provisions of the Development Corporation Act, Texas Local Government Code, Title 12, Subtitle C1, as amended (formerly known as the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6), specifically Chapters 501 and 504 of the Local Government Code (the "Act"); and

WHEREAS, the Issuer is empowered to issue bonds for the purpose of refunding outstanding bonds issued on account of a "project" defined as such by the Act; and

WHEREAS, the Issuer has determined to refund the following described outstanding bonds of the Corporation (hereinafter collectively referred to as the "Refunded Bonds"), to wit:

(1) "Allen Economic Development Corporation Sales Tax Revenue Refunding Bonds, Series 2008", dated January 15, 2008; and

(2) "Allen Economic Development Corporation Sales Tax Revenue Bonds, Series 2010A", dated September 1, 2010; and

WHEREAS, Section 501.204 of the Act requires the City Council of the City approve the resolution of the Issuer providing for the issuance of the Bonds no more than sixty (60) days prior to the delivery of the Bonds; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, TEXAS:

SECTION 1: The Resolution authorizing the issuance of the Bonds adopted by the Issuer on October 12, 2016 (the "Issuer Resolution") attached hereto as Exhibit A and incorporated herein by reference as a part hereof for all purposes, is hereby approved in all respects. The Bonds are being issued to refund the Refunded Bonds (identified in the preamble hereof). The principal amount of the Bonds shall not exceed \$13,000,000, the true interest cost rate shall not exceed 3.00% and the net present value savings must be at least 7.00%.

SECTION 2: The approvals herein given are in accordance with Section 501.204 of the Act and the Bylaws of the Issuer, and the Bonds shall never be construed as an indebtedness or pledge of the City, or the State of Texas (the "State"), within the meaning of any constitutional or statutory provision, and the owner of the Bonds shall never be paid in whole or in part out of any funds raised or to be raised by taxation (other than sales tax proceeds as authorized pursuant to the Act) or any other revenues of the Issuer, the City, or the State, except those revenues assigned and pledged by the Issuer Resolution.

SECTION 3: The City hereby agrees to promptly collect and remit to the Issuer the Gross Sales Tax Revenues (as defined in the Issuer Resolution) in accordance with the terms of the Issuer Resolution and the Act to provide for the prompt payment of the Bonds, and to assist and

cooperate with the Issuer in the enforcement and collection of sales and use taxes imposed on behalf of the Issuer.

SECTION 4: The Mayor, the City Secretary, the City Manager, Chief Financial Officer and Assistant Chief Financial Officer of the City are hereby authorized, jointly and severally, to execute and deliver such endorsements, instruments, certificates, documents, or other papers necessary and advisable to carry out the intent and purposes of this Resolution and the Issuer Resolution.

SECTION 5: The City hereby acknowledges and recognizes that the Bonds are being issued as tax exempt obligations under and pursuant to section 103(a) of the Code (as defined below) and, in connection therewith, the City hereby makes the following representations and warranties to the Issuer:

(a) Definitions. When used in this Section, the following terms have the following meanings:

"Closing Date" means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

"Code" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Gross Proceeds" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

"Investment" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Nonpurpose Investment" means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

"Rebate Amount" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Regulations" means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"Yield" of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Bonds), and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds (including property financed with the Gross Proceeds of the Refunded Bonds), other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield

from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Payment of Rebatable Arbitrage. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall remit to the Issuer for payment to the United States the amount described in paragraph (3) of the Issuer Resolution, at the times, in the manner and accompanied by such forms or other information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraph (2), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including the amount remitted to the Issuer for payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(h) Bonds Not Hedge Bonds. (1) At the time the original bonds refunded by the Bonds were issued, the Corporation reasonably expected to spend at least 85% of the spendable proceeds of such bonds within three years after such bonds were issued and (2) not more than 50% of the proceeds of the original bonds refunded by the Bonds were invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(i) Qualified Advance Refunding. The Bonds are issued to refund the Refunded Bonds, and the Bonds will be issued more than 90 days before the redemption of the Refunded Bonds. The City represents as follows:

(1) The Bonds are the first advance refunding of the Refunded Bonds, within the meaning of section 149(d)(3) of the Code.

(2) The Refunded Bonds are being called for redemption, and will be redeemed not later than the earliest date on which such bonds may be redeemed.

(3) The initial temporary period under section 148(c) of the Code will end: (i) with respect to the proceeds of the Bonds not later than 30 days after the date of issue of such Bonds; and (ii) with respect to proceeds of the Refunded Bonds on the Closing Date if not ended prior thereto.

(4) On and after the date of issue of the Bonds, no proceeds of the Refunded Bonds will be invested in Nonpurpose Investments having a Yield in excess of the Yield on such Refunded Bonds.

(5) The Bonds are being issued for the purposes stated in the preamble of this Resolution. There is not a present value savings associated with the refunding. In the issuance of the Bonds the Corporation has neither: (i) overburdened the tax exempt bond market by issuing more bonds, issuing bonds earlier or allowing bonds to remain outstanding longer than reasonably necessary to accomplish the governmental purposes for which the Bonds were issued; (ii) employed on "abusive arbitrage device" within the meaning of Section 1.148-10(a) of the Regulations; nor (iii) employed a "device" to obtain a material financial advantage based on arbitrage, within the meaning of section 149(d)(4) of the Code, apart from savings attributable to lower interest rates, if any, and reduced debt service payments in early years.

SECTION 6: It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 7: This Resolution shall be in force and effect from and after its passage on the date shown below.

*[remainder of page left blank intentionally]*



DULY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF ALLEN,  
COLLIN COUNTY, TEXAS, ON THIS THE 8<sup>th</sup> DAY OF NOVEMBER, 2016.

CITY OF ALLEN, TEXAS

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STEPHEN TERRELL  
Mayor

ATTEST:

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SHELLEY B. GEORGE  
TRMC, City Secretary

(City Seal)

EXHIBIT A

FORM OF BOND RESOLUTION

A RESOLUTION authorizing the issuance of "ALLEN ECONOMIC DEVELOPMENT CORPORATION SALES TAX REVENUE REFUNDING BONDS, SERIES 2017A"; pledging certain "Pledged Revenues" of the Corporation, including "Gross Sales Tax Revenues", to the payment of the principal of and interest on said Bonds; resolving other matters incident and related to the issuance, sale, payment, and delivery of said Bonds, including establishing procedures therefor and delegating matters to authorized corporate officers; and providing an effective date

WHEREAS, Allen Economic Development Corporation (the "Corporation") has been duly created and organized pursuant to the provisions of the Development Corporation Act, Texas Local Government Code, Title 12, Subtitle C1, as amended (the "Act") (formerly known as the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6), specifically Chapters 501 and 504 of the Local Government Code; and

WHEREAS, a sales and use tax at the rate of  $\frac{1}{2}$  of one percent for the promotion and development of new and expanded business enterprises was approved by voters at an election held January 18, 1992; and

WHEREAS, the Corporation has heretofore issued, sold, and delivered, and there is currently outstanding, bonds of the following issues or series (collectively, the "Refunded Bonds"), to wit:

(1) "Allen Economic Development Corporation Sales Tax Revenue Refunding Bonds, Series 2008", dated January 15, 2008; and

(2) "Allen Economic Development Corporation Sales Tax Revenue Bonds, Series 2010A", dated September 1, 2010; and

WHEREAS, the Board of Directors of the Corporation hereby finds and determines that it is a public purpose and in the best interests of the Corporation to refund the Refunded Bonds in accordance with the provisions of the Act to achieve present value savings, with such savings, among other information and terms, to be included in a pricing certificate (the "Pricing Certificate") to be executed by the Pricing Officer (hereinafter designated); in accordance with the provisions in accordance with the provisions of the Act and the Texas Nonprofit Corporation Act, and Chapter 22, Texas Business Organizational Code; and

WHEREAS, the Board of Directors hereby further finds and determines that such revenue bonds shall be payable from certain "Pledged Revenues" (hereinafter defined) of the Corporation, including sales tax receipts of the Corporation in the manner and to the extent hereinafter provided; now, therefore,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ALLEN ECONOMIC DEVELOPMENT CORPORATION:

SECTION 1: Authorization - Designation - Principal Amount - Purpose. Bonds of the Corporation shall be and are hereby authorized to be issued in the maximum aggregate principal amount hereinafter specified to be designated and bear the title "ALLEN ECONOMIC DEVELOPMENT CORPORATION SALES TAX REVENUE REFUNDING BONDS, SERIES

2017A", hereinafter referred to as the "Bonds", to provide funds for the discharge and final payment of certain outstanding obligations of the Corporation (identified in the preamble hereof and referred to as the "Refunded Bonds") and to pay costs of issuance, in conformity with the Constitution and laws of the State of Texas, including the Act, the Texas Nonprofit Corporation Act, and Chapter 22, Texas Business Organizational Code.

SECTION 2: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Date. The Bonds shall be issued as fully registered obligations, without coupons, shall be dated as specified in the Pricing Certificate (the "Bond Date"), shall be in denominations of \$5,000 or any integral multiple (within a Stated Maturity) thereof, shall be numbered consecutively from One (1) upward and shall become due and payable on the date(s) in each of the years and in principal amounts (the "Stated Maturities") and bear interest at per annum rates in accordance with the details set forth in the Pricing Certificate.

The Bonds shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate at the per annum rates shown in the Pricing Certificate (calculated on the basis of a 360 day year of twelve 30 day months). Interest on the Bonds shall be payable in each year on the dates, and commencing on the date, set forth in the Pricing Certificate.

SECTION 3: Delegation of Authority to Pricing Officer.

(a) The President of the Board of Directors of the Corporation or the City Manager of the City of Allen, Texas (the "City") or the Executive Director of the Corporation, as an ex-officio member of the Board of Directors (each a "Pricing Officer") are each hereby authorized to act on behalf of the Corporation in selling and delivering the Bonds, and carrying out the other procedures specified in this Resolution, including determining the aggregate original principal amount of the Bonds, the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which the Bonds will be sold, the manner of sale (negotiated, privately placed or competitively bid), the years in which the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the interest payment dates, the record date, the price and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the Corporation, as well as any mandatory sinking fund redemption provisions, the designation of a paying agent/registrars for the Bonds, the designation of an escrow agent, the terms of any bond insurance applicable to the Bonds, the selection of a financial guaranty insurance company, if any, and all other matters relating to the issuance, sale and delivery of the Bonds, all of which shall be specified in the Pricing Certificate, provided that:

(1) the aggregate original principal amount of the Bonds shall not exceed \$13,000,000;

(2) the refunding must produce a net present value debt service savings of at least 7.00%, net of any contribution by the Corporation.

(3) the true interest cost rate for the Bonds shall not exceed 3.00%;  
and

(4) the maximum maturity date for the Bonds shall not exceed September 1, 2032.

The execution of the Pricing Certificate shall evidence the sale date of the Bonds by the Corporation to the Purchaser (hereinafter defined).

(b) The delegation made hereby shall expire if not exercised by a Pricing Officer within 180 days from the date of adoption hereof.

**SECTION 4: Terms of Payment - Paying Agent/Registrar.** The principal of, and the interest on the Bonds, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of the Paying Agent/Registrar for the Bonds shall be as provided in the Pricing Certificate. Books and records relating to the registration, payment, exchange and transfer of the Bonds (the "Security Register") shall at all times be kept and maintained on behalf of the Corporation by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement", substantially in the form attached hereto as Exhibit A and such reasonable rules and regulations as the Paying Agent/Registrar and the Corporation may prescribe. The Pricing Officer is hereby authorized to execute and deliver such Agreement in connection with the delivery of the Bonds. The Corporation covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid in full and discharged. Any successor Paying Agent/Registrar shall be a bank, trust company, financial institution or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the Corporation agrees to promptly cause a written notice to be sent to the Holder affected by United States Mail, first class postage prepaid, which notice shall identify and give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Bonds shall be payable at the Stated Maturities or upon their earlier redemption, only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices as provided in the Pricing Certificate (the "Designated Payment/Transfer Office"). Interest on the Bonds shall be paid to the Holders whose name appear in the Security Register at the close of business on the Record Date (which shall be set forth in the Pricing Certificate) and shall be paid by the Paying Agent/Registrar (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located is authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on one or more maturities on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment for such maturity or maturities (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Corporation. Notice of the Special Record Date and of the scheduled payment date of the

past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of such maturity or maturities appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

**SECTION 5: Registration - Transfer - Exchange of Bonds - Predecessor Bonds.** The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each registered owner of the Bonds issued under and pursuant to the provisions of this Resolution. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Designated Payment/Transfer Office of the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of a Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar, one or more new certificates evidencing the Bonds, in authorized denominations, of like Stated Maturity and of a like aggregate principal amount as the Bond or Bonds surrender for transfer shall be registered and issued to the assignee or transferee of the previous Holders.

At the option of the Holder, Bonds may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new printed certificates evidencing the Bonds, executed on behalf of, and furnished by, the Corporation, to the Holder requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be delivered at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent by United States Mail, first class postage prepaid, to the Holder and, upon the delivery thereof, the same shall be valid obligations of the Corporation, evidencing the same obligation to pay, and entitled to the same benefits under this Resolution, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered and delivered in lieu thereof pursuant to Section 26 hereof and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the Corporation nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Bond; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

SECTION 6: Book-Entry Only Transfers and Transactions. Notwithstanding the provisions contained in Sections 3 and 5 hereof and in the Pricing Certificate relating to the payment, and transfer/exchange of the Bonds, the Corporation hereby approves and authorizes the use of "Book-Entry Only" securities clearance, settlement and transfer system provided by The Depository Trust Company (DTC), a limited purpose trust company organized under the laws of the State of New York, in accordance with the operational arrangements referenced in the Blanket Issuer Letter of Representations by and between the Corporation and DTC (the "Depository Agreement").

Pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC who shall hold said Bonds for its participants (the "DTC Participants"). While the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Bond (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the Corporation determines that DTC is incapable of properly discharging its duties as securities depository for the Bonds, the Corporation covenants and agrees with the Holders of the Bonds to cause Bonds to be printed in definitive form and provide for the Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Bonds shall be made in accordance with the provisions of Sections 3 and 5 hereof.

SECTION 7: Execution - Registration. The Bonds shall be executed on behalf of the Corporation by its President of the Board of Directors of the Corporation under its seal reproduced or impressed thereon and attested by the Secretary of the Board of Directors of the Corporation. The signature of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the Corporation on the date of adoption of this Resolution shall be deemed to be duly executed on behalf of the Corporation, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchasers and with respect to Bonds delivered in subsequent exchanges and transfers.

No Bond shall be entitled to any right or benefit under this Resolution, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas or his duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate upon any Bond duly signed shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered and delivered.



SECTION 8: Initial Bond(s). The Bonds herein authorized shall be initially issued either (i) as a single fully registered bond in the total principal amount and with principal installments to become due and payable as provided in the Pricing Certificate and numbered T-1, or (ii) as multiple fully registered bonds registered to the initial purchasers in principal amounts and denominations in accordance with the Pricing Certificate and to be numbered consecutively from T 1 and upward (hereinafter called the "Initial Bond(s)") and, in either case, the Initial Bond(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond(s) shall be the Bonds submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond(s), the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond(s) delivered hereunder and exchange therefor definitive Bonds of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9: Forms.

(a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas (to appear on the Initial Bond(s) only), the Registration Certificate of Paying Agent/Registrar (to appear on definitive Bonds only), and the form of Assignment to appear on each of the Bonds, shall be substantially in the forms set forth in this Section as such forms may be modified in the Pricing Certificate with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Resolution and with the Bonds to be completed with the information set forth in the Pricing Certificate, and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends on insured Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the Board of Directors of the Corporation or determined by a Pricing Officer. The Pricing Certificate shall set forth the final and controlling terms of the Bonds. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The Bonds, including the Initial Bond(s), shall be typewritten, printed, lithographed, or engraved or produced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

(b) Form of Bond.

REGISTERED  
NO. \_\_\_\_\_

REGISTERED  
\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
ALLEN ECONOMIC DEVELOPMENT CORPORATION  
SALES TAX REVENUE REFUNDING BOND, SERIES 2017A

Bond Date: \_\_\_\_\_, 2017      Interest Rate: \_\_\_\_\_%      Stated Maturity: \_\_\_\_\_      CUSIP NO: \_\_\_\_\_

Registered Owner:

Principal Amount:

The Allen Economic Development Corporation (hereinafter referred to as the "Corporation"), a non-profit industrial development corporation organized and existing under the laws of the State of Texas, including the Development Corporation Act, V.T.C.A, Local Government Code, Title 12, Subtitle C1, as amended (the "Act") (formerly known as the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6), specifically Chapters 501 and 504 of the Local Government Code, with its principal office located in Collin County, Texas, for value received, hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, solely from the revenues and sources pledged under the Resolution identified below, the Principal Amount stated above (or so much thereof as shall not have been paid upon prior redemption) on the Stated Maturity date specified above and to pay interest (computed on the basis of a 360-day year of twelve 30-day months) on the unpaid Principal Amount hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the \_\_\_\_\_) at the per annum rate of interest specified above; such interest being payable on \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing \_\_\_\_\_, until maturity or prior redemption. Principal of this Bond is payable at its Stated Maturity or redemption to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor; provided, however, while this Bond is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Bond. Interest is payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the resolution hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the \_\_\_\_\_ day of the month next preceding each interest payment date and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located is authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$\_\_\_\_\_ (herein referred to as the "Bonds") to provide funds for the discharge

and final payment of certain outstanding obligations of the Corporation (identified in the preamble hereof and referred to as the "Refunded Bonds"), and to pay costs of issuance, in conformity with the Constitution and laws of the State of Texas, including the Act, the Texas Nonprofit Corporation Act, and Chapter 22, Texas Business Organizational Code, and pursuant to a Resolution adopted by the governing body of the Corporation (herein referred to as the "Resolution").

The Bonds maturing on \_\_\_\_\_, and \_\_\_\_\_ (the "Term Bonds"), are subject to mandatory redemption at a price of par plus accrued interest to the date of redemption, as follows:

<u>Term Bonds due</u>	<u>Principal Amount</u>	<u>Term Bonds due</u>	<u>Principal Amount</u>
<u>Redemption Date</u>		<u>Redemption Date</u>	
	\$ ,000		\$ ,000
	,000		,000
	,000		,000
	,000	(maturity)	,000
(maturity)	,000		

The particular Term Bonds to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Bonds for a Stated Maturity required to be redeemed pursuant to the operation of such mandatory redemption provisions may be reduced, at the option of the Corporation, by the principal amount of Term Bonds of like maturity which, at least 50 days prior to a mandatory redemption date, (1) shall have been acquired by the Corporation at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.

The Bonds maturing on and after \_\_\_\_\_ may be redeemed prior to their Stated Maturities, at the option of the Corporation, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on \_\_\_\_\_ or on any date thereafter at the redemption price of par plus accrued interest thereon to the redemption date.

At least thirty days prior to the date fixed for any redemption of Bonds, the Corporation shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Bond to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Resolution. If a Bond (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date such Bond (or the portion of its principal sum to be redeemed) shall become due and payable, and, if moneys for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable from and after the redemption date on the principal amount hereof redeemed.

In the event a portion of the principal amount of a Bond is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of

such Bond to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Bond or Bonds of like maturity and interest rate in any authorized denominations provided in the Resolution for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Bond is called for redemption, in whole or in part, the Corporation and the Paying Agent/Registrar shall not be required to transfer such Bond to an assignee of the Holder within 45 days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond redeemed in part.

With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by the Resolution have been met and moneys sufficient to pay the redemption price of the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the Corporation shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

The Bonds, together with the Series 2017B Bonds, are payable solely from and equally and ratably secured by a pledge of the "Pledged Revenues" (as defined in the Resolution) received by the Corporation, including the "Gross Sales Tax Revenues" (as defined in the Resolution) levied for the benefit of the Corporation pursuant to the Act and an election held in the City. The Bonds do not constitute a legal or equitable, pledge, charge, lien or encumbrance upon any property of the Corporation or the City of Allen, Texas (the "City") except with respect to the "Pledged Revenues". This Bond may not be paid in whole or in part from any property taxes raised or to be raised by the City and is not a debt of and does not give rise to a claim for payment against the City, except as to the sales and use tax revenues held by the City and required under the Act to be paid over to the Corporation. Neither the State of Texas, the City or any political corporation, subdivision or agency of the State of Texas shall be obligated to pay this Bond or the interest hereon and neither the faith and credit nor the taxing power of the State, the City or any other political corporation, subdivision or agency thereof is pledged to the payment of the principal of and interest on this Bond except as noted above.

Subject to satisfying the terms and conditions prescribed therefor, the Corporation has reserved the right to issue additional revenue obligations payable, in whole or in part, from the "Pledged Revenues" and equally and ratably secured in like manner and effect as the Bonds and the Series 2017B Bonds.

Reference is hereby made to the Resolution, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the Holder by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the security for the payment of the Bonds; the rights of Holders of the Bonds the terms and conditions for the issuance of additional obligations; the terms and conditions relating to the payment, transfer or exchange of this Bond; the conditions upon which the Resolution may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the Corporation and the Paying Agent/Registrar; the terms and provisions upon which the encumbrances, pledges, charges and covenants made therein

may be discharged; and for the other terms and provisions contained therein. Capitalized terms used herein have the same meanings assigned in the Resolution.

This Bond, subject to certain limitations contained in the Resolution, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The Corporation and the Paying Agent/Registrar, and any agent of either, may treat the registered owner hereof whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal hereof at its Stated Maturity or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the Corporation nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of non-payment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Corporation. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and covenanted that the Corporation is a non-profit industrial development corporation duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas, including the Act; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid special obligations of the Corporation have been properly done, have happened and have been performed in regular and due time, form and manner as required by law; and that due provision has been made for the payment of the principal of and interest on the Bonds from the sources and in the manner provided in the Resolution. In case any provision in this Bond or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Resolution shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the Board of Directors of the Corporation has caused this Bond to be duly executed under the official seal of the Corporation.

ALLEN ECONOMIC DEVELOPMENT  
CORPORATION

\_\_\_\_\_  
President, Board of Directors

ATTEST:

\_\_\_\_\_  
Secretary, Board of Directors

(SEAL)

(c) Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Bond(s) only.

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER	)	
	)	
OF PUBLIC ACCOUNTS	)	REGISTER NO. _____
	)	
THE STATE OF TEXAS	)	

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

(SEAL)

- (d) Form of Certificate of Paying Agent/Registrar to Appear on definitive Bonds.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Resolution and duly approved, or a Predecessor Bond hereof duly approved, by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated offices of the Paying Agent/Registrar located in \_\_\_\_\_, is the "Designated Payment/Transfer Office" for this Bond.

\_\_\_\_\_  
\_\_\_\_\_,  
as Paying Agent/Registrar

Registration date:

\_\_\_\_\_

By \_\_\_\_\_  
Authorized Signature

- (e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee:)

\_\_\_\_\_

(Social Security or other identifying number \_\_\_\_\_) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED:

\_\_\_\_\_  
Signature guaranteed:

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular.

(f) The Initial Bond(s) shall be in the form set forth in paragraph (b) of this Section as modified in accordance with the Pricing Certificate, except that the form of a single fully registered Initial Bond shall be modified as follows or as provided in the Pricing Certificate:

REGISTERED  
NO. T-1

REGISTERED  
\$ \_\_\_\_\_



UNITED STATES OF AMERICA  
STATE OF TEXAS  
ALLEN ECONOMIC DEVELOPMENT CORPORATION  
SALES TAX REVENUE REFUNDING BOND, SERIES 2017A

Bond Date:  
\_\_\_\_\_, 2017

Registered Owner:

Principal Amount:

The Allen Economic Development Corporation (hereinafter referred to as the "Corporation"), a non-profit industrial development corporation organized and existing under the laws of the State of Texas, including the Development Corporation Act, V.T.C.A, Local Government Code, Title 12, Subtitle C1, as amended (the "Act") (formerly known as the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6), specifically Chapters 501 and 504 of the Local Government Code, with its principal office located in Collin County, Texas, for value received, hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, solely from the revenues and sources pledged under the Resolution identified below, the Principal Amount hereinabove stated on \_\_\_\_\_ in each of the years and in principal amounts and bearing interest at per annum rates in accordance with the following schedule:

<u>YEAR</u>	<u>PRINCIPAL INSTALLMENTS</u>	<u>INTEREST RATE</u>
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(Information to be inserted from the Pricing Certificate)

(or so much thereof as shall not have been paid upon prior redemption) and to pay interest (computed on the basis of a 360-day year of twelve 30-day months) on the unpaid Principal Amount hereof from the \_\_\_\_\_ at the per annum rate of interest specified above; such interest being payable on \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing \_\_\_\_\_. Principal installments of this Bond are payable at its Stated Maturity or on a prepayment date to the registered owner hereof by

\_\_\_\_\_ (the "Paying Agent/Registrar"), upon its presentation and surrender, at its designated office in \_\_\_\_\_ (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the resolution hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the \_\_\_\_\_ day of the month next preceding each interest payment date and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located is authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal

holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

SECTION 10: Definitions. For all purposes of this Resolution and in particular for clarity with respect to the issuance of the Bonds herein authorized and the pledge and appropriation of revenues to the payment of the Bonds, the following definitions are provided:

"Act" - The Development Corporation Act, Texas Local Government Code, Title 12, Subtitle C1, as amended (the "Act") (formerly known as the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6), specifically Chapters 501 and 504 of the Local Government Code.

"Additional Obligations" - Bonds, notes or other evidences of indebtedness which the Corporation reserves the right to issue or enter into, as the case may be, in the future in accordance with the terms and conditions provided in Section 18 hereof and which, together with the Bonds and the Series 2017B Bonds, are equally and ratably secured by a parity pledge of and claim on the Pledged Revenues under the terms of this Resolution and any Supplemental Resolution.

"Average Annual Debt Service" - That amount which, at the time of computation, is derived by dividing the total amount of Debt Service to be paid over a period of years as the same is scheduled to become due and payable by the number of years taken into account in determining the total Debt Service. Capitalized interest payments provided from proceeds of borrowings of the Corporation shall be excluded in making the aforementioned computation.

"Board" - The Board of Directors of the Corporation.

"Bonds" – The "Allen Economic Development Corporation Sales Tax Revenue Refunding Bonds, Series 2017A" authorized by this Resolution.

"City" - The City of Allen, Texas.

"Corporation" - The Allen Economic Development Corporation, a non-profit industrial development corporation organized and existing under and pursuant to the laws of the State of Texas, including the Act and on behalf of the City of Allen, Texas.

"Debt Service" - As of any particular date of computation, with respect to any obligations and with respect to any period, the aggregate of the amounts to be paid or set aside by the Corporation as of such date or in such period for the payment of the principal of, premium, if any, and interest (to the extent not capitalized) on such obligations; assuming, in the case of obligations without a fixed numerical rate, that such obligations bear, or would have borne, interest at the maximum legal per annum rate applicable to such obligations, and further assuming in the case of obligations required to be redeemed or prepaid as to

principal prior to maturity, the principal amounts thereof will be redeemed prior to maturity in accordance with the mandatory redemption provisions applicable thereto.

"Depository" - A commercial bank or other qualified financial institution eligible and qualified to serve as the custodian of the Corporation's monetary accounts and funds.

"Fiscal Year" - The twelve month financial accounting period used by the Corporation ending September 30 in each year, or such other twelve consecutive month period established by the Corporation.

"Government Obligations" - Unless otherwise provided in the Pricing Certificate, (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the Corporation are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the Corporation, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iv) any other then authorized securities or obligations under applicable State law that may be used to defease obligations such as the Bonds.

"Gross Sales Tax Revenues" - All of the revenues or receipts due or owing to, or collected or received by or on behalf of the Corporation by the City or otherwise pursuant to the Act and the election held January 18, 1992, less any amounts due and owed to the Comptroller of Public Accounts of the State of Texas as charges for the collection of the Sales Tax or retention by said Comptroller for refunds and to redeem dishonored checks and drafts, to the extent such charges and retention are authorized or required by law.

"Outstanding" - When used in this Resolution with respect to Bonds or Parity Obligations, as the case may be, means, as of the date of determination, all Bonds and Parity Obligations theretofore sold, issued and delivered by the Corporation, except:

(1) those Bonds or Parity Obligations canceled or delivered to the transfer agent or registrar for cancellation in connection with the exchange or transfer of such obligations;

(2) those Bonds or Parity Obligations paid or deemed to be paid in accordance with the provisions of Section 24 hereof or similar provisions of any Supplemental Resolution authorizing the issuance of Additional Obligations.

(3) those Bonds or Parity Obligations that have been mutilated, destroyed, lost, or stolen and replacement obligations have been registered and delivered in lieu thereof in accordance with the provisions of Section 26 hereof.

"Parity Obligations" - Collectively, the Bonds, the Series 2017B Bonds and Additional Obligations.

"Pledged Revenues" - Collectively (i) Gross Sales Tax Revenues from time to time deposited or owing to the Pledged Revenue Fund and (ii) such other money, income, revenue, receipts or other property as may be specifically dedicated, pledged or otherwise encumbered in a Supplemental Resolution for the payment and security of Parity Obligations.

"Required Reserve" - The amount required to be accumulated and maintained in the Reserve Fund under the provisions of Section 14 hereof.

"Sales Tax" - The local sales and use tax authorized under Section 4A of the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6 (now codified as the Development Corporation Act as described above), approved at an election held on January 18, 1992, and the effective date for the imposition and application of such Sales Tax within the corporate limits of the City by the Comptroller of Public Accounts of the State of Texas being July 1, 1992, together with any increases in the rate of such Sales Tax authorized and provided by law.

"Series 2017B Bonds" – The "Allen Economic Development Corporation Sales Tax Revenue Bonds, Taxable Series 2017B" authorized for issuance concurrently with the Bonds.

"Qualified Short Term Obligations" – Parity Obligations with a final maturity of five years or less subject to the following coverage test: Gross Sales Tax Revenues received by the Corporation for either (i) the last completed Fiscal Year next preceding the adoption of the Supplemental Resolution authorizing the issuance of the proposed Qualified Short Term Obligations or (ii) any twelve (12) consecutive months out of the previous fifteen (15) months next preceding the adoption of the Supplemental Resolution authorizing the Qualified Short Term Obligations were equal to not less than 2.25 times the maximum annual Debt Service for all Parity Obligations then Outstanding after giving effect to the issuance of the Qualified Short Term Obligations then being issued.

"Supplemental Resolution" - Any resolution of the Board supplementing this Resolution for the purpose of authorizing and providing the terms and provisions of the Bonds or Additional Obligations, or supplementing or amending this Resolution for any other authorized purpose permitted in Section 18 or 25 hereof, including resolutions authorizing the issuance of Additional Obligations or pledging and encumbering income, revenues, receipts or property other than the Gross Sales Tax Revenues to the payment and security of the Parity Obligations.

**SECTION 11: Pledge.** The Corporation hereby covenants and agrees that the Pledged Revenues, with the exception of those in excess of the amounts required for the payment and security of the Parity Obligations, are hereby irrevocably pledged to the payment and security of

the Bonds, the Series 2017B Bonds and Additional Obligations, if issued, including the establishment and maintenance of the special funds created and established in this Resolution and any Supplemental Resolution, all as hereinafter provided. The Corporation hereby resolves the Parity Obligations shall constitute a lien on the Pledged Revenues in accordance with the terms of this Resolution and any Supplemental Resolution, which lien shall be valid and binding and fully perfected from and after the date of adoption of this Resolution without physical delivery or transfer of control of the Pledged Revenues, the filing of this Resolution or any other act; all as provided in Chapter 1208 of the Texas Government Code.

Section 1208, Government Code, applies to the issuance of the Bonds and the pledge of the Pledged Revenues granted by the Corporation under this Section 11, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Bonds are Outstanding such that the pledge of the Pledged Revenues granted by the Corporation under this Section 11 is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the Corporation agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

**SECTION 12: Pledged Revenue Fund.** The Corporation hereby covenants and agrees to establish and maintain a fund or account at a Depository for the deposit of the Pledged Revenues as received by the Corporation, which fund or account shall continue to be known on the books and records of the Corporation as the "Pledged Revenue Fund". All Pledged Revenues deposited to the credit of such Fund shall continue to be accounted for separate and apart from all other revenues, receipts and income of the Corporation and, with respect to the Gross Sales Tax Revenues, the Corporation shall further account for such funds separate and apart from the other Pledged Revenues deposited to the credit of the Pledged Revenue Fund. All Pledged Revenues deposited to the credit of the Pledged Revenue Fund shall be appropriated and expended to the extent required by this Resolution and any Supplemental Resolution for the following uses and in the order of priority shown:

First: To the payment of the amounts required to be deposited in the Bond Fund for the payment of Debt Service on the Parity Obligations as the same becomes due and payable;

Second: To the payment of the amounts required to be deposited in the Reserve Fund to establish and maintain the Required Reserve in accordance with the provisions of this Resolution and any Supplemental Resolution, if any;

Third: To the payment of amounts required to be deposited in any other fund or account required by any Supplemental Resolution authorizing the issuance of Parity Obligations; and

Fourth: To any fund or account held at any place or places, or to any payee, required by any other resolution of the Board which authorized the issuance of obligations or the creation of debt of the Corporation having a lien on the Pledged Revenues subordinate to the lien created herein on behalf of the Parity Obligations.

Any Pledged Revenues remaining in the Pledged Revenue Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other lawful purpose now or hereafter permitted by law.

**SECTION 13: Bond Fund.** For the purpose of providing funds to pay the principal of and interest on Parity Obligations, the Corporation covenants and agrees to maintain a separate and special account or fund on the books and records of the Corporation known as the "Allen Economic Development Corporation Debt Service Account" (the "Bond Fund"), and all monies deposited to the credit of the Bond Fund shall continue to be held in a special banking fund or account maintained at a Depository of the Corporation. In addition to the amounts required to be deposited to the credit of the Bond Fund for the payment of the Series 2017B Bonds, the Corporation covenants that there shall be deposited into the Bond Fund prior to each principal and interest payment date from the Pledged Revenues an amount equal to one hundred per centum (100%) of the interest on and the principal of the Bonds then falling due and payable, and such deposits to pay principal and accrued interest on the Bonds shall be made in substantially equal monthly installments on or before the 10th day of each month, beginning on or before the 10th day of the month next following the delivery of the Bonds to the initial purchasers.

The required deposits to the Bond Fund for the payment of principal of and interest on the Bonds shall continue to be made as hereinabove provided until (i) the total amount on deposit in the Bond Fund and Reserve Fund is equal to the amount required to fully pay and discharge all Parity Obligations (principal and interest) then Outstanding or (ii) the Bonds are no longer Outstanding.

**SECTION 14: Reserve Fund.** (a) The Corporation covenants and agrees to maintain on the books and records of the Corporation a separate and special fund or account known as the "Reserve Account" (the "Reserve Fund"), which fund or account is and shall continue to be a special banking fund maintained at a Depository. All Pledged Revenues deposited to the credit of such fund or account shall be used solely for the payment of the principal of and interest on the Parity Obligations when (whether at maturity, upon a redemption date or any interest payment date) other funds available for such purposes are insufficient, and, in addition, may be used to the extent not required to maintain the "Required Reserve", to pay, or provide for the payment of, the final principal amount of a series of Parity Obligations so that such series of Parity Obligations is no longer deemed to be "Outstanding" as such term is defined herein.

The total amount required to be deposited to the credit of the Reserve Fund by reason of the issuance of the Bonds (the "Required Reserve"), which amount is equal to the lesser of (i) the maximum annual Debt Service (calculated on a Fiscal Year basis) for all Parity Obligations currently Outstanding (after giving effect to the issuance of the Bonds) and (ii) the maximum amount that can be invested without restriction as to yield in a reasonably required reserve fund pursuant to Subsection (d) of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder, as determined on the date the Bonds are to be delivered to the initial purchasers, will be determined when the Bonds are sold and will be stated in the Pricing Certificate; provided, however, the Corporation may recalculate and adjust the Required Reserve at the end of each Fiscal Year or upon the defeasance, redemption or maturity of any Parity Obligations. The Required Reserve shall be established and maintained (i) with Gross Revenues, (ii) with the proceeds of sale of Parity Obligations or (iii) by depositing to the Reserve Fund one or more surety bonds issued by a company or institution having a rating in the highest two rating categories (i.e., "AA-" or equivalent or higher) by at least one nationally recognized rating agency or services, or any combination thereof.

By reason of the issuance of the Bonds, the total amount required to be accumulated and maintained in said Fund shall be determined by the Pricing Officer and specified in the Pricing Certificate (the "Required Reserve") and the Pricing Officer shall determine and provide in the Pricing Certificate in the manner in which Required Reserve will be initially funded. The Pricing Officer is hereby authorized to executed any document or agreement in connection with funding the Required Reserve.

As and when Additional Obligations are delivered or incurred, the Required Reserve shall be increased, if required, to an amount equal to the lesser of either (i) the maximum annual Debt Service (calculated on a Fiscal Year basis) for all Parity Obligations then Outstanding (after giving effect to the issuance of the Additional Obligations), as determined on the date each series of Additional Obligations are delivered or incurred, as the case may be, or (ii) the maximum amount that can be invested without restriction as to yield in a reasonably required reserve fund pursuant to Subsection (d) of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder. Any additional amount required to be maintained in the Reserve Fund shall be accumulated (i) by depositing to the credit of the Reserve Fund (immediately after the delivery of the then proposed Additional Obligations) cash or an additional surety bond or revised surety bond with surety bond coverage in an amount sufficient to provide for the new Required Reserve to be fully or partially funded or (ii) at the option of the Corporation, by making monthly deposits from funds in the Pledged Revenue Fund, on or before the 10th day of each month following the month of delivery of the then proposed Additional Obligations, of not less than 1/36th of the additional amount to be maintained in said Fund by reason of the issuance of the Additional Obligations then being issued (or 1/36th of the balance of the additional amount not deposited immediately in cash or provided by a surety bond). To the extent of multiple surety bonds or other credit agreements funding the Required Reserve, any draws on such surety bonds or other credit agreements on which there is available coverage shall be made on a pro rata basis (calculated by reference to coverage then available under each such surety bond or credit agreement).

While the cash and investments and/or surety coverage in the Reserve Fund total not less than the Required Reserve, no deposits need be made to the credit of the Reserve Fund. Should the Reserve Fund at any time contain less than the Required Reserve (or so much thereof as shall then be required to be contained therein if Additional Obligations have been issued and the Corporation has elected to accumulate all or portion of the Required Reserve with Pledged Revenues or should the Corporate be obligated to repay or reimburse an issuer of a surety bond to replenish and restore the full amount of surety bond coverage provided by a surety bond held for the account of the Reserve Fund), the Corporation covenants and agrees to cause monthly deposits to be made to the Reserve Fund on or before the 10th day of each month (beginning the month next following the month the deficiency in the Required Reserve occurred by reason of a draw on the Reserve Fund or as a result of a reduction in the market value of investments held for the account of the Reserve Fund) from Pledged Revenues in an amount equal to 1/36th of the Required Reserve until (i) the total Required Reserve then required to be maintained in said Fund has been fully restored or (ii) the amounts required to be reimbursed and repaid to the issuer of the surety bond in the event of a draw upon a surety bond. The Corporation further covenants and agrees that the Pledged Revenues shall be applied and appropriated and used to establish and maintain the Required Reserve and to cure any deficiency in such amounts as required by the terms of this Resolution and any Supplemental Resolution.



During such time as the Reserve Fund contains the total Required Reserve, the Corporation may, at its option, withdraw any amount in the Reserve Fund in excess of the Required Reserve and deposit such surplus in the Pledged Revenue Fund.

Notwithstanding the above and foregoing, the terms "Parity Obligations" and "Additional Obligations" used in this Section shall not include Qualified Short Term Obligations. The issuance of Qualified Short Term Obligations will not be included in the calculation of the Required Reserve and will not necessitate a deposit to the Reserve Fund.

SECTION 15: Deficiencies. If on any occasion there shall not be sufficient Pledged Revenues to make the required deposits into the Bond Fund or Reserve Fund, such deficiency shall be cured as soon as possible from the next available Pledged Revenues, or from any other sources available for such purpose.

SECTION 16: Payment of Bonds. While any of the Bonds are Outstanding, the designated financial officer of the Corporation shall cause to be transferred to the Paying Agent/Registrar, from funds on deposit in the Bond Fund, and, if necessary, in the Reserve Fund, amounts sufficient to fully pay and discharge promptly as each installment of interest and principal of the Bonds accrues or matures; such transfer of funds to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar for the Bonds at the close of the business day next preceding the date of payment for the Bonds.

SECTION 17: Investments - Security of Funds. Money in any Fund required to be maintained pursuant to this Resolution may, at the option of the Corporation, be invested in obligations and in the manner prescribed by the Public Funds Investment Act (Texas Government Code, Chapter 2256), including investments held in book-entry form; provided that all such deposits and investments shall be made in such a manner that the money required to be expended from any Fund will be available at the proper time or times and provided further the maximum stated maturity for any investment acquired with money deposited to the credit of the Reserve Fund shall be limited to five (5) years from the date of the investment of such money. Such investments shall be valued in terms of current market value within 45 days of the close of each Fiscal Year and, with respect to investments held for the account of the Reserve Fund, within 45 days of the date of passage of each authorizing document of the Board pertaining to the issuance of Additional Obligations. All interest and income derived from deposits and investments in the Bond Fund immediately shall be credited to, and any losses debited to, the appropriate account of the Bond Fund. All interest and income derived from deposits in and investments of the Reserve Fund shall, subject to the limitations provided in Section 14 hereof, be credited to and deposited in the Pledged Revenue Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Parity Obligations.

Money deposited to the credit of the Pledged Revenue Fund, Bond Fund and Reserve Fund, to the extent not invested and not otherwise insured by the Federal Deposit Insurance Corporation or similar agency, shall be secured by a pledge of direct obligations of the United States of America, or obligations unconditionally guaranteed by the United States of America.

SECTION 18: Issuance of Additional Parity Obligations. Subject to the provisions hereinafter appearing as to conditions precedent which must be satisfied, the Corporation reserves the right to issue, from time to time as needed, Additional Obligations for any lawful purpose. Such Additional Obligations may be issued in such form and manner as the Corporation shall determine, provided, however, prior to issuing or incurring such Additional

Obligations, the following conditions precedent for the authorization and issuance of the same are satisfied, to wit:

(1) The Treasurer of the Corporation (or other officer of the Corporation then having the primary responsibility for the financial affairs of the Corporation) shall have executed a certificate stating that, to the best of his or her knowledge and belief, the Corporation is not then in default as to any covenant, obligation or agreement contained in the Resolution or a Supplemental Resolution.

(2) The Corporation has secured from a certified public accountant a certificate or opinion to the effect that, according to the books and records of the Corporation, the Gross Sales Tax Revenues received by the Corporation for either (i) the last completed Fiscal Year next preceding the adoption of the Supplemental Resolution authorizing the issuance of the proposed Additional Obligations or (ii) any twelve (12) consecutive months out of the previous fifteen (15) months next preceding the adoption of the Supplemental Resolution authorizing the Additional Obligations were equal to not less than 1.50 times the Average Annual Debt Service for all Parity Obligations then Outstanding after giving effect to the issuance of the Additional Obligations then being issued. Additionally, for the purpose of providing this certificate or opinion, if the Corporation shall not have received Gross Sales Tax Revenues for a full 12 month period, one-half of the amount of sales tax revenues actually received by the City under Chapter 321, Texas Tax Code, may be used for the months during which the Corporation did not receive Gross Sales Tax Revenues.

(3) The Required Reserve to be accumulated and maintained in the Reserve Fund is increased to the extent required by Section 14.

SECTION 19: Refunding Bonds. The Corporation reserves the right to issue refunding bonds to refund all or any part of the Parity Obligations (pursuant to any law then available) upon such terms and conditions as the Board may deem to be in the best interest of the Corporation, and if less than all such Parity Obligations then Outstanding are refunded, the conditions precedent prescribed (for the issuance of Additional Obligations) set forth in Section 18 hereof shall be satisfied, and shall give effect to the refunding. Refunding bonds that produce a net present value savings are not subject to the requirements contained in Section 18 hereof.

SECTION 20: Right to Create Subordinate Debt. Except as may be limited by a Supplemental Resolution, the Corporation shall have the right to issue or create any debt payable from or secured by a lien on all or any part of the Pledged Revenues for any lawful purpose without complying with the provisions of Section 18 or 19 hereof, provided the pledge and the lien securing such debt is subordinate to the pledge and lien established, made and created in Section 11 of this Resolution with respect to the Pledged Revenues to the payment and security of the Parity Obligations.

SECTION 21: Confirmation and Levy of Sales Tax.

(a) The Board hereby represents the City has duly complied with the provisions of the Act for the levy of the Sales Tax at the rate voted at the election held by and within the City on January 18, 1992, and such Sales Tax is to be imposed within the corporate limits of the City

and the receipts of such Sales Tax are to be remitted to the City by the Comptroller of Public Accounts on a monthly basis.

(b) While any Bonds are Outstanding, the Corporation covenants, agrees and warrants to take and pursue all action permissible to cause the Sales Tax, at said rate or at a higher rate if legally permitted, to be levied and collected continuously, in the manner and to the maximum extent permitted by law, and to cause no reduction, abatement or exemption in the Sales Tax or rate of tax below the rate stated, confirmed and ordered in subsection (a) of this Section to be ordered or permitted while any Bonds shall remain Outstanding.

(c) If hereafter authorized by law to apply, impose and levy the Sales Tax on any taxable items or transactions that are not subject to the Sales Tax on the date of the adoption hereof, to the extent it legally may do so, the Corporation agrees to use its best efforts to cause the City to take such action as may be required to subject such taxable items or transactions to the Sales Tax.

(d) The Corporation agrees to take and pursue all action legally permissible to cause the Sales Tax to be collected and remitted and deposited as herein required and as required by the Act, at the earliest and most frequent times permitted by law.

(e) The Corporation agrees to use its best efforts to cause the City to comply with the Act and shall cause the Gross Sales Tax Revenues to be deposited to the credit of the Pledged Revenue Fund in their entirety immediately upon receipt by the City. In the alternative and if legally authorized, the Corporation shall, by appropriate notice, direction, request or other legal method, use its good-faith efforts to cause the Comptroller of Public Accounts of the State of Texas (the "Comptroller") to pay all Gross Sales Tax Revenues directly to the Corporation for deposit to the Pledged Revenue Fund.

**SECTION 22: Records and Accounts.** The Corporation hereby covenants and agrees that while any of the Bonds are Outstanding, it will keep and maintain complete records and accounts in accordance with generally accepted accounting principles, and following the close of each Fiscal Year, it will cause an audit of such books and accounts to be made by an independent firm of certified public accountants. Each such audit, in addition to whatever other matters may be thought proper by the accountant, shall particularly include the following:

(1) A statement in reasonable detail regarding the receipt and disbursement of the Pledged Revenues for such Fiscal Year; and

(2) A balance sheet for the Corporation as of the end of such Fiscal Year.

Such annual audit of the records and accounts of the Corporation shall be in the form of a report (and may be reflected in the audit of the City) and be accompanied by an opinion of the accountant to the effect that such examination was made in accordance with generally accepted auditing standards and contain a statement to the effect that in the course of making the examination necessary for the report and opinion, the accountant obtained no knowledge of any default of the Corporation on the Bonds or in the fulfillment of any of the terms, covenants or provisions of this Resolution, or under any other evidence of indebtedness, or of any event which, with notice or lapse of time, or both, would constitute a failure of the Corporation to comply with the provisions of this Resolution or if, in the opinion of the accountants, any such

failure to comply with a covenant or agreement hereof, a statement as to the nature and status thereof shall be included.

Copies of each annual audit report shall be furnished upon written request, to any Holders of any of said Bonds. The audits herein required shall be made within 180 days following the close of each Fiscal Year insofar as is possible.

The Holders of any Bonds or any duly authorized agent or agents of such Holders shall have the right to inspect such records, accounts and data of the Corporation during regular business hours.

#### SECTION 23: Representations and Covenants as to Security for the Bonds.

(a) The Corporation represents and warrants that, except for Parity Obligations, the Pledged Revenues are and will be and remain free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge and lien created in or authorized by this Resolution except as expressly provided herein.

(b) The Bonds and the provisions of this Resolution are and will be the valid and legally enforceable obligations of the Corporation in accordance with their terms and the terms of this Resolution, subject only to any applicable bankruptcy or insolvency laws or to any laws affecting creditors rights generally.

(c) The Corporation shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Revenues and all the rights of the Holders against all claims and demands of all persons whomsoever.

(d) The Corporation will take, and use its best efforts to cause the City to take, all steps reasonably necessary and appropriate to collect all delinquencies in the collection of the Sales Tax to the fullest extent permitted by the Act.

(e) The provisions, covenants, pledge and lien on and against the Pledged Revenues, as herein set forth, are established and shall be for the equal benefit, protection and security of the owners and holders of Parity Obligations without distinction as to priority and rights under this Resolution.

(f) The Parity Obligations shall constitute special obligations of the Corporation, payable solely from, and equally and ratably secured by a parity pledge of and lien on, the Pledged Revenues, and not from any other revenues, properties or income of the Corporation. The Bonds may not be paid in whole or in part from any property taxes raised or to be raised by the City and shall not constitute debts or obligations of the State or of the City, and the Holders, shall never have the right to demand payment out of any funds raised or to be raised by any system of ad valorem taxation.

SECTION 24: Satisfaction of Obligation of Corporation. If the Corporation shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Resolution, then the pledge of the Pledged Revenues under this Resolution and all other obligations of the Corporation to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds or any principal amount(s) shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Obligations shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Obligations have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the Bonds on the Stated Maturities thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor accepted to the Paying Agent/Registrar have been made) the redemption date thereof. The Corporation covenants that no deposit of moneys or Government Obligations will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Obligations held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section in excess of the amount required for the payment of the Bonds shall be remitted to the Corporation or deposited as directed by the Corporation. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of four (4) years after the Stated Maturity, or applicable redemption date, of the Bonds such moneys were deposited and are held in trust to pay shall, upon the request of the Corporation, be remitted to the Corporation against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the Corporation shall be subject to any applicable unclaimed property laws of the State of Texas.

SECTION 25: Resolution a Contract - Amendments. This Resolution, together with the Pricing Certificate, shall constitute a contract with the Holders from time to time, be binding on the Corporation, and shall not be amended or repealed by the Corporation while any Bond remains Outstanding except as permitted in this Section and in Section 41 hereof and the Pricing Certificate. The Corporation, may, without the consent of or notice to any Holders, from time to time and at any time, amend this Resolution in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the Corporation may, with the written consent from the owners holding a majority in aggregate principal amount of the Parity Obligations then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Resolution; provided that, without the written consent of all Holders of Outstanding Bonds effected, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Bonds, reduce the principal amount thereof, the redemption price therefor, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds or Parity Obligations, as the case may be, required to be held for consent to any such amendment, addition, or rescission.

SECTION 26: Mutilated - Destroyed - Lost and Stolen Bonds. In case any Bond shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the same denomination and bearing a number

not contemporaneously outstanding, in exchange and substitution for such mutilated Bond, or in lieu of and in substitution for such destroyed, lost or stolen Bond, only upon the approval of the Corporation and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the Corporation and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, or destroyed, lost or stolen.

Every new Bond issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Bond shall constitute a replacement of the prior obligation of the Corporation, whether or not the mutilated, destroyed, lost, or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Resolution equally and ratably with all other Outstanding Bonds.

#### SECTION 27: Covenants Regarding Tax-Exempt Status.

(a) Definitions. When used in this Section 27, the following terms have the following meanings:

*"Closing Date"* means the date on which Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

*"Code"* means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

*"Computation Date"* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Gross Proceeds"* means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

*"Investment"* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Nonpurpose Investment"* means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

*"Rebate Amount"* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Regulations"* means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"Yield" of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The Corporation shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Corporation receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the Corporation shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. The Bonds are being issued to finance the costs of the Projects for and on behalf of the City, a political subdivision of the State of Texas and, in connection therewith, the City and the Corporation will execute an agreement relating to the ownership, operation and maintenance of the Projects while the Bonds are outstanding and unpaid, which agreement provides that, except as permitted by section 141 of the Code and the Regulations and rulings thereunder, the Projects shall at all times prior to the last Stated Maturity of Bonds:

(1) be exclusively owned, operated and maintained by the City, and prohibits the City from using or permitting the use of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity other than a state or local government, unless such use is solely as a member of the general public; and

(2) prohibits the City from directly or indirectly imposing or accepting any charge or other payment for use of Gross Proceeds of the Bonds or for any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the Corporation shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the Corporation shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any

Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the Corporation shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The Corporation shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The Corporation and the City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Bond is discharged. However, to the extent permitted by law, the Corporation may commingle Gross Proceeds of the Bonds with other money of the Corporation, provided that the Corporation separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the Corporation shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The Corporation shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the Corporation shall pay to the United States out of the Bond Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.



(4) The Corporation shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the Corporation shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) Elections. The Corporation hereby directs and authorizes the President, Vice President or Secretary of the Board of Directors, any Ex-Officio Member of the Board, or Executive Director of the Corporation, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

(k) Bonds Not Hedge Bonds. At the time the original bonds refunded by the Bonds were issued, the Corporation reasonably expected to spend at least 85% of the spendable proceeds of such bonds within three years after such bonds were issued, and (2) not more than 50% of the proceeds of the original bonds refunded by the Bonds were invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(l) Qualified Tax Exempt Obligations. The Pricing Officer is hereby authorized to designate in the Pricing Certificate the designation of the Bonds as "qualified tax-exempt obligations" in accordance with the provisions of the paragraph (3) of subsection (b) of Section 265 of the Code in the event the Bonds qualify for such designation and confirm that the Bonds are not "private activity bonds" as defined in the Code and confirm the amount of "tax-exempt obligations" to be issued by the Corporation (including the City and all subordinate entities of the City) for the calendar year 2017 will not exceed \$10,000,000.

(m) Qualified Advance Refunding. The Bonds are issued exclusively to refund the Refunded Bonds, and the Bonds will be issued more than 90 days before the redemption of the Refunded Bonds. The Corporation represents as follows:

(1) The Bonds are the first advance refunding of the Refunded Bonds, within the meaning of section 149(d)(3) of the Code.

(2) The Refunded Bonds are being called for redemption, and will be redeemed not later than the earliest date on which such bonds may be redeemed.

(3) The initial temporary period under section 148(c) of the Code will end: (i) with respect to the proceeds of the Bonds not later than 30 days after the

date of issue of such Bonds; and (ii) with respect to proceeds of the Series 1999 Refunded Bonds on the Closing Date if not ended prior thereto.

(4) On and after the date of issue of the Bonds, no proceeds of the Refunded Bonds will be invested in Nonpurpose Investments having a Yield in excess of the Yield on such Refunded Bonds.

(5) The Bonds are being issued for the purposes stated in the preamble of this Resolution. There is a present value savings associated with the refunding. In the issuance of the Bonds the Corporation has neither: (i) overburdened the tax exempt bond market by issuing more bonds, issuing bonds earlier or allowing bonds to remain outstanding longer than reasonably necessary to accomplish the governmental purposes for which the Bonds were issued; (ii) employed on "abusive arbitrage device" within the meaning of Section 1.148-10(a) of the Regulations; nor (iii) employed a "device" to obtain a material financial advantage based on arbitrage, within the meaning of section 149(d)(4) of the Code, apart from savings attributable to lower interest rates and reduced debt service payments in early years.

**SECTION 28: Notices to Holders - Waiver.** Wherever this Resolution provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder as it appears in the Security Register.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Resolution provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**SECTION 29: Cancellation.** All Bonds surrendered for payment, redemption, transfer or exchange, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the Corporation, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The Corporation may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the Corporation may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Bonds held by the Paying Agent/Registrar shall be destroyed as directed by the Corporation.

**SECTION 30: Sale of Bonds – Official Statement.** The Bonds authorized by this Resolution are to be sold by the Corporation to the underwriter(s) (herein referred to as the "Purchasers") in accordance with a bond purchase agreement (the "Purchase Contract"), the terms and provisions of which Purchase Contract are to be determined by a Pricing Officer, in accordance with Section 3 hereof. With regard to such terms and provisions of said Purchase Contract, a Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

- (1) The details of the purchase and sale of the Bonds;
- (2) The details of the public offering of the Bonds by the Purchasers;
- (3) The details of an Official Statement (and, if appropriate, any Preliminary Official Statement) relating to the Bonds and the Corporation's Rule 15c2-12 undertaking;
- (4) A security deposit for the Bonds;
- (5) The representations and warranties of the Corporation to the Purchasers;
- (6) The details of the delivery of, and payment for, the Bonds;
- (7) The Purchasers' obligations under the Purchase Contract;
- (8) The certain conditions to the obligations of the Corporation under the Purchase Contract;
- (9) Termination of the Purchase Contract;
- (10) Particular covenants of the Corporation;
- (11) The survival of representations made in the Purchase Contract;
- (12) The payment of any expenses relating to the Purchase Contract;
- (13) Notices; and

Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Bonds.

A Pricing Officer is hereby authorized and directed to execute said Purchase Contract for and on behalf of the Corporation and as the act and deed of this Board.

The President and Secretary of the Board of Directors of the Corporation are further authorized and directed to deliver for and on behalf of the Corporation copies of a Preliminary Official Statement and Official Statement, prepared in connection with the offering of the Bonds by the Purchasers, in final form as may be required by the Purchasers, and such Preliminary Official Statement and final Official Statement in the form and content as approved by a Pricing Officer or as manually executed by said officials shall be deemed to be approved by the Board of Directors of the Corporation and constitute the Official Statement authorized for distribution and use by the Purchasers.

SECTION 31: Special Escrow Agreement Approval and Execution. A "Special Escrow Agreement" (the "Escrow Agreement") by and between the Corporation and an authorized escrow agent (the "Escrow Agent") shall be attached to the Pricing Certificate. Such Escrow Agreement is hereby authorized to be finalized and executed by the Pricing Officer for and on behalf of the Corporation and as the act and deed of this Board of Directors; and such Escrow Agreement as executed by said Pricing Officer shall be deemed approved by the Board of Directors and constitute the Escrow Agreement herein approved. With regard to the finalization

of certain terms and provisions of said Escrow Agreement, a Pricing Officer is hereby authorized to come to an agreement with the Escrow Agent on the following details, among other matters::

1. The identification of the Refunded Bonds;
2. The creation and funding of the Escrow Fund; and
3. The Escrow Agent's compensation, administration of the Escrow Fund, and the settlement of any paying agents' charges relating to the Refunded Bonds.

Furthermore, appropriate officials of the Corporation in cooperation with the Escrow Agent are hereby authorized and directed to make the necessary arrangements for the purchase of the escrowed securities referenced in the Escrow Agreement and the delivery thereof to the Escrow Agent on the day of delivery of the Bonds to the Purchasers for deposit to the credit of the "ALLEN ECONOMIC DEVELOPMENT CORPORATION SERIES 2017A SALES TAX REVENUE REFUNDING BOND ESCROW FUND" (referred to herein as the "Escrow Fund"); all as contemplated and provided in the Act, this Resolution, the Pricing Certificate, and the Escrow Agreement.

SECTION 32: Refunded Bonds. (a) In order to provide for the refunding, discharge, and retirement of the Refunded Bonds, the Refunded Bonds identified, described, and in the amounts set forth in the Pricing Certificate, are called for redemption on the first date(s) such Refunded Bonds are subject to redemption or such other date(s) specified by the Pricing Officer in the Pricing Certificate at the price of par plus accrued interest to the redemption date, and notices of such redemption shall be given in accordance with the applicable provisions of the resolutions adopted by the Board of Directors of the Corporation, which authorized the issuance of the Refunded Bonds. The Pricing Officer is hereby authorized and directed to provide documentation, including a copy of this Resolution and the Pricing Certificate, to the paying agent/registrar for the Refunded Bonds, together with a suggested form of notice of redemption to be sent to holders, such suggested form of notice of redemption for the Refunded Bonds to be substantially the form set forth as an exhibit to the Pricing Certificate, in accordance with the redemption provisions applicable to the Refunded Bonds.

(b) The paying agent/registrar for Refunded Bonds is hereby directed to provide the appropriate notice of redemption as required by the resolutions authorizing the Refunded Bonds and is hereby directed to make appropriate arrangements so that the Refunded Bonds may be redeemed on the respective redemption dates.

(c) The source of funds for payment of the principal of and interest on the Refunded Bonds on their respective maturity or redemption dates shall be from the funds deposited with the Escrow Agent, pursuant to the Escrow Agreement finalized by a Pricing Officer and approved in Section 31 of this Resolution and by a Pricing Officer.

SECTION 33: Proceeds of Sale. Immediately following the delivery of the Bonds, the proceeds of sale (less those proceeds of sale designated to pay costs of issuance, amounts to be municipal bond insurance premium if any, surety bond premium, if any, and accrued interest received from the Purchasers of the Bonds, if any) shall be deposited with the Escrow Agent for application and disbursement in accordance with the provisions of the Escrow Agreement. The proceeds of sale of the Bonds not so deposited with the Escrow Agent for the refunding of the Refunded Bonds shall be disbursed for payment of costs of issuance or deposited in the Bond

Fund for the Bonds, all in accordance with written instructions from the Corporation or its Financial Advisor. Such proceeds of sale may be invested in authorized investments and any investment earnings realized may be (with respect to the accrued interest received from the Purchasers) deposited in the Bond Fund as shall be determined by the Board of Directors of the Corporation. All surplus proceeds of sale of the Bonds, including investment earnings, remaining after completion of the Projects shall be deposited to the credit of the Bond Fund.

Additionally, the Pricing Officer shall determine the amount of any Corporation contribution to the refunding from moneys on deposit in the interest and sinking fund maintained for the payment of the Refunded Bonds and is empowered to authorize its transfer.

SECTION 34: Legal Opinion. The obligation of the Purchasers to accept delivery of the Bonds is subject to being furnished final opinions of Norton Rose Fulbright US LLP, Attorneys, Dallas, Texas, approving such Bonds as to their validity, said opinions to be dated and delivered as of the date of delivery and payment for such Bonds. A true and correct reproduction of each opinion is hereby authorized to be printed on the definitive Bonds or an executed counterpart thereof shall accompany the global Bonds deposited with the Depository Trust Company.

SECTION 35: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof and neither the Corporation nor attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 36: Control and Custody of Bonds. The President of the Board shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, and shall take and have charge and control of the Initial Bonds pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

Furthermore, the President, Vice President and Secretary of the Board of Directors of the Corporation, any Director, any Ex-Officio Member of the Board of Directors and the Executive Director, individually, jointly or collectively, are hereby authorized and directed to furnish and execute such documents and certifications relating to the Corporation and the issuance of the Bonds, as may be necessary for the approval of the Attorney General, registration by the Comptroller of Public Accounts and delivery of the Bonds to the initial purchasers and, together with the Corporation's financial advisor, general counsel, bond counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond(s) to the Purchasers and the initial exchange thereof for definitive Bonds.

SECTION 37: Benefits of Resolution. Nothing in this Resolution, expressed or implied, is intended or shall be construed to confer upon any person other than the Corporation, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Resolution or any provision hereof, this Resolution and all its provisions being intended to be and being for the sole and exclusive benefit of the Corporation, the Paying Agent/Registrar and the Holders.

SECTION 38: Inconsistent Provisions. All orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict and the provisions of this Resolution shall be and remain controlling as to the matters contained herein.

SECTION 39: Governing Law. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 40: Severability. If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution and the application thereof to other circumstances shall nevertheless be valid, and the Board hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 41: Construction of Terms. If appropriate in the context of this Resolution, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 42: Continuing Disclosure Undertaking. This Section 42 shall apply unless the Pricing Officer determines in the Pricing Certificate that an undertaking is not required pursuant to the Rule.

(a) *Definitions*. As used in this Section, the following terms have the meanings ascribed to such terms below:

"MSRB" means the Municipal Securities Rulemaking Board.

"NRMSIR" means each person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

"SID" means any person designated by the State of Texas or an authorized department, officer, or agency thereof as, and determined by the SEC or its staff to be, a state information depository within the meaning of the Rule from time to time.

(b) *Annual Reports*. The Corporation shall provide annually to the MSRB (1) within six months after the end of each fiscal year of the Corporation beginning in the year stated in the Pricing Certificate, financial information and operating data with respect to the Corporation of the general type included in the final Official Statement approved by the Pricing Officer and described in the Pricing Certificate, and (2) if not provided as part such financial information and operating data, audited financial statements of the Corporation, when and if available. Any financial statements to be provided shall be (i) prepared in accordance with the accounting principles described in the Pricing Certificate, or such other accounting principles as the Corporation may be required to employ from time to time pursuant to state law or regulation, and in substantially the form included in the Official Statement, and (ii) audited, if the Corporation commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within twelve (12) months after any such fiscal year end, then the Corporation shall file unaudited financial statements within such twelve-month period and audited financial statements for the applicable fiscal year, when and if the audit report on such statements becomes available.

If the Corporation changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Corporation otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any documents available to the public on the MSRB's Internet web site or filed with the SEC.

(c) *Notice of Certain Events.* The Corporation shall provide notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the Corporation, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the Corporation or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

For these purposes, any event described in the immediately preceding subsection (c)12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal

agent, or similar officer for the Corporation in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Corporation, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Corporation.

The Corporation shall notify the MSRB, in a timely manner, of any failure by the Corporation to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) *Limitations, Disclaimers, and Amendments.* The Corporation shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the Corporation remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the Corporation in any event will give the notice required by subsection (c) of this Section of any Bond calls and defeasance that cause the Corporation to be no longer such an “obligated person.”

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds; and, nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Corporation undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section. Except as expressly provided within this Section, the Corporation does not undertake to provide any other information, whether or not it may be relevant or material to a complete presentation of the Corporation’s financial results, condition, or prospects; nor does the Corporation undertake to update any information provided in accordance with this Section or otherwise. Furthermore, the Corporation does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CORPORATION BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CORPORATION, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the Corporation in observing or performing its obligations under this Section shall constitute a breach of or default under this Resolution for purposes of any other provision of this Resolution.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Corporation under federal and state securities laws.

(e) Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the Corporation from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity,



nature, status, or type of operations of the Corporation, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Resolution that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a Person that is unaffiliated with the Corporation (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the Corporation if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the Corporation's right to do so would not prevent underwriters of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the Corporation so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 43: Further Procedures. Any one or more of the President, Vice President or Secretary of the Board, any Director, any Ex-Officio Member of the Board, or the Executive Director of the Corporation are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Corporation all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Resolution and the issuance of the Bonds. In addition, prior to the initial delivery of the Bonds, the President or Vice President of the Board, Secretary of the Board, or the Executive Director or Bond Counsel to the Corporation are each hereby authorized and directed to approve any changes or corrections to this Resolution or to any of the documents authorized and approved by this Resolution: (i) in order to cure any ambiguity, formal defect or omission in this Resolution or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of the Resolution, which determination shall be final. In the event that any officer of the Corporation whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 44: Public Meeting. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 45: Effective Date. This Resolution shall be in force and effect from and after its passage on the date shown below.

*[remainder of page left blank intentionally]*

PASSED AND ADOPTED, this October 12, 2016.

ALLEN ECONOMIC DEVELOPMENT  
CORPORATION

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President, Board of Directors

ATTEST:

---

Secretary, Board of Directors

(Seal)

**EXHIBIT A**

**FORM OF PAYING AGENT/REGISTRAR AGREEMENT**

## **PAYING AGENT/REGISTRAR AGREEMENT**

THIS AGREEMENT is entered into as of \_\_\_\_\_, 2016 (this "Agreement"), by and between \_\_\_\_\_, a banking association duly organized and existing under the laws of the \_\_\_\_\_, or its successors or assigns (the "Bank") and the Allen Economic Development Corporation (the "Issuer"),

### **RECITALS**

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "Allen Economic Development Corporation Sales Tax Revenue Refunding Bonds, Series 2017A" (the "Securities"), dated \_\_\_\_\_, 2017, such Securities scheduled to be delivered to the initial purchasers thereof on or about \_\_\_\_\_, 2017; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

### **ARTICLE ONE APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR**

Section 1.01 **Appointment**. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 1.02 **Compensation**. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in Annex A attached hereto.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

## **ARTICLE TWO DEFINITIONS**

Section 2.01 **Definitions.** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

"Acceleration Date" on any Security means the date on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

"Authorizing Document" means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

"Bank Office" means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

"Financial Advisor" – means Estrada Hinojosa & Company, Inc.

"Holder" and "Security Holder" each means the Person in whose name a Security is registered in the Security Register.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

"Predecessor Securities" of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

"Redemption Date", when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

"Responsible Officer", when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Security Register" means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

"Stated Maturity" means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

Section 2.02 **Other Definitions.** The terms "Bank," "Issuer," and "Securities (Security)" have the meanings assigned to them in the recital paragraphs of this Agreement.

The term "Paying Agent/Registrar" refers to the Bank in the performance of the duties and functions of this Agreement.

### **ARTICLE THREE PAYING AGENT**

Section 3.01 **Duties of Paying Agent.** As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder's risk and expense.

Section 3.02 **Payment Dates.** The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

### **ARTICLE FOUR REGISTRAR**

Section 4.01 **Security Register - Transfers and Exchanges.** The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the "Security Register") for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such other information as may be reasonably required by the Issuer and subject to such reasonable

regulations as the Issuer and the Bank may prescribe. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the National Association of Securities Dealers, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

Section 4.02 **Securities**. The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

Section 4.03 **Form of Security Register**. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

Section 4.04 **List of Security Holders**. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

Section 4.05 **Return of Cancelled Securities**. The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

Section 4.06 **Mutilated, Destroyed, Lost or Stolen Securities**. The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

Section 4.07 **Transaction Information to Issuer**. The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

## **ARTICLE FIVE THE BANK**

Section 5.01 **Duties of Bank**. The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

### **Section 5.02 Reliance on Documents, Etc.**

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction,



consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, the Financial Advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

**Section 5.03 Recitals of Issuer.** The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

**Section 5.04 May Hold Securities.** The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

**Section 5.05 Moneys Held by Bank - Paying Agent Account/Collateralization.** A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become

due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

Section 5.06 **Indemnification**. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

Section 5.07 **Interpleader**. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

In the event the Bank becomes involved in litigation in connection with this Section, the Issuer, to the extent permitted by law, agrees to indemnify and save the Bank harmless from all loss, cost, damages, expenses, and attorney fees suffered or incurred by the Bank as a result. The obligations of the Bank under this Agreement shall be performable at the principal corporate office of the Bank in the City of Dallas, Texas.

Section 5.08 **DTC Services**. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for "Depository Trust Company" services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the "Operational Arrangements", which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

## **ARTICLE SIX MISCELLANEOUS PROVISIONS**

Section 6.01 **Amendment**. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 6.02 **Assignment**. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 6.03 **Notices**. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page hereof.

Section 6.04 **Effect of Headings**. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 6.05 **Successors and Assigns**. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 6.06 **Severability**. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.07 **Merger, Conversion, Consolidation, or Succession**. Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

Section 6.08 **Benefits of Agreement**. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

Section 6.09 **Entire Agreement**. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

Section 6.10 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.11 **Termination**. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and

records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

Section 6.12 **Governing Law**. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

*[Remainder of page left blank intentionally.]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Attest:

\_\_\_\_\_  
Title: \_\_\_\_\_

ALLEN ECONOMIC DEVELOPMENT  
CORPORATION

By: \_\_\_\_\_  
Pricing Officer

Address: 700 Central Expressway South  
Suite 210  
Allen, Texas 75013

October 12, 2016



# Allen Economic Development Corporation

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Firm Update  
Market Update  
Refunding/Defeasance Analysis  
New Money Analysis  
Schedule

ESTRADA • HINOJOSA  
INVESTMENT BANKERS

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Dallas • Austin • Chicago • Houston • Los Angeles • Miami • New York • San Antonio

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## Executive Summary

The proposed plan of finance in this presentation includes three components:

■ **1. Refund (refinance) the existing tax-exempt debt for savings**

- ✓ Produces NPV savings of approximately \$1.29 million or about 9.0% (net of all expected fees and contributions)
- ✓ Produces cash flow savings of approximately \$1.50 million
- ✓ Debt restructured to smooth portfolio
- ✓ Current restricted debt service reserve funds of \$146,702 contributed to transaction
- ✓ New debt service reserve uses a “surety policy” instead of cash

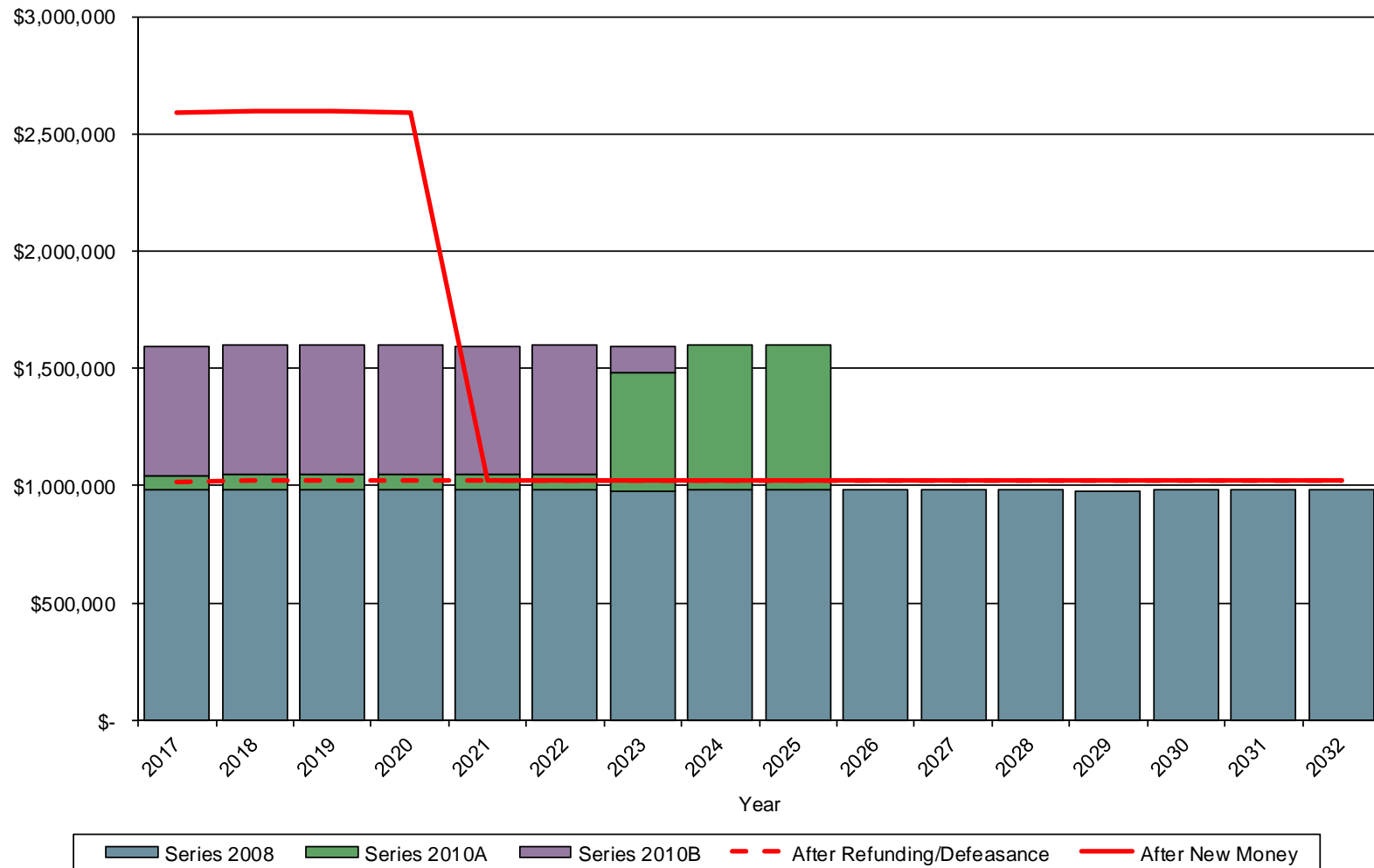
■ **2. Cash “Defease” (pay off with cash) the existing taxable debt**

- ✓ Allows the AEDC to re-write existing bond covenants
- ✓ Provides average cash flow savings of about \$490,000 per year through 2023
- ✓ Uses approximately \$2.74 million of unassigned cash
- ✓ Current restricted debt service reserve funds of \$472,098 contributed to the defeasance

■ **3. Issue \$6 million of taxable new money to pay for land purchase**

- ✓ Level debt service for 3-1/2 years (9/1 principal payments)
- ✓ True Interest Cost of about 1.75%, about 2.30% after all costs (includes 0.20% of cushion)
- ✓ Assumes no debt service reserve fund required
- ✓ Closes on 1/4/17 – AEDC advances money for land purchase on 12/27/16 and is repaid

## Pro Forma AEDC Debt Profile After All Transactions







- Section 1: Firm Update
- Section 2: Market Update
- Section 3: Refunding/Defeasance Analysis
- Section 4: New Money Analysis
- Section 5: Schedule



## Section 1 Firm Update

## Estrada Hinojosa is a Leader with a Growing National Footprint...

### ■ In 24 years the Firm has completed:

- ✓ Financial Advisory Services- 1,676 financings totaling \$105.2 billion
- ✓ Underwriting Services- 2,766 financings totaling \$280 billion

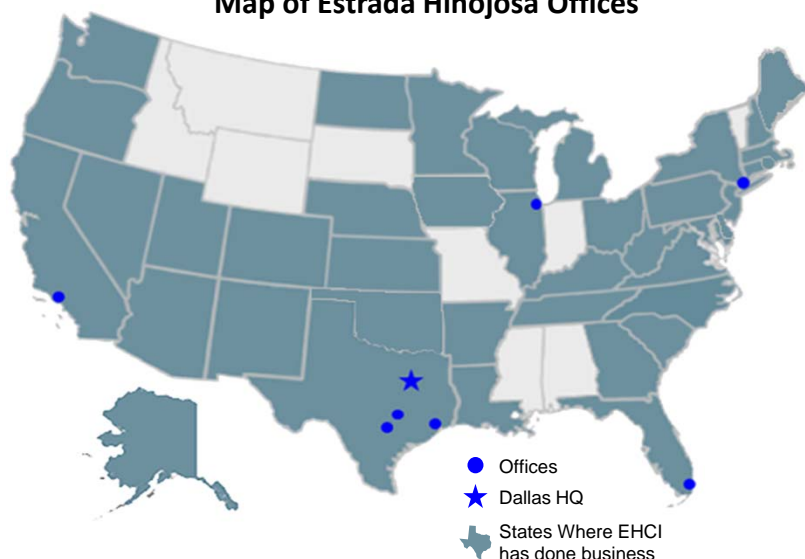
### ■ For calendar year ended 2015, the Firm completed:

- ✓ Financial Advisory Services- 118 financings totaling \$9.8 billion
- ✓ Underwriting Services- 231 financings totaling \$30.3 billion

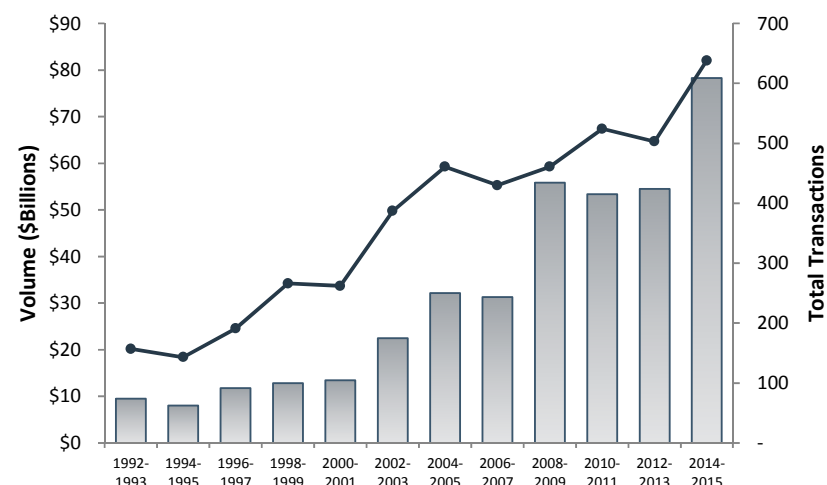
### Texas FA Rankings (Last 5 Years 2011-2015)

	\$ Volume	# of Deals
First Southwest	\$92,760.6	3,285
Estrada Hinojosa	18,964.6	404
RBC Capital	15,883.1	701
PFM	12,048.0	146
SAMCO	5,355.4	306

Map of Estrada Hinojosa Offices



Estrada Hinojosa  
Growth of FA and Underwriting Experience



# Representative Financial Advisory Recent Transactions

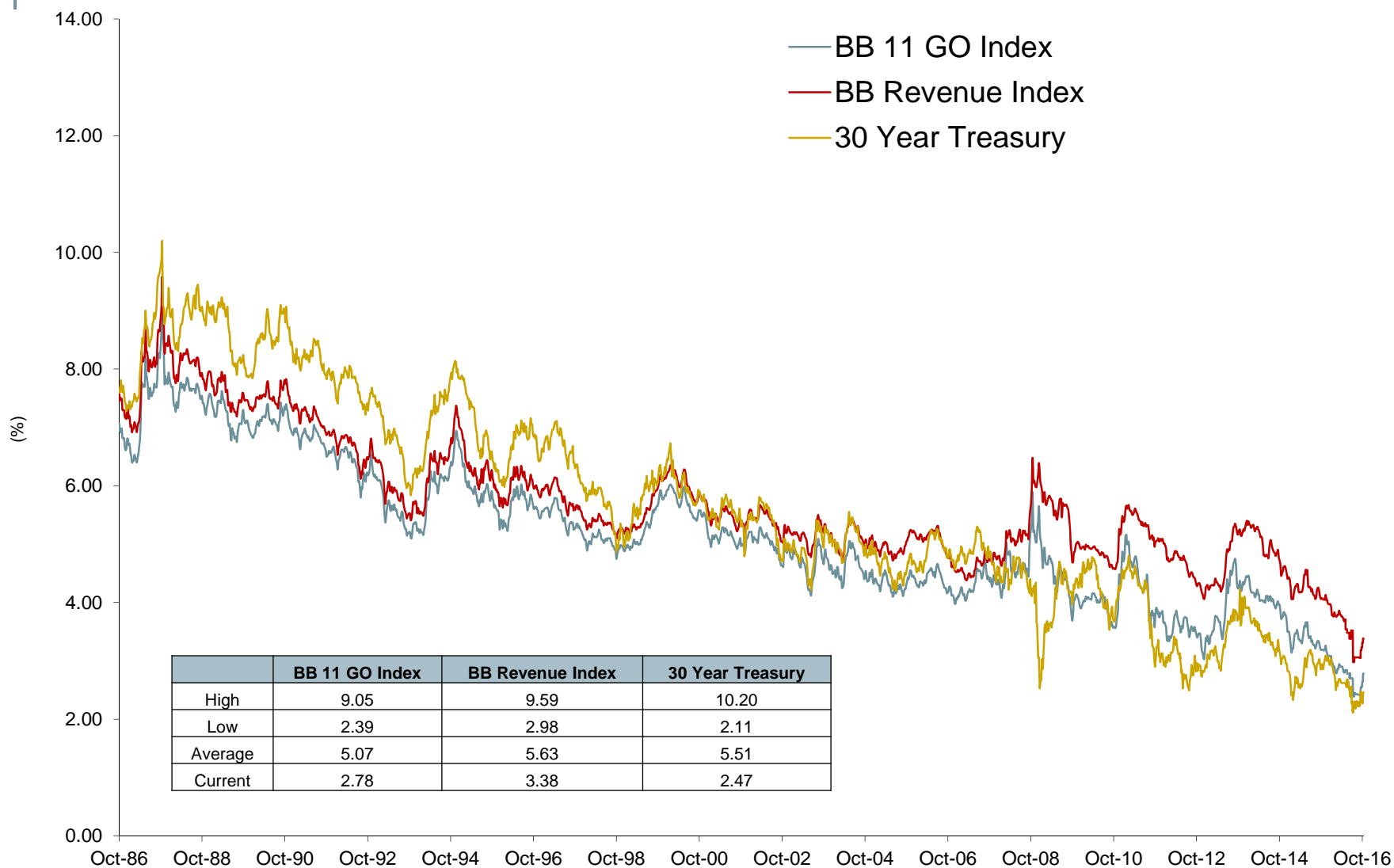
<p><i>\$39.185 Million</i></p> <p><b>City of Arlington, Texas</b></p>  <p>Water &amp; Wastewater System Revenue Bonds, Series 2016A</p> <p>Financial Advisor</p>	<p><i>\$37.420 Million</i></p> <p><b>Cameron County, Texas</b></p>  <p>Certificates of Obligations, Series 2016A-B</p> <p>Financial Advisor</p>	<p><i>\$122.415 Million</i></p> <p><b>Dallas County Community College District</b></p>  <p>GO Refunding Bonds, Series 2016</p> <p>Financial Advisor</p>	<p><i>\$31.235 Million</i></p> <p><b>Allen Community Development Corporation</b></p>  <p>Sales Tax Revenue Refunding Bonds, Taxable Series 2016</p> <p>Financial Advisor</p>	<p><i>\$52.625 Million</i></p> <p><b>Hidalgo County Drainage District # 1</b></p>  <p>Unlimited Tax Refunding Bonds, Series 2016</p> <p>Financial Advisor</p>
<p><i>\$280.43 Million</i></p> <p><b>Dallas Fort Worth International Airport</b></p>  <p>Joint Revenue Refunding &amp; Improvement Bonds, Series 2016 (AMT)</p> <p>Financial Advisor</p>	<p><i>\$3.485 Million</i></p> <p><b>South Padre Island Economic Development Corp</b></p>  <p>Sales Tax Revenue Refunding Bonds, Series 2016</p> <p>Financial Advisor</p>	<p><i>\$35.045 Million</i></p> <p><b>Hidalgo County, Texas</b></p>  <p>Certificates of Obligations, Series 2016</p> <p>Financial Advisor</p>	<p><i>\$482.53 Million</i></p> <p><b>Dallas Area Rapid Transit</b></p>  <p>Senior Lien Sales Tax Revenue Refunding Bonds, Series 2016A</p> <p>Financial Advisor</p>	<p><i>\$540.345 Million</i></p> <p><b>City of Dallas, Texas</b></p>  <p>Waterworks &amp; Sewer System Rev Ref Bonds, Series 2016A and Taxable Series 2016B</p> <p>Financial Advisor</p>
<p><i>\$987.790 Million</i></p> <p><b>North Texas Tollway Authority</b></p>  <p>System First Tier Revenue Refunding Bonds, Series 2016A</p> <p>Financial Advisor</p>	<p><i>\$67.645 Million</i></p> <p><b>Del Mar College District</b></p>  <p>Limited Tax Bonds, Series 2016</p> <p>Financial Advisor</p>	<p><i>\$27.485 Million</i></p> <p><b>City of Donna, Texas</b></p>  <p>Comb Tax &amp; Intl Toll Bridge Revenue Ref Bonds, Series 2016</p> <p>Financial Advisor</p>	<p><i>\$4.545 Million</i></p> <p><b>Brazosport College District</b></p>  <p>Combined Fee Revenue Refunding Bonds, Series 2016</p> <p>Financial Advisor</p>	<p><i>\$75.89 Million</i></p> <p><b>City of Fort Worth, Texas</b></p>  <p>Waterworks &amp; Sewer System Rev Ref Bonds, Series 2016</p> <p>Financial Advisor</p>



## Section 2

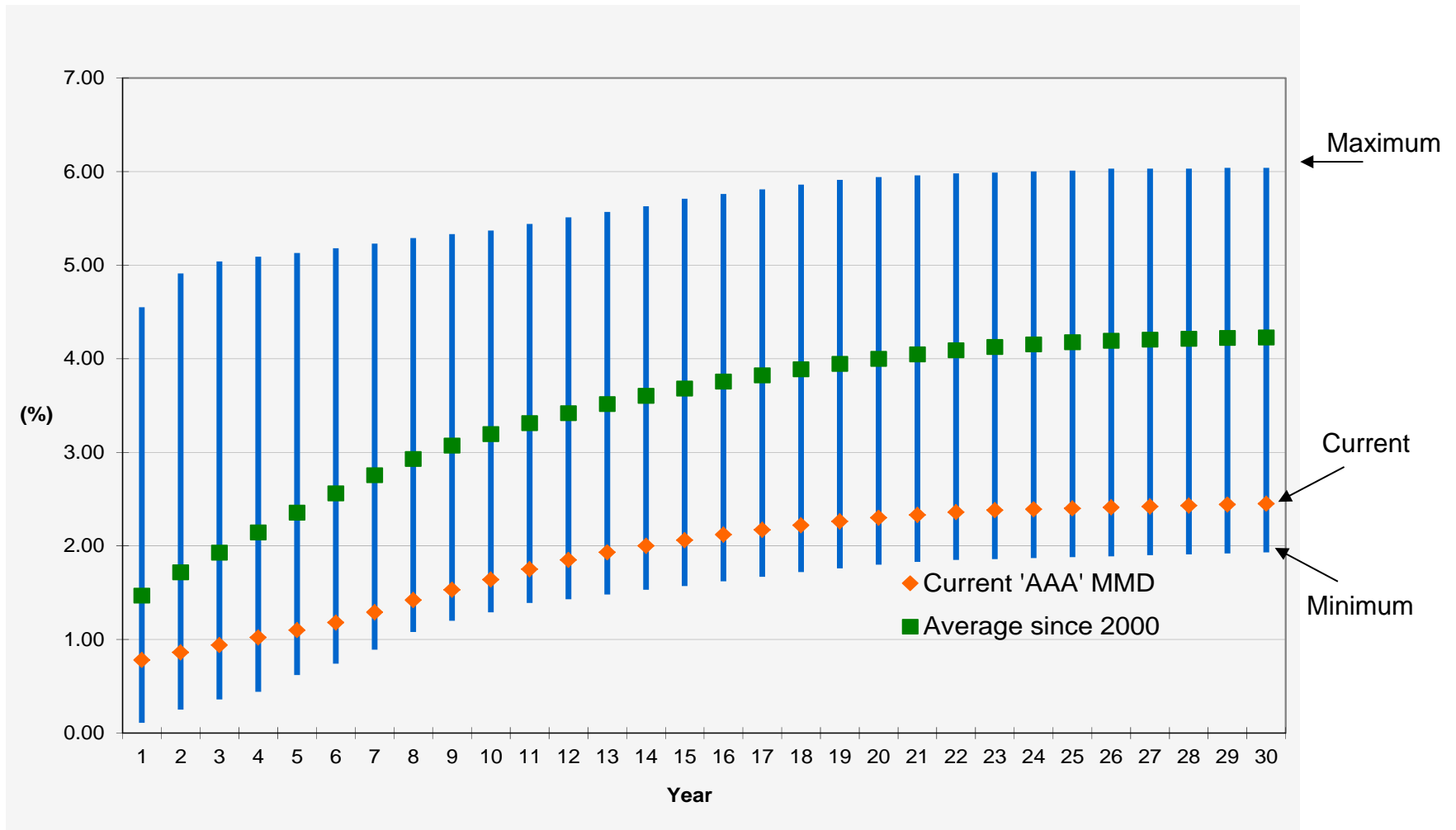
# Market Update

## Bond Buyer Indices vs. 30 Year Treasury: 30 Year History



Source: Bond Buyer

## 'AAA' MMD History Since 2000



Maturity	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
% of time above current MMD	53%	56%	63%	71%	83%	87%	89%	93%	95%	96%	96%	96%	96%	96%	96%	96%	96%	96%	96%	96%	96%	96%	96%	96%	97%	97%	97%	97%	97%	97%

As of 10/7/2016



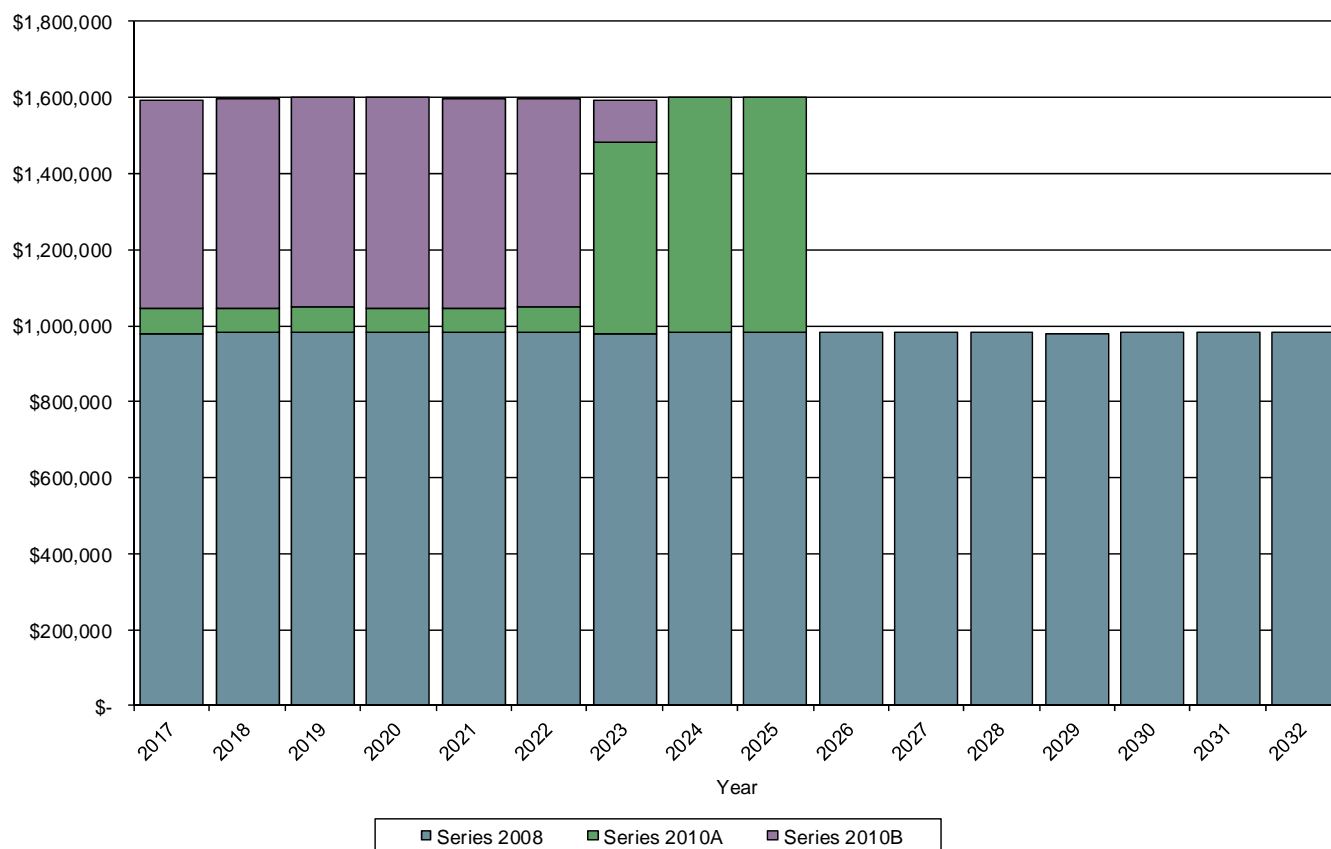
## Section 3

# Refunding/Defeasance Analysis



## AEDC Debt Profile

Series Name	Dated Date	Outstanding Par (\$ mm)	Next Call Date	Call Price
<b>TOTALS</b>		<b>\$ 15.695</b>		
Sales Tax Rev Bds Ser 2010A	05/15/10	1.605	09/01/19	100.0
Sales Tax Rev Bds Taxable Ser 2010B	05/15/10	2.900	09/01/19	100.0
Sales Tax Rev Bds Ser 2008	01/15/08	11.190	09/01/17	100.0



## Eligible Bonds to be Refunded

- Included in the refunding analysis herein is a refunding of the outstanding 2008 and 2010A Bonds.
- As shown to the right, current rates offer savings on a maturity-by-maturity basis versus the existing interest rates.
- This analysis assumes Aa2 market rates, 9/27/16.
- The analysis assumes that all outstanding AEDC debt is either refunded or defeased to allow us to rewrite covenants to be able to use a AA surety in the debt service reserve fund.

Eligible Bonds to be Refunded							
Series	Maturity Date	Existing Coupon		Par Amount	Call Date	Call Price	Current Rates Rate Difference
<b><i>Sales Tax Revenue Bonds, Series 2008</i></b>							
	9/1/2017	3.500%	Serial	\$510,000	-	-	0.910% 2.590%
	9/1/2018	3.500%	Serial	535,000	9/1/2017	100%	1.030% 2.470%
	9/1/2019	3.625%	Serial	555,000	9/1/2017	100%	1.140% 2.485%
	9/1/2020	3.750%	Serial	575,000	9/1/2017	100%	1.320% 2.430%
	9/1/2021	3.875%	Serial	595,000	9/1/2017	100%	1.450% 2.425%
	9/1/2022	4.000%	Serial	620,000	9/1/2017	100%	1.580% 2.420%
	9/1/2023	4.000%	Serial	640,000	9/1/2017	100%	1.730% 2.270%
	9/1/2024	4.125%	Serial	670,000	9/1/2017	100%	1.870% 2.255%
	9/1/2025	4.200%	Serial	695,000	9/1/2017	100%	1.990% 2.210%
	9/1/2026	4.250%	Serial	725,000	9/1/2017	100%	2.100% 2.150%
	9/1/2027	4.300%	Serial	755,000	9/1/2017	100%	2.290% 2.010%
	9/1/2028	4.375%	Serial	790,000	9/1/2017	100%	2.480% 1.895%
	9/1/2029	4.500%	Term1	820,000	9/1/2017	100%	2.620% 1.880%
	9/1/2030	4.500%	Term1	860,000	9/1/2017	100%	2.730% 1.770%
	9/1/2031	4.500%	Term1	900,000	9/1/2017	100%	2.790% 1.710%
	9/1/2032	4.500%	Term1	940,000	9/1/2017	100%	3.020% 1.480%
				<b>\$11,185,000</b>			
<b><i>Sales Tax Revenue Bonds, Series 2010A</i></b>							
	9/1/2023	4.000%	Serial	\$440,000	9/1/2019	100%	1.730% 2.270%
	9/1/2024	4.000%	Serial	570,000	9/1/2019	100%	1.870% 2.130%
	9/1/2025	4.000%	Serial	595,000	9/1/2019	100%	1.990% 2.010%
				<b>\$1,605,000</b>			
				<b>\$12,790,000</b>	<b>Total Bonds to be Refunded</b>		

Note: Closing after 6/2/17 would provide some additional option value but would also have additional market risk.

## Eligible Bonds to be “Defeased”

- Included in the analysis herein is a cash defeasance of the 2010B Taxable Bonds.
- In a cash defeasance, the AEDC can use excess cash to pay off debt early. The funds would be deposited into an escrow account and invested in allowable securities (SLGS) to retire bonds on their maturity or call date.
- About \$2.74 million would be required to defease the outstanding 2010B Taxable Bonds assuming the contribution of \$472,098 debt service reserve fund balance.

Eligible Bonds to be Defeased							
Series	Maturity Date	Existing Coupon		Par Amount	Call Date	Call Price	Current Taxable Rates Rate Difference
<b><i>Sales Tax Revenue Bonds, Taxable Series 2010B</i></b>							
	9/1/2017	4.000%	Serial	415,000	-	-	-
	9/1/2018	4.250%	Serial	435,000	-	-	-
	9/1/2019	4.550%	Serial	455,000	-	-	-
	9/1/2020	4.700%	Serial	475,000	9/1/2019	100%	-
	9/1/2021	4.800%	Serial	495,000	9/1/2019	100%	-
	9/1/2022	4.950%	Serial	520,000	9/1/2019	100%	-
	9/1/2023	5.100%	Serial	105,000	9/1/2019	100%	-
				<b><u>\$2,900,000</u></b>	<b><i>Total Bonds to be Refunded</i></b>		

# AEDC 2015 and 2014 Balance Sheets

**CITY OF ALLEN, TEXAS  
COMPARATIVE BALANCE SHEETS  
ALLEN ECONOMIC DEVELOPMENT CORPORATION  
SEPTEMBER 30, 2015 AND 2014**

**EXHIBIT F-1**

	<u>2015</u>	<u>2014</u>
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 5,976,111	\$ 5,581,166
Investments	10,025,083	6,891,910
Sales tax receivable	1,531,556	1,436,156
Accounts receivable	-	2,534
Accrued interest receivable	35,676	26,813
Prepaid items	6,298	6,298
<b>TOTAL ASSETS</b>	<u>\$ 17,574,724</u>	<u>\$ 13,944,877</u>
<b>LIABILITIES AND FUND BALANCES</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable	\$ 66,741	\$ 65,095
Accrued and other liabilities	17,335	13,878
<b>TOTAL LIABILITIES</b>	<u>84,076</u>	<u>78,973</u>
<b>FUND BALANCES</b>		
Nonspendable	6,298	6,298
Restricted		
Debt service	752,316	751,646
Unassigned	16,732,034	13,107,960
<b>TOTAL FUND BALANCES</b>	<u>17,490,648</u>	<u>13,865,904</u>
<b>TOTAL LIABILITIES AND FUND BALANCES</b>	<u>\$ 17,574,724</u>	<u>\$ 13,944,877</u>

# Savings Summary

Refunding					Defeasance	Total	
FYE 9/30	Prior Debt Service	Refunding Debt Service	Cash Flow Savings	Present Value Savings	Cash Flow Savings	Total Combined CF Savings	FYE 9/30
2017	\$ 896,449	\$ 836,826	\$ 21,419	\$ 20,583	\$ 547,970	\$ 569,389	2017
2018	1,046,130	1,020,075	26,055	25,477	551,370	577,425	2018
2019	1,047,405	1,022,675	24,730	23,645	552,883	577,613	2019
2020	1,047,286	1,019,675	27,611	25,747	552,180	579,791	2020
2021	1,045,724	1,020,075	25,649	23,415	549,855	575,504	2021
2022	1,047,668	1,019,475	28,193	25,131	551,095	579,288	2022
2023	1,482,868	1,022,875	459,993	395,199	110,355	570,348	2023
2024	1,599,668	1,020,075	579,593	486,489	-	579,593	2024
2025	1,599,230	1,021,275	577,955	474,010	-	577,955	2025
2026	981,240	1,021,275	(40,035)	(32,009)	-	(40,035)	2026
2027	980,428	1,020,075	(39,648)	(30,977)	-	(39,648)	2027
2028	982,963	1,022,675	(39,713)	(30,325)	-	(39,713)	2028
2029	978,400	1,018,875	(40,475)	(30,211)	-	(40,475)	2029
2030	981,500	1,018,875	(37,375)	(27,267)	-	(37,375)	2030
2031	982,800	1,022,475	(39,675)	(28,302)	-	(39,675)	2031
2032	982,300	1,019,475	(37,175)	(25,924)	-	(37,175)	2032
	\$ 17,682,057	\$ 16,146,751	\$ 1,497,102	\$ 1,294,683	\$3,415,708	\$ 4,912,809	

Savings Summary			
Net FV Savings from cash flow:	\$1,497,102	\$3,415,708	\$4,912,809
Net PV Savings from cash flow:	\$1,151,087 *	\$94,060 **	\$1,245,147
% Savings of Refunded Bonds:	9.000%	3.243%	
Avg. Annual Savings (FYE 2017-2032):	\$93,569 (FYE 2017-2023):	\$487,958	
Defeasance Contribution (including COI):		\$2,741,619	\$2,741,619
Contribution from Debt Service Reserve:	\$146,702	\$472,098	\$618,800
Negative Arbitrage:	\$204,178		

\*Less Prior Fund on Hand \$146,702.22. Plus rounding \$3,106.57.

\*\* Using a 1.0% discount rate.

## Refunding Summary

- Based on current rates, NPV and annual savings can be realized by refunding the EDC's Sales Tax Revenue Bonds, Series 2008 and Sales Tax Revenue Bonds, Series 2010A and cash defeasing the Sales Tax Revenue Bonds, Taxable Series 2010B using excess available cash.
- The cash defeasing would use approximately \$2.74 million of available AEDC funds.
- The refunding and defeasance assume that a total of \$618,800 of existing debt service reserve funds are contributed to the transactions and that a surety policy is used to fund the reserve requirement on the refunding.
- Assumes that the refunding and defeasance escrows are funded with SLGS.
- Assumes that today's rates are available at the time of pricing.
- Alternate debt structures could be used to smooth out the 2010A portion of the refunding (e.g., make the total resulting debt portfolio level, etc.).

	Refunding	Defeasance	Combined Total
Delivered:	1/4/2017	1/4/2017	
Par Amount of Refunding Bonds:	\$11,960,000	\$0	\$11,960,000
Par Amount of Refunded Bonds:	\$12,790,000	\$2,900,000	\$15,690,000
Net PV Savings:	\$1,151,087	\$94,060	\$1,245,147
% Savings of Refunded Bonds:	9.000%	3.243%	7.936%
Avg. Annual Savings (FYE 2017-2032):	\$93,569	\$213,482	\$307,051
Avg. Coupon of Refunded Bonds:	4.287%	4.755%	
True Interest Cost (TIC):	2.583%		
Negative Arbitrage:	\$204,178		
Rates as of:	9/27/2016	9/27/2016	



## Section 4

# New Money Analysis

## Pro Forma New Money Debt Service and Coverage

					TIC: 1.750% CM Aa2 Taxable Rates + 20 bps, 9/29/16 \$6,090,000 Delivery: 1/04/2017 Sales Tax Rev Bonds, Taxable Series 2017			Par Amount: \$ 6,090,000 Project Funds: 6,000,000 DSRF Contribution: - <sup>(2)</sup> Issuance Costs: 90,000 <sup>(3)</sup>			
FYE	[A] Projected Pledged		[B] Existing Debt	[C] Debt Service	[D]	[E]	[F]=[D]+[E]	[G]=[C]+[F]	[H]=[A]/[G]	[I]=[A]-[G]	
9/30	Revenues <sup>(1)</sup>	Growth	Service	After Ref & Def	Principal	Interest	Debt Service	Total Debt Service	Debt Service Coverage	Remaining Revenue	FYE 9/30
2017	\$ 9,000,000		\$ 1,592,125	\$ 1,017,561	\$ 1,515,000	\$ 58,317	\$ 1,573,317	\$ 2,590,878	3.47 X	\$ 6,409,122	2017
2018	9,000,000	0.0%	1,597,500	1,020,075	1,505,000	72,524	1,577,524	2,597,599	3.46 X	6,402,402	2018
2019	9,000,000	0.0%	1,600,288	1,022,675	1,525,000	51,755	1,576,755	2,599,430	3.46 X	6,400,571	2019
2020	9,000,000	0.0%	1,599,466	1,019,675	1,545,000	27,965	1,572,965	2,592,640	3.47 X	6,407,361	2020
2021	9,000,000	0.0%	1,595,579	1,020,075	-	-	-	1,020,075	8.82 X	7,979,925	2021
2022	9,000,000	0.0%	1,598,763	1,019,475	-	-	-	1,019,475	8.83 X	7,980,525	2022
2023	9,000,000	0.0%	1,593,223	1,022,875	-	-	-	1,022,875	8.80 X	7,977,125	2023
2024	9,000,000	0.0%	1,599,668	1,020,075	-	-	-	1,020,075	8.82 X	7,979,925	2024
2025	9,000,000	0.0%	1,599,230	1,021,275	-	-	-	1,021,275	8.81 X	7,978,725	2025
2026	9,000,000	0.0%	981,240	1,021,275	-	-	-	1,021,275	8.81 X	7,978,725	2026
2027	9,000,000	0.0%	980,428	1,020,075	-	-	-	1,020,075	8.82 X	7,979,925	2027
2028	9,000,000	0.0%	982,963	1,022,675	-	-	-	1,022,675	8.80 X	7,977,325	2028
2029	9,000,000	0.0%	978,400	1,018,875	-	-	-	1,018,875	8.83 X	7,981,125	2029
2030	9,000,000	0.0%	981,500	1,018,875	-	-	-	1,018,875	8.83 X	7,981,125	2030
2031	9,000,000	0.0%	982,800	1,022,475	-	-	-	1,022,475	8.80 X	7,977,525	2031
2032	9,000,000	0.0%	982,300	1,019,475	-	-	-	1,019,475	8.83 X	7,980,525	2032
Total			\$ 21,245,470	\$ 16,327,486	\$ 6,090,000	\$ 210,559	\$ 6,300,559	\$ 22,628,045			Total

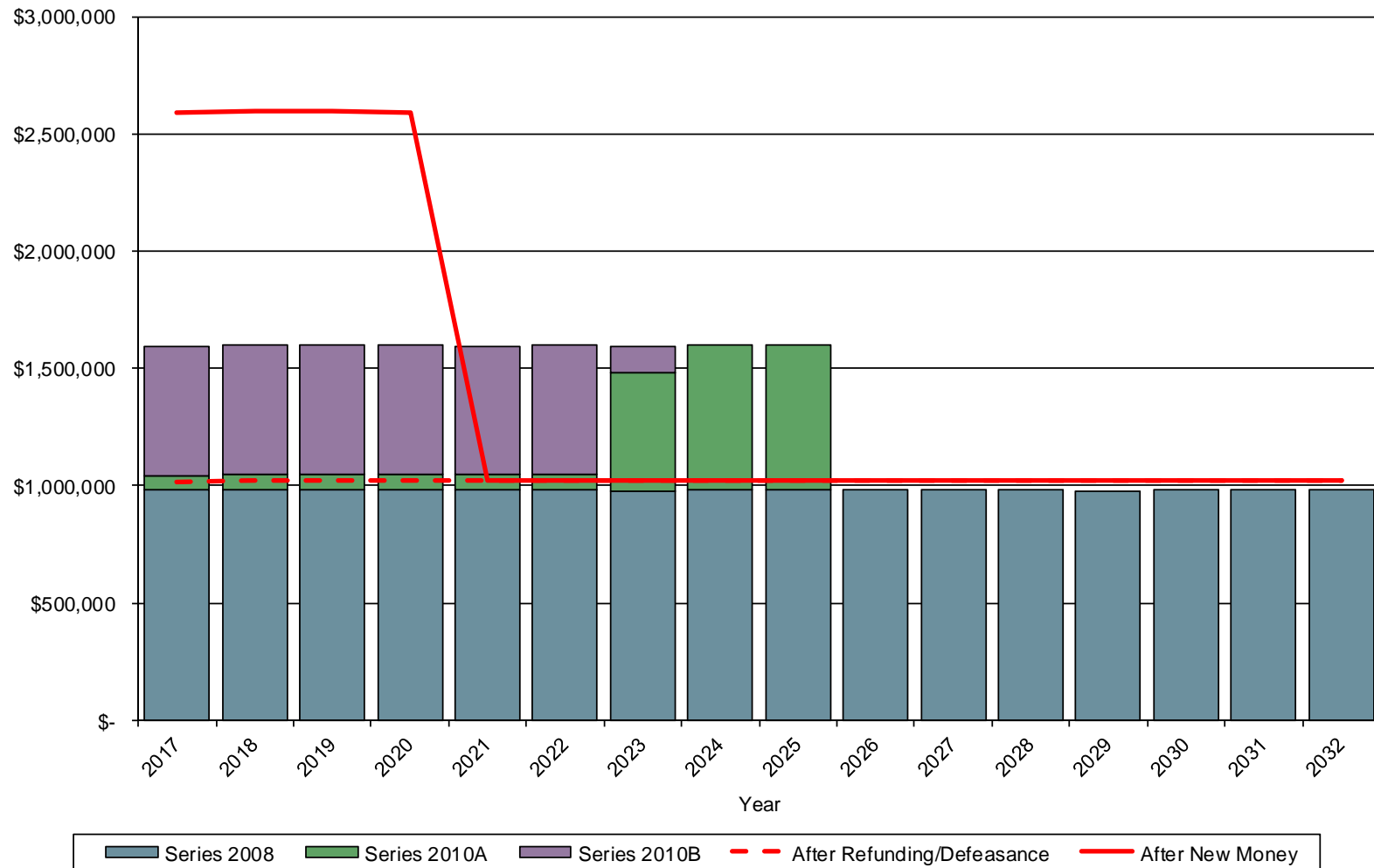
<sup>(1)</sup> Assumed revenue with no growth.

(2) Covenants re-written to not require a debt service reserve fund deposit for short term borrowings.

<sup>(3)</sup> Includes estimated underwriters' discount and other costs of issuance. All-in TIC = 2.30%.



## Pro Forma AEDC Debt Profile After All Transactions





## Section 5 Schedule

# Schedule

OCTOBER						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23/30	24/31	25	26	27	28	29

NOVEMBER						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

DECEMBER						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

JANUARY						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

<u>Date</u>	<u>Day</u>	<u>Event</u>	<u>Responsibility</u>
October 3, 2016	(Monday)	Present plan of finance to AEDC	AEDC, FA
October 12, 2016	(Wednesday)	Board meets to adopt parameters resolution to issue the Bonds and complete the defeasance	AEDC, BC
October 31, 2016	(Monday)	Send first draft of Preliminary Official Statement to working group	FA
October 31, 2016	(Monday)	Submit information to surety providers	FA
November 8, 2016	(Tuesday)	Receive comments on first draft of Preliminary Official Statement	AEDC, City, BC, FA
November 8, 2016	(Tuesday)	Present plan of finance to City Council	City, FA
November 8, 2016	(Tuesday)	Council meets to adopt parameters resolution to issue the Bonds and complete the defeasance	City, BC
November 9, 2016	(Wednesday)	Send second draft of Preliminary Official Statement to working group	FA
November 9, 2016	(Wednesday)	Submit information to bond rating agency	FA
November 16, 2016	(Wednesday)	Moody's Rating Call (if required)	AEDC, City, FA
November 16, 2016	(Wednesday)	Receive comments on second draft of Preliminary Official Statement	Working Group
November 22, 2016	(Tuesday)	TBD: Due diligence call (to be confirmed)	UC
November 22, 2016	(Tuesday)	Receive rating	Rating Agency
November 22, 2016	(Tuesday)	Receive surety bids.	Insurance Companies
<i>Subject to market conditions</i>			
November 28, 2016	(Monday)	Send Preliminary Official Statement to printer	FA
December 6, 2016	(Tuesday)	Price Bonds	UW, FA
December 6, 2016	(Tuesday)	Pricing Officer approves the sale of the Bonds	AEDC, City, BC, FA
December 7, 2016	(Wednesday)	Submit Bond documents to Attorney General	BC
December 27, 2016	(Tuesday)	Obtain Attorney General approval of Bonds	AG, BC
January 4, 2017	(Wednesday)	Deliver Bonds and fund project and escrow funds	UW, FA

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<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:**

November 8, 2016

**SUBJECT:**

Consider all Matters Incident and Related to the Issuance and Sale of "Allen Economic Development Corporation Sales Tax Revenue Bonds, Taxable Series 2017B", Including the Adoption of a Resolution Approving the Resolution of the Board of Directors of the Corporation Authorizing the Issuance of Such Bonds.

**STAFF RESOURCE:**

Eric Cannon, Chief Financial Officer

**BOARD COMMISSION ACTION:**

On October 12, 2016, the Allen Economic Development Corporation (AEDC) Board of Directors Approved a Parameters Resolution Authorizing the Issuance of Sales Tax Revenue Bonds, Taxable Series 2017B.

**ACTION PROPOSED:**

Consider all Matters Incident and Related to the Issuance and Sale of "Allen Economic Development Corporation Sales Tax Revenue Bonds, Taxable Series 2017B", Including the Adoption of a Resolution Approving the Resolution of the Board of Directors of the Corporation Authorizing the Issuance of Such Bonds.

**BACKGROUND**

Attached is a Resolution prepared by the City's bond counsel, Norton Rose Fulbright US L.L.P., that approves the resolution of the Allen Economic Development Corporation authorizing the issuance of its Sales Tax Revenue Bonds, Taxable Series 2017B. The AEDC's resolution requires certain parameters set forth in Section 3 of the resolution to be met at the time the bonds are priced.

The bond issue is expected to be in the approximate amount of \$6,090,000. The bonds are for the purpose of land acquisition and infrastructure improvements.

The maximum sales tax revenue bonds that can be outstanding is restricted by a requirement that the pledged revenues (sales taxes) are not less than 1.50 times the average annual debt service of the total bonds outstanding. This bond issue will result in a 3.47 times debt service coverage, which is above the restricted requirement.

The term of the taxable bonds are 4 years and the anticipated yield on the bonds ranges from 1.5% to 2.5%. The true interest cost on the bonds is projected to be 1.75%. The bonds will not be priced until December 6, 2016, so final interest rates are an estimate at this time.

The Paying Agent/Registrar is The Bank of New York Mellon. The bank will be responsible for maintaining the ownership records of the bonds and for paying the principal and interest to the registered bondholders as the amounts become due on the payment dates. The Paying Agent/Registrar Agreement is attached.

The AEDC Resolution approved by the AEDC Board of Directors on October 12, 2016, anticipated the issuance of the bonds on January 4, 2016, with a closing date in December 6, 2016.

A Preliminary Official Statement (POS) has been prepared in connection with the bond issuance. The POS has been tentatively scheduled to be discussed with Moody's Investor's Service, Inc. later this month. Also, the EDC recently received a rating bump to Aa2 from Aa3.

### **BUDGETARY IMPACT**

The impact on the AEDC budget would be an initial increase in the annual debt service of approximately \$1,573,317 to \$1,577,524, which is consistent with the projected amount approved in the AEDC revised budget. Property taxes of the City are not pledged for the repayment of the sales tax bonds.

### **STAFF RECOMMENDATION**

Staff recommends approval of the Resolution authorizing the issuance of the bonds by the Allen Economic Development Corporation (AEDC) Board of Directors.

### **MOTION**

*I make a motion to adopt Resolution No. \_\_\_\_\_ approving the Resolution of the Allen Economic Development Corporation providing for the issuance of its Sales Tax Revenue Bonds, Taxable Series 2017B, and resolving other matters incident and related to the issuance of the bonds.*

### **ATTACHMENTS:**

Resolution

AEDC Presentation

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION relating to the "Allen Economic Development Corporation Sales Tax Revenue Bonds, Taxable Series 2017B" approving the resolution of the Allen Economic Development Corporation authorizing the issuance of such Bonds; resolving other matters incident and related to the issuance of such Bonds; and providing an effective date.

WHEREAS, Allen Economic Development Corporation (the "Issuer") has been duly created and organized pursuant to the provisions of Section 4A of the Development Corporation Act of 1979, Article 5190.6, Vernon's Texas Civil Statutes, as amended, now codified as Texas Local Government Code, Title 12, Subtitle C1, as amended (the "Act"), specifically Chapters 501 and 504 of the Local Government Code; and

WHEREAS, pursuant to the Act, the Issuer is empowered to issue bonds for the purpose of defraying the cost of any "project" defined as such by the Act; and

WHEREAS, the Board of Directors of the Issuer has found and determined the purchase of land for promotion and development of new and expanded business enterprises, to wit: expansion of regional or national corporate headquarters facilities and any other projects authorized by Chapter 501 of the Local Government Code (the "Projects") constitute projects within the meaning of the Act; and

WHEREAS, the Board of Directors further finds and determines the costs of Projects should be financed from the proceeds of sale of "Allen Economic Development Corporation Sales Tax Revenue Bonds, Taxable Series 2017B" (the "Bonds"); and

WHEREAS, Section 501.204(a) of the Act requires the City Council of the City approve the resolution of the Issuer providing for the issuance of the Bonds no more than sixty (60) days prior to the delivery of the Bonds; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, TEXAS:

SECTION 1: The Resolution authorizing the issuance of the Bonds adopted by the Issuer on October 12, 2016 (the "Issuer Resolution") attached hereto as Exhibit A and incorporated herein by reference as a part hereof for all purposes, is hereby approved in all respects. The principal amount of the Bonds shall not exceed \$6,500,000 and the true interest cost rate shall not exceed 2.25%.

SECTION 2: The approvals herein given are in accordance with Section 501.204(a) of the Act and the Bylaws of the Issuer, and the Bonds shall never be construed as an indebtedness or pledge of the City, or the State of Texas (the "State"), within the meaning of any constitutional or statutory provision, and the owner of the Bonds shall never be paid in whole or in part out of any funds raised or to be raised by taxation (other than sales tax proceeds as authorized pursuant to the Act) or any other revenues of the Issuer, the City, or the State, except those revenues assigned and pledged by the Issuer Resolution.

SECTION 3: The City hereby agrees to promptly collect and remit to the Issuer the Gross Sales Tax Revenues (as defined in the Issuer Resolution) in accordance with the terms of the Issuer Resolution and the Act to provide for the prompt payment of the Bonds, and to assist and

cooperate with the Issuer in the enforcement and collection of sales and use taxes imposed on behalf of the Issuer.

SECTION 4: It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 5: This Resolution shall be in force and effect from and after its passage on the date shown below.

*[remainder of page left blank intentionally]*



DULY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF ALLEN,  
COLLIN COUNTY, TEXAS, ON THIS THE 8<sup>th</sup> DAY OF NOVEMBER, 2016.

CITY OF ALLEN, TEXAS

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STEPHEN TERRELL  
Mayor

ATTEST:

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SHELLEY B. GEORGE  
TRMC, City Secretary

(City Seal)

EXHIBIT A

FORM OF BOND RESOLUTION

A RESOLUTION authorizing the issuance of "ALLEN ECONOMIC DEVELOPMENT CORPORATION SALES TAX REVENUE BONDS, TAXABLE SERIES 2017B"; pledging certain "Pledged Revenues" of the Corporation, including "Gross Sales Tax Revenues", to the payment of the principal of and interest on said Bonds; resolving other matters incident and related to the issuance, sale, payment, and delivery of said Bonds, including establishing procedures therefor and delegating matters to authorized corporate officers; and providing an effective date

WHEREAS, Allen Economic Development Corporation (the "Corporation") has been duly created and organized pursuant to the provisions of the Development Corporation Act, Texas Local Government Code, Title 12, Subtitle C1, as amended (the "Act") (formerly known as the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6), specifically Chapters 501 and 504 of the Local Government Code; and

WHEREAS, a sales and use tax at the rate of  $\frac{1}{2}$  of one percent for the promotion and development of new and expanded business enterprises was approved by voters at an election held January 18, 1992; and

WHEREAS, the Board of Directors of the Corporation hereby finds and determines that bonds should be issued at this time for the purchase of land to promote and develop new and expanded business enterprises and that the projects are within the meaning of the Act and as approved by the voters at the aforesaid election; and

WHEREAS, the Board of Directors of the Corporation further finds that the expenditures for the projects are required and suitable for the development, retention or expansion of regional or national corporate headquarters facilities and any other projects authorized by the Act; and

WHEREAS, the Board hereby finds and determines that it is in the best interests of the Corporation to authorize the issuance of the bonds and the terms of such bonds to be included in a pricing certificates (the "Pricing Certificate") to be executed by the Pricing Officer (hereafter designated); now, therefore,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ALLEN ECONOMIC DEVELOPMENT CORPORATION:

SECTION 1: Authorization - Designation - Principal Amount - Purpose. Bonds of the Corporation shall be and are hereby authorized to be issued in the maximum aggregate principal amount hereinafter specified to be designated and bear the title "ALLEN ECONOMIC DEVELOPMENT CORPORATION SALES TAX REVENUE BONDS, TAXABLE SERIES 2017B", hereinafter referred to as the "Bonds", to provide funds to finance the costs of the purchase of land for promotion and development of new and expanded business enterprises, to wit: expansion of regional or national corporate headquarters facilities and any other projects authorized by Chapter 501 of the Local Government Code (collectively, the "Projects") and to pay costs of issuance, in conformity with the Constitution and laws of the State of Texas, including the Act, the Texas Nonprofit Corporation Act, and Chapter 22, Texas Business Organizational Code.

SECTION 2: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Date. The Bonds shall be issued as fully registered obligations, without coupons, shall be dated as specified in the Pricing Certificate (the "Bond Date"), shall be in denominations of \$5,000 or any integral multiple (within a Stated Maturity) thereof, shall be numbered consecutively from One (1) upward and shall become due and payable on the date(s) in each of the years and in principal amounts (the "Stated Maturities") and bear interest at per annum rates in accordance with the details set forth in the Pricing Certificate.

The Bonds shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate at the per annum rates shown in the Pricing Certificate (calculated on the basis of a 360 day year of twelve 30 day months). Interest on the Bonds shall be payable in each year on the dates, and commencing on the date, set forth in the Pricing Certificate.

SECTION 3: Delegation of Authority to Pricing Officer.

(a) The President of the Board of Directors of the Corporation or the City Manager of the City of Allen, Texas (the "City") or the Executive Director of the Corporation, as an ex-officio member of the Board of Directors (each a "Pricing Officer") are each hereby authorized to act on behalf of the Corporation in selling and delivering the Bonds, and carrying out the other procedures specified in this Resolution, including determining the aggregate original principal amount of the Bonds, the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which the Bonds will be sold, the manner of sale (negotiated, privately placed or competitively bid), the years in which the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the interest payment dates, the record date, the price and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the Corporation, as well as any mandatory sinking fund redemption provisions, the designation of a paying agent/registrars for the Bonds, the terms of any bond insurance applicable to the Bonds, and all other matters relating to the issuance, sale and delivery of the Bonds, all of which shall be specified in the Pricing Certificate, provided that:

(1) the aggregate original principal amount of the Bonds shall not exceed \$6,500,000;

(2) the true interest cost rate for the Bonds shall not exceed 2.25%;  
and

(3) the maximum maturity date for the Bonds shall not exceed September 1, 2021.

The execution of the Pricing Certificate shall evidence the sale date of the Bonds by the Corporation to the Purchaser (hereinafter defined).

(b) The delegation made hereby shall expire if not exercised by a Pricing Officer within 180 days from the date of adoption hereof.

SECTION 4: Terms of Payment - Paying Agent/Registrar. The principal of, and the interest on the Bonds, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar and the payment thereof shall be in any coin or currency of the United States of America, which at

the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of the Paying Agent/Registrar for the Bonds shall be as provided in the Pricing Certificate. Books and records relating to the registration, payment, exchange and transfer of the Bonds (the "Security Register") shall at all times be kept and maintained on behalf of the Corporation by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement", substantially in the form attached hereto as Exhibit A and such reasonable rules and regulations as the Paying Agent/Registrar and the Corporation may prescribe. The Pricing Officer is hereby authorized to execute and deliver such Agreement in connection with the delivery of the Bonds. The Corporation covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid in full and discharged. Any successor Paying Agent/Registrar shall be a bank, trust company, financial institution or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the Corporation agrees to promptly cause a written notice to be sent to the Holder affected by United States Mail, first class postage prepaid, which notice shall identify and give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Bonds shall be payable at the Stated Maturities or upon their earlier redemption, only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices as provided in the Pricing Certificate (the "Designated Payment/Transfer Office"). Interest on the Bonds shall be paid to the Holders whose name appear in the Security Register at the close of business on the Record Date (which shall be set forth in the Pricing Certificate) and shall be paid by the Paying Agent/Registrar (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located is authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on one or more maturities on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment for such maturity or maturities (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Corporation. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of such maturity or maturities appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

**SECTION 5: Registration - Transfer - Exchange of Bonds - Predecessor Bonds.** The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each registered owner of the Bonds issued under and pursuant to the provisions of this Resolution. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds of other authorized denominations upon the Security

Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Designated Payment/Transfer Office of the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of a Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar, one or more new certificates evidencing the Bonds, in authorized denominations, of like Stated Maturity and of a like aggregate principal amount as the Bond or Bonds surrender for transfer shall be registered and issued to the assignee or transferee of the previous Holders.

At the option of the Holder, Bonds may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new printed certificates evidencing the Bonds, executed on behalf of, and furnished by, the Corporation, to the Holder requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be delivered at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent by United States Mail, first class postage prepaid, to the Holder and, upon the delivery thereof, the same shall be valid obligations of the Corporation, evidencing the same obligation to pay, and entitled to the same benefits under this Resolution, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered and delivered in lieu thereof pursuant to Section 26 hereof and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the Corporation nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Bond; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

**SECTION 6: Book-Entry Only Transfers and Transactions.** Notwithstanding the provisions contained in Sections 3 and 5 hereof and in the Pricing Certificate relating to the payment, and transfer/exchange of the Bonds, the Corporation hereby approves and authorizes the use of "Book-Entry Only" securities clearance, settlement and transfer system provided by

The Depository Trust Company (DTC), a limited purpose trust company organized under the laws of the State of New York, in accordance with the operational arrangements referenced in the Blanket Issuer Letter of Representations by and between the Corporation and DTC (the "Depository Agreement").

Pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC who shall hold said Bonds for its participants (the "DTC Participants"). While the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Bond (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the Corporation determines that DTC is incapable of properly discharging its duties as securities depository for the Bonds, the Corporation covenants and agrees with the Holders of the Bonds to cause Bonds to be printed in definitive form and provide for the Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Bonds shall be made in accordance with the provisions of Sections 3 and 5 hereof.

SECTION 7: Execution - Registration. The Bonds shall be executed on behalf of the Corporation by its President of the Board of Directors of the Corporation under its seal reproduced or impressed thereon and attested by the Secretary of the Board of Directors of the Corporation. The signature of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the Corporation on the date of adoption of this Resolution shall be deemed to be duly executed on behalf of the Corporation, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchasers and with respect to Bonds delivered in subsequent exchanges and transfers.

No Bond shall be entitled to any right or benefit under this Resolution, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas or his duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate upon any Bond duly signed shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered and delivered.

SECTION 8: Initial Bond(s). The Bonds herein authorized shall be initially issued either (i) as a single fully registered bond in the total principal amount and with principal installments to become due and payable as provided in the Pricing Certificate and numbered T-1, or (ii) as multiple fully registered bonds registered to the initial purchasers in principal amounts and denominations in accordance with the Pricing Certificate and to be numbered consecutively from T 1 and upward (hereinafter called the "Initial Bond(s)") and, in either case, the Initial Bond(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond(s) shall be the Bonds submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the

Initial Bond(s), the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond(s) delivered hereunder and exchange therefor definitive Bonds of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9: Forms.

(a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas (to appear on the Initial Bond(s) only), the Registration Certificate of Paying Agent/Registrar (to appear on definitive Bonds only), and the form of Assignment to appear on each of the Bonds, shall be substantially in the forms set forth in this Section as such forms may be modified in the Pricing Certificate with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Resolution and with the Bonds to be completed with the information set forth in the Pricing Certificate, and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends on insured Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the Board of Directors of the Corporation or determined by a Pricing Officer. The Pricing Certificate shall set forth the final and controlling terms of the Bonds. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The Bonds, including the Initial Bond(s), shall be typewritten, printed, lithographed, or engraved or produced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

(b) Form of Bond.

REGISTERED  
NO. \_\_\_\_\_

REGISTERED  
\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
ALLEN ECONOMIC DEVELOPMENT CORPORATION  
SALES TAX REVENUE BOND, TAXABLE SERIES 2017B

Bond Date:  
\_\_\_\_\_, 2017

Interest Rate:  
\_\_\_\_\_%

Stated Maturity:  
\_\_\_\_\_

CUSIP NO:  
\_\_\_\_\_

Registered Owner:

Principal Amount:

The Allen Economic Development Corporation (hereinafter referred to as the "Corporation"), a non-profit industrial development corporation organized and existing under the laws of the State of Texas, including the Development Corporation Act, V.T.C.A., Local Government Code, Title 12, Subtitle C1, as amended (the "Act") (formerly known as the



Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6), specifically Chapters 501 and 504 of the Local Government Code, with its principal office located in Collin County, Texas, for value received, hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, solely from the revenues and sources pledged under the Resolution identified below, the Principal Amount stated above (or so much thereof as shall not have been paid upon prior redemption) on the Stated Maturity date specified above and to pay interest (computed on the basis of a 360-day year of twelve 30-day months) on the unpaid Principal Amount hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the \_\_\_\_\_) at the per annum rate of interest specified above; such interest being payable on \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing \_\_\_\_\_, until maturity or prior redemption. Principal of this Bond is payable at its Stated Maturity or redemption to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor; provided, however, while this Bond is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Bond. Interest is payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the resolution hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the \_\_\_\_\_ day of the month next preceding each interest payment date and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located is authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$\_\_\_\_\_ (herein referred to as the "Bonds") to provide funds to finance the costs of the purchase of land for promotion and development of new and expanded business enterprises, to wit: expansion of regional or national corporate headquarters facilities and any other projects authorized by Chapter 501 of the Local Government Code (collectively, the "Projects"), and to pay costs of issuance, in conformity with the Constitution and laws of the State of Texas, including the Act, the Texas Nonprofit Corporation Act, and Chapter 22, Texas Business Organizational Code, and pursuant to a Resolution adopted by the governing body of the Corporation (herein referred to as the "Resolution").

The Bonds maturing on \_\_\_\_\_, and \_\_\_\_\_ (the "Term Bonds"), are subject to mandatory redemption at a price of par plus accrued interest to the date of redemption, as follows:

<u>Term Bonds due</u> <u>Redemption Date</u>	<u>Principal Amount</u>	<u>Term Bonds due</u> <u>Redemption Date</u>	<u>Principal Amount</u>
	\$ ,000		\$ ,000
	,000		,000
	,000		,000
	,000	(maturity)	,000
(maturity)	,000		

The particular Term Bonds to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Bonds for a Stated Maturity required to be redeemed pursuant to the operation of such mandatory redemption provisions may be reduced, at the option of the Corporation, by the principal amount of Term Bonds of like maturity which, at least 50 days prior to a mandatory redemption date, (1) shall have been acquired by the Corporation at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.

The Bonds maturing on and after \_\_\_\_\_ may be redeemed prior to their Stated Maturities, at the option of the Corporation, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on \_\_\_\_\_ or on any date thereafter at the redemption price of par plus accrued interest thereon to the redemption date.

At least thirty days prior to the date fixed for any redemption of Bonds, the Corporation shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Bond to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Resolution. If a Bond (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date such Bond (or the portion of its principal sum to be redeemed) shall become due and payable, and, if moneys for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable from and after the redemption date on the principal amount hereof redeemed.

In the event a portion of the principal amount of a Bond is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Bond to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Bond or Bonds of like maturity and interest rate in any authorized denominations provided in the Resolution for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Bond is called for redemption, in whole or in part, the Corporation and the Paying Agent/Registrar shall not be required to transfer such Bond to an assignee of the Holder within 45 days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond redeemed in part.

With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by the Resolution have been met and moneys sufficient to pay the redemption price of the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the Corporation shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

The Bonds, together with the Series 2017A Bonds, are payable solely from and equally and ratably secured by a pledge of the "Pledged Revenues" (as defined in the Resolution) received by the Corporation, including the "Gross Sales Tax Revenues" (as defined in the Resolution) levied for the benefit of the Corporation pursuant to the Act and an election held in the City. The Bonds do not constitute a legal or equitable, pledge, charge, lien or encumbrance upon any property of the Corporation or the City of Allen, Texas (the "City") except with respect to the "Pledged Revenues". This Bond may not be paid in whole or in part from any property taxes raised or to be raised by the City and is not a debt of and does not give rise to a claim for payment against the City, except as to the sales and use tax revenues held by the City and required under the Act to be paid over to the Corporation. Neither the State of Texas, the City or any political corporation, subdivision or agency of the State of Texas shall be obligated to pay this Bond or the interest hereon and neither the faith and credit nor the taxing power of the State, the City or any other political corporation, subdivision or agency thereof is pledged to the payment of the principal of and interest on this Bond except as noted above.

Subject to satisfying the terms and conditions prescribed therefor, the Corporation has reserved the right to issue additional revenue obligations payable, in whole or in part, from the "Pledged Revenues" and equally and ratably secured in like manner and effect as the Bonds and the Series 2017A Bonds.

Reference is hereby made to the Resolution, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the Holder by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the security for the payment of the Bonds; the rights of Holders of the Bonds the terms and conditions for the issuance of additional obligations; the terms and conditions relating to the payment, transfer or exchange of this Bond; the conditions upon which the Resolution may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the Corporation and the Paying Agent/Registrar; the terms and provisions upon which the encumbrances, pledges, charges and covenants made therein may be discharged; and for the other terms and provisions contained therein. Capitalized terms used herein have the same meanings assigned in the Resolution.

This Bond, subject to certain limitations contained in the Resolution, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of

interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The Corporation and the Paying Agent/Registrar, and any agent of either, may treat the registered owner hereof whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal hereof at its Stated Maturity or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the Corporation nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of non-payment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Corporation. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and covenanted that the Corporation is a non-profit industrial development corporation duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas, including the Act; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid special obligations of the Corporation have been properly done, have happened and have been performed in regular and due time, form and manner as required by law; and that due provision has been made for the payment of the principal of and interest on the Bonds from the sources and in the manner provided in the Resolution. In case any provision in this Bond or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Resolution shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the Board of Directors of the Corporation has caused this Bond to be duly executed under the official seal of the Corporation.

ALLEN ECONOMIC DEVELOPMENT  
CORPORATION

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President, Board of Directors

ATTEST:

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Secretary, Board of Directors

(SEAL)

(c) Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Bond(s) only.

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER )  
 )  
OF PUBLIC ACCOUNTS ) REGISTER NO. \_\_\_\_\_  
 )  
THE STATE OF TEXAS )

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

(SEAL)

(d) Form of Certificate of Paying Agent/Registrar to Appear on definitive Bonds.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Resolution and duly approved, or a Predecessor Bond hereof duly approved, by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated offices of the Paying Agent/Registrar located in \_\_\_\_\_, is the "Designated Payment/Transfer Office" for this Bond.

\_\_\_\_\_  
\_\_\_\_\_,  
as Paying Agent/Registrar

Registration date:

\_\_\_\_\_

By \_\_\_\_\_  
Authorized Signature

(e) Form of Assignment.

### ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto  
(Print or typewrite name, address, and zip code of transferee:)

(Social Security or other identifying number) the within  
Bond and all rights thereunder, and hereby irrevocably constitutes and appoints  
attorney to transfer the within Bond on the books kept for registration thereof, with full power of  
substitution in the premises.

DATED:

Signature guaranteed:

NOTICE: The signature on this  
assignment must correspond with the  
name of the registered owner as it  
appears on the face of the within Bond in  
every particular.

(f) The Initial Bond(s) shall be in the form set forth in paragraph (b) of this Section  
as modified in accordance with the Pricing Certificate, except that the form of a single fully  
registered Initial Bond shall be modified as follows or as provided in the Pricing Certificate:

REGISTERED  
NO. T-1

REGISTERED  
\$

UNITED STATES OF AMERICA  
STATE OF TEXAS  
ALLEN ECONOMIC DEVELOPMENT CORPORATION  
SALES TAX REVENUE BOND, SERIES 2017B

Bond Date:  
, 2017

Registered Owner:

Principal Amount:

The Allen Economic Development Corporation (hereinafter referred to as the  
"Corporation"), a non-profit industrial development corporation organized and existing under the  
laws of the State of Texas, including the Development Corporation Act, V.T.C.A, Local  
Government Code, Title 12, Subtitle C1, as amended (the "Act") (formerly known as the  
Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6), specifically  
Chapters 501 and 504 of the Local Government Code, with its principal office located in Collin  
County, Texas, for value received, hereby promises to pay to the Registered Owner named  
above, or the registered assigns thereof, solely from the revenues and sources pledged under  
the Resolution identified below, the Principal Amount hereinabove stated on in  
each of the years and in principal amounts and bearing interest at per annum rates in  
accordance with the following schedule:

<u>YEAR</u>	<u>PRINCIPAL INSTALLMENTS</u>	<u>INTEREST RATE</u>
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(Information to be inserted from the Pricing Certificate)

(or so much thereof as shall not have been paid upon prior redemption) and to pay interest (computed on the basis of a 360-day year of twelve 30-day months) on the unpaid Principal Amount hereof from the \_\_\_\_\_ at the per annum rate of interest specified above; such interest being payable on \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing \_\_\_\_\_. Principal installments of this Bond are payable at its Stated Maturity or on a prepayment date to the registered owner hereof by \_\_\_\_\_

\_\_\_\_\_ (the "Paying Agent/Registrar"), upon its presentation and surrender, at its designated office in \_\_\_\_\_ (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the resolution hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the \_\_\_\_\_ day of the month next preceding each interest payment date and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located is authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

**SECTION 10: Definitions.** For all purposes of this Resolution and in particular for clarity with respect to the issuance of the Bonds herein authorized and the pledge and appropriation of revenues to the payment of the Bonds, the following definitions are provided:

"Act" - The Development Corporation Act, Texas Local Government Code, Title 12, Subtitle C1, as amended (the "Act") (formerly known as the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6), specifically Chapters 501 and 504 of the Local Government Code.

"Additional Obligations" - Bonds, notes or other evidences of indebtedness which the Corporation reserves the right to issue or enter into, as the case may be, in the future in accordance with the terms and conditions provided in Section 18 hereof and which, together with the Bonds and the Series 2017A Bonds, are equally and ratably secured by a parity pledge of and claim on the Pledged Revenues under the terms of this Resolution and any Supplemental Resolution.

"Average Annual Debt Service" - That amount which, at the time of computation, is derived by dividing the total amount of Debt Service to be paid over a period of years as the same is scheduled to become due and payable by the number of years taken into account in determining the total Debt Service. Capitalized interest payments provided from proceeds of borrowings of the Corporation shall be excluded in making the aforementioned computation.

"Board" - The Board of Directors of the Corporation.

"Bonds" – The "Allen Economic Development Corporation Sales Tax Revenue Bonds, Taxable Series 2017B" authorized by this Resolution.

"City" - The City of Allen, Texas.

"Corporation" - The Allen Economic Development Corporation, a non-profit industrial development corporation organized and existing under and pursuant to the laws of the State of Texas, including the Act and on behalf of the City of Allen, Texas.

"Debt Service" - As of any particular date of computation, with respect to any obligations and with respect to any period, the aggregate of the amounts to be paid or set aside by the Corporation as of such date or in such period for the payment of the principal of, premium, if any, and interest (to the extent not capitalized) on such obligations; assuming, in the case of obligations without a fixed numerical rate, that such obligations bear, or would have borne, interest at the maximum legal per annum rate applicable to such obligations, and further assuming in the case of obligations required to be redeemed or prepaid as to principal prior to maturity, the principal amounts thereof will be redeemed prior to maturity in accordance with the mandatory redemption provisions applicable thereto.

"Depository" - A commercial bank or other qualified financial institution eligible and qualified to serve as the custodian of the Corporation's monetary accounts and funds.

"Fiscal Year" - The twelve month financial accounting period used by the Corporation ending September 30 in each year, or such other twelve consecutive month period established by the Corporation.

"Government Obligations" - Unless otherwise provided in the Pricing Certificate, (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the Corporation are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the Corporation, are rated as to investment quality by a nationally recognized investment rating firm



not less than AAA or its equivalent, and (iv) any other then authorized securities or obligations under applicable State law that may be used to defease obligations such as the Bonds.

"Gross Sales Tax Revenues" - All of the revenues or receipts due or owing to, or collected or received by or on behalf of the Corporation by the City or otherwise pursuant to the Act and the election held January 18, 1992, less any amounts due and owed to the Comptroller of Public Accounts of the State of Texas as charges for the collection of the Sales Tax or retention by said Comptroller for refunds and to redeem dishonored checks and drafts, to the extent such charges and retention are authorized or required by law.

"Outstanding" - When used in this Resolution with respect to Bonds or Parity Obligations, as the case may be, means, as of the date of determination, all Bonds and Parity Obligations theretofore sold, issued and delivered by the Corporation, except:

(1) those Bonds or Parity Obligations canceled or delivered to the transfer agent or registrar for cancellation in connection with the exchange or transfer of such obligations;

(2) those Bonds or Parity Obligations paid or deemed to be paid in accordance with the provisions of Section 24 hereof or similar provisions of any Supplemental Resolution authorizing the issuance of Additional Obligations.

(3) those Bonds or Parity Obligations that have been mutilated, destroyed, lost, or stolen and replacement obligations have been registered and delivered in lieu thereof in accordance with the provisions of Section 26 hereof.

"Parity Obligations" - Collectively, the Bonds, the Series 2017A Bonds and Additional Obligations.

"Pledged Revenues" - Collectively (i) Gross Sales Tax Revenues from time to time deposited or owing to the Pledged Revenue Fund and (ii) such other money, income, revenue, receipts or other property as may be specifically dedicated, pledged or otherwise encumbered in a Supplemental Resolution for the payment and security of Parity Obligations.

"Required Reserve" - The amount required to be accumulated and maintained in the Reserve Fund under the provisions of Section 14 hereof.

"Sales Tax" - The local sales and use tax authorized under Section 4A of the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6 (now codified as the Development Corporation Act as described above), approved at an election held on January 18, 1992, and the effective date for the imposition and application of such Sales Tax within the corporate limits of the City by the Comptroller of Public Accounts of the State of Texas being July 1, 1992, together with any increases in the rate of such Sales Tax authorized and provided by law.

"Series 2017A Bonds" – The "Allen Economic Development Corporation Sales Tax Revenue Refunding Bonds, Series 2017A" authorized for issuance concurrently with the Bonds.

"Qualified Short Term Obligations" – Parity Obligations with a final maturity of five years or less subject to the following coverage test: Gross Sales Tax Revenues received by the Corporation for either (i) the last completed Fiscal Year next preceding the adoption of the Supplemental Resolution authorizing the issuance of the proposed Qualified Short Term Obligations or (ii) any twelve (12) consecutive months out of the previous fifteen (15) months next preceding the adoption of the Supplemental Resolution authorizing the Qualified Short Term Obligations were equal to not less than 2.25 times the maximum annual Debt Service for all Parity Obligations then Outstanding after giving effect to the issuance of the Qualified Short Term Obligations then being issued.

"Supplemental Resolution" - Any resolution of the Board supplementing this Resolution for the purpose of authorizing and providing the terms and provisions of the Bonds or Additional Obligations, or supplementing or amending this Resolution for any other authorized purpose permitted in Section 18 or 25 hereof, including resolutions authorizing the issuance of Additional Obligations or pledging and encumbering income, revenues, receipts or property other than the Gross Sales Tax Revenues to the payment and security of the Parity Obligations.

SECTION 11: Pledge. The Corporation hereby covenants and agrees that the Pledged Revenues, with the exception of those in excess of the amounts required for the payment and security of the Parity Obligations, are hereby irrevocably pledged to the payment and security of the Bonds, the Series 2017A Bonds and Additional Obligations, if issued, including the establishment and maintenance of the special funds created and established in this Resolution and any Supplemental Resolution, all as hereinafter provided. The Corporation hereby resolves the Parity Obligations shall constitute a lien on the Pledged Revenues in accordance with the terms of this Resolution and any Supplemental Resolution, which lien shall be valid and binding and fully perfected from and after the date of adoption of this Resolution without physical delivery or transfer of control of the Pledged Revenues, the filing of this Resolution or any other act; all as provided in Chapter 1208 of the Texas Government Code.

Section 1208, Government Code, applies to the issuance of the Bonds and the pledge of the Pledged Revenues granted by the Corporation under this Section 11, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Bonds are Outstanding such that the pledge of the Pledged Revenues granted by the Corporation under this Section 11 is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the Corporation agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

SECTION 12: Pledged Revenue Fund. The Corporation hereby covenants and agrees to establish and maintain a fund or account at a Depository for the deposit of the Pledged Revenues as received by the Corporation, which fund or account shall continue to be known on the books and records of the Corporation as the "Pledged Revenue Fund". All Pledged Revenues deposited to the credit of such Fund shall continue to be accounted for separate and

apart from all other revenues, receipts and income of the Corporation and, with respect to the Gross Sales Tax Revenues, the Corporation shall further account for such funds separate and apart from the other Pledged Revenues deposited to the credit of the Pledged Revenue Fund. All Pledged Revenues deposited to the credit of the Pledged Revenue Fund shall be appropriated and expended to the extent required by this Resolution and any Supplemental Resolution for the following uses and in the order of priority shown:

First: To the payment of the amounts required to be deposited in the Bond Fund for the payment of Debt Service on the Parity Obligations as the same becomes due and payable;

Second: To the payment of the amounts required to be deposited in the Reserve Fund to establish and maintain the Required Reserve in accordance with the provisions of this Resolution and any Supplemental Resolution, if any;

Third: To the payment of amounts required to be deposited in any other fund or account required by any Supplemental Resolution authorizing the issuance of Parity Obligations; and

Fourth: To any fund or account held at any place or places, or to any payee, required by any other resolution of the Board which authorized the issuance of obligations or the creation of debt of the Corporation having a lien on the Pledged Revenues subordinate to the lien created herein on behalf of the Parity Obligations.

Any Pledged Revenues remaining in the Pledged Revenue Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other lawful purpose now or hereafter permitted by law.

**SECTION 13: Bond Fund.** For the purpose of providing funds to pay the principal of and interest on Parity Obligations, the Corporation covenants and agrees to maintain a separate and special account or fund on the books and records of the Corporation known as the "Allen Economic Development Corporation Debt Service Account" (the "Bond Fund"), and all monies deposited to the credit of the Bond Fund shall continue to be held in a special banking fund or account maintained at a Depository of the Corporation. In addition to the amounts required to be deposited to the credit of the Bond Fund for the payment of the Series 2017A Bonds, the Corporation covenants that there shall be deposited into the Bond Fund prior to each principal and interest payment date from the Pledged Revenues an amount equal to one hundred per centum (100%) of the interest on and the principal of the Bonds then falling due and payable, and such deposits to pay principal and accrued interest on the Bonds shall be made in substantially equal monthly installments on or before the 10th day of each month, beginning on or before the 10th day of the month next following the delivery of the Bonds to the initial purchasers.

The required deposits to the Bond Fund for the payment of principal of and interest on the Bonds shall continue to be made as hereinabove provided until (i) the total amount on deposit in the Bond Fund and Reserve Fund is equal to the amount required to fully pay and discharge all Parity Obligations (principal and interest) then Outstanding or (ii) the Bonds are no longer Outstanding.

SECTION 14: Reserve Fund. (a) The Corporation covenants and agrees to maintain on the books and records of the Corporation a separate and special fund or account known as the "Reserve Account" (the "Reserve Fund"), which fund or account is and shall continue to be a special banking fund maintained at a Depository. All Pledged Revenues deposited to the credit of such fund or account shall be used solely for the payment of the principal of and interest on the Parity Obligations when (whether at maturity, upon a redemption date or any interest payment date) other funds available for such purposes are insufficient, and, in addition, may be used to the extent not required to maintain the "Required Reserve", to pay, or provide for the payment of, the final principal amount of a series of Parity Obligations so that such series of Parity Obligations is no longer deemed to be "Outstanding" as such term is defined herein.

The total amount required to be deposited to the credit of the Reserve Fund by reason of the issuance of the Bonds (the "Required Reserve"), which amount is equal to the lesser of (i) the maximum annual Debt Service (calculated on a Fiscal Year basis) for all Parity Obligations currently Outstanding (after giving effect to the issuance of the Bonds) and (ii) the maximum amount that can be invested without restriction as to yield in a reasonably required reserve fund pursuant to Subsection (d) of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder, as determined on the date the Bonds are to be delivered to the initial purchasers, will be determined when the Bonds are sold and will be stated in the Pricing Certificate; provided, however, the Corporation may recalculate and adjust the Required Reserve at the end of each Fiscal Year or upon the defeasance, redemption or maturity of any Parity Obligations. The Required Reserve shall be established and maintained (i) with Gross Revenues, (ii) with the proceeds of sale of Parity Obligations or (iii) by depositing to the Reserve Fund one or more surety bonds issued by a company or institution having a rating in the highest two rating categories (i.e., "AA-" or equivalent or higher) by at least one nationally recognized rating agency or services, or any combination thereof.

By reason of the issuance of the Bonds, the total amount required to be accumulated and maintained in said Fund shall be determined by the Pricing Officer and specified in the Pricing Certificate (the "Required Reserve") and the Pricing Officer shall determine and provide in the Pricing Certificate in the manner in which Required Reserve will be initially funded. The Pricing Officer is hereby authorized to execute any document or agreement in connection with funding the Required Reserve.

As and when Additional Obligations are delivered or incurred, the Required Reserve shall be increased, if required, to an amount equal to the lesser of either (i) the maximum annual Debt Service (calculated on a Fiscal Year basis) for all Parity Obligations then Outstanding (after giving effect to the issuance of the Additional Obligations), as determined on the date each series of Additional Obligations are delivered or incurred, as the case may be, or (ii) the maximum amount that can be invested without restriction as to yield in a reasonably required reserve fund pursuant to Subsection (d) of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder. Any additional amount required to be maintained in the Reserve Fund shall be accumulated (i) by depositing to the credit of the Reserve Fund (immediately after the delivery of the then proposed Additional Obligations) cash or an additional surety bond or revised surety bond with surety bond coverage in an amount sufficient to provide for the new Required Reserve to be fully or partially funded or (ii) at the option of the Corporation, by making monthly deposits from funds in the Pledged Revenue Fund, on or before the 10th day of each month following the month of delivery of the then proposed Additional Obligations, of not less than 1/36th of the additional amount to be maintained in said Fund by reason of the issuance of the Additional Obligations then being issued (or 1/36th of the balance of the additional amount not deposited immediately in cash or

provided by a surety bond). To the extent of multiple surety bonds or other credit agreements funding the Required Reserve, any draws on such surety bonds or other credit agreements on which there is available coverage shall be made on a pro rata basis (calculated by reference to coverage then available under each such surety bond or credit agreement).

While the cash and investments and/or surety coverage in the Reserve Fund total not less than the Required Reserve, no deposits need be made to the credit of the Reserve Fund. Should the Reserve Fund at any time contain less than the Required Reserve (or so much thereof as shall then be required to be contained therein if Additional Obligations have been issued and the Corporation has elected to accumulate all or portion of the Required Reserve with Pledged Revenues or should the Corporation be obligated to repay or reimburse an issuer of a surety bond to replenish and restore the full amount of surety bond coverage provided by a surety bond held for the account of the Reserve Fund), the Corporation covenants and agrees to cause monthly deposits to be made to the Reserve Fund on or before the 10th day of each month (beginning the month next following the month the deficiency in the Required Reserve occurred by reason of a draw on the Reserve Fund or as a result of a reduction in the market value of investments held for the account of the Reserve Fund) from Pledged Revenues in an amount equal to 1/36th of the Required Reserve until (i) the total Required Reserve then required to be maintained in said Fund has been fully restored or (ii) the amounts required to be reimbursed and repaid to the issuer of the surety bond in the event of a draw upon a surety bond. The Corporation further covenants and agrees that the Pledged Revenues shall be applied and appropriated and used to establish and maintain the Required Reserve and to cure any deficiency in such amounts as required by the terms of this Resolution and any Supplemental Resolution.

During such time as the Reserve Fund contains the total Required Reserve, the Corporation may, at its option, withdraw any amount in the Reserve Fund in excess of the Required Reserve and deposit such surplus in the Pledged Revenue Fund.

Notwithstanding the above and foregoing, the terms "Parity Obligations" and "Additional Obligations" used in this Section shall not include Qualified Short Term Obligations. The issuance of Qualified Short Term Obligations will not be included in the calculation of the Required Reserve and will not necessitate a deposit to the Reserve Fund.

The Pricing Officer shall determine in the Pricing Certificate whether the Bonds are Qualified Short Term Obligations.

**SECTION 15: Deficiencies.** If on any occasion there shall not be sufficient Pledged Revenues to make the required deposits into the Bond Fund or Reserve Fund, such deficiency shall be cured as soon as possible from the next available Pledged Revenues, or from any other sources available for such purpose.

**SECTION 16: Payment of Bonds.** While any of the Bonds are Outstanding, the designated financial officer of the Corporation shall cause to be transferred to the Paying Agent/Registrar, from funds on deposit in the Bond Fund, and, if necessary, in the Reserve Fund, amounts sufficient to fully pay and discharge promptly as each installment of interest and principal of the Bonds accrues or matures; such transfer of funds to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar for the Bonds at the close of the business day next preceding the date of payment for the Bonds.

SECTION 17: Investments - Security of Funds. Money in any Fund required to be maintained pursuant to this Resolution may, at the option of the Corporation, be invested in obligations and in the manner prescribed by the Public Funds Investment Act (Texas Government Code, Chapter 2256), including investments held in book-entry form; provided that all such deposits and investments shall be made in such a manner that the money required to be expended from any Fund will be available at the proper time or times and provided further the maximum stated maturity for any investment acquired with money deposited to the credit of the Reserve Fund shall be limited to five (5) years from the date of the investment of such money. Such investments shall be valued in terms of current market value within 45 days of the close of each Fiscal Year and, with respect to investments held for the account of the Reserve Fund, within 45 days of the date of passage of each authorizing document of the Board pertaining to the issuance of Additional Obligations. All interest and income derived from deposits and investments in the Bond Fund immediately shall be credited to, and any losses debited to, the appropriate account of the Bond Fund. All interest and income derived from deposits in and investments of the Reserve Fund shall, subject to the limitations provided in Section 14 hereof, be credited to and deposited in the Pledged Revenue Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Parity Obligations.

Money deposited to the credit of the Pledged Revenue Fund, Bond Fund and Reserve Fund, to the extent not invested and not otherwise insured by the Federal Deposit Insurance Corporation or similar agency, shall be secured by a pledge of direct obligations of the United States of America, or obligations unconditionally guaranteed by the United States of America.

SECTION 18: Issuance of Additional Parity Obligations. Subject to the provisions hereinafter appearing as to conditions precedent which must be satisfied, the Corporation reserves the right to issue, from time to time as needed, Additional Obligations for any lawful purpose. Such Additional Obligations may be issued in such form and manner as the Corporation shall determine, provided, however, prior to issuing or incurring such Additional Obligations, the following conditions precedent for the authorization and issuance of the same are satisfied, to wit:

(1) The Treasurer of the Corporation (or other officer of the Corporation then having the primary responsibility for the financial affairs of the Corporation) shall have executed a certificate stating that, to the best of his or her knowledge and belief, the Corporation is not then in default as to any covenant, obligation or agreement contained in the Resolution or a Supplemental Resolution.

(2) The Corporation has secured from a certified public accountant a certificate or opinion to the effect that, according to the books and records of the Corporation, the Gross Sales Tax Revenues received by the Corporation for either (i) the last completed Fiscal Year next preceding the adoption of the Supplemental Resolution authorizing the issuance of the proposed Additional Obligations or (ii) any twelve (12) consecutive months out of the previous fifteen (15) months next preceding the adoption of the Supplemental Resolution authorizing the Additional Obligations were equal to not less than 1.50 times the Average Annual Debt Service for all Parity Obligations then Outstanding after giving effect to the issuance of the Additional Obligations then being issued. Additionally, for the purpose of providing this certificate or opinion, if the Corporation shall not have received Gross Sales Tax Revenues for a full 12

month period, one-half of the amount of sales tax revenues actually received by the City under Chapter 321, Texas Tax Code, may be used for the months during which the Corporation did not receive Gross Sales Tax Revenues.

(3) The Required Reserve to be accumulated and maintained in the Reserve Fund is increased to the extent required by Section 14.

SECTION 19: Refunding Bonds. The Corporation reserves the right to issue refunding bonds to refund all or any part of the Parity Obligations (pursuant to any law then available) upon such terms and conditions as the Board may deem to be in the best interest of the Corporation, and if less than all such Parity Obligations then Outstanding are refunded, the conditions precedent prescribed (for the issuance of Additional Obligations) set forth in Section 18 hereof shall be satisfied, and shall give effect to the refunding.

SECTION 20: Right to Create Subordinate Debt. Except as may be limited by a Supplemental Resolution, the Corporation shall have the right to issue or create any debt payable from or secured by a lien on all or any part of the Pledged Revenues for any lawful purpose without complying with the provisions of Section 18 or 19 hereof, provided the pledge and the lien securing such debt is subordinate to the pledge and lien established, made and created in Section 11 of this Resolution with respect to the Pledged Revenues to the payment and security of the Parity Obligations.

SECTION 21: Confirmation and Levy of Sales Tax.

(a) The Board hereby represents the City has duly complied with the provisions of the Act for the levy of the Sales Tax at the rate voted at the election held by and within the City on January 18, 1992, and such Sales Tax is to be imposed within the corporate limits of the City and the receipts of such Sales Tax are to be remitted to the City by the Comptroller of Public Accounts on a monthly basis.

(b) While any Bonds are Outstanding, the Corporation covenants, agrees and warrants to take and pursue all action permissible to cause the Sales Tax, at said rate or at a higher rate if legally permitted, to be levied and collected continuously, in the manner and to the maximum extent permitted by law, and to cause no reduction, abatement or exemption in the Sales Tax or rate of tax below the rate stated, confirmed and ordered in subsection (a) of this Section to be ordered or permitted while any Bonds shall remain Outstanding.

(c) If hereafter authorized by law to apply, impose and levy the Sales Tax on any taxable items or transactions that are not subject to the Sales Tax on the date of the adoption hereof, to the extent it legally may do so, the Corporation agrees to use its best efforts to cause the City to take such action as may be required to subject such taxable items or transactions to the Sales Tax.

(d) The Corporation agrees to take and pursue all action legally permissible to cause the Sales Tax to be collected and remitted and deposited as herein required and as required by the Act, at the earliest and most frequent times permitted by law.

(e) The Corporation agrees to use its best efforts to cause the City to comply with the Act and shall cause the Gross Sales Tax Revenues to be deposited to the credit of the Pledged Revenue Fund in their entirety immediately upon receipt by the City. In the alternative and if legally authorized, the Corporation shall, by appropriate notice, direction, request or other

legal method, use its good-faith efforts to cause the Comptroller of Public Accounts of the State of Texas (the "Comptroller") to pay all Gross Sales Tax Revenues directly to the Corporation for deposit to the Pledged Revenue Fund.

SECTION 22: Records and Accounts. The Corporation hereby covenants and agrees that while any of the Bonds are Outstanding, it will keep and maintain complete records and accounts in accordance with generally accepted accounting principles, and following the close of each Fiscal Year, it will cause an audit of such books and accounts to be made by an independent firm of certified public accountants. Each such audit, in addition to whatever other matters may be thought proper by the accountant, shall particularly include the following:

- (1) A statement in reasonable detail regarding the receipt and disbursement of the Pledged Revenues for such Fiscal Year; and
- (2) A balance sheet for the Corporation as of the end of such Fiscal Year.

Such annual audit of the records and accounts of the Corporation shall be in the form of a report (and may be reflected in the audit of the City) and be accompanied by an opinion of the accountant to the effect that such examination was made in accordance with generally accepted auditing standards and contain a statement to the effect that in the course of making the examination necessary for the report and opinion, the accountant obtained no knowledge of any default of the Corporation on the Bonds or in the fulfillment of any of the terms, covenants or provisions of this Resolution, or under any other evidence of indebtedness, or of any event which, with notice or lapse of time, or both, would constitute a failure of the Corporation to comply with the provisions of this Resolution or if, in the opinion of the accountants, any such failure to comply with a covenant or agreement hereof, a statement as to the nature and status thereof shall be included.

Copies of each annual audit report shall be furnished upon written request, to any Holders of any of said Bonds. The audits herein required shall be made within 180 days following the close of each Fiscal Year insofar as is possible.

The Holders of any Bonds or any duly authorized agent or agents of such Holders shall have the right to inspect such records, accounts and data of the Corporation during regular business hours.

SECTION 23: Representations and Covenants as to Security for the Bonds.

(a) The Corporation represents and warrants that, except for Parity Obligations, the Pledged Revenues are and will be and remain free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge and lien created in or authorized by this Resolution except as expressly provided herein.

(b) The Bonds and the provisions of this Resolution are and will be the valid and legally enforceable obligations of the Corporation in accordance with their terms and the terms of this Resolution, subject only to any applicable bankruptcy or insolvency laws or to any laws affecting creditors rights generally.



(c) The Corporation shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Revenues and all the rights of the Holders against all claims and demands of all persons whomsoever.

(d) The Corporation will take, and use its best efforts to cause the City to take, all steps reasonably necessary and appropriate to collect all delinquencies in the collection of the Sales Tax to the fullest extent permitted by the Act.

(e) The provisions, covenants, pledge and lien on and against the Pledged Revenues, as herein set forth, are established and shall be for the equal benefit, protection and security of the owners and holders of Parity Obligations without distinction as to priority and rights under this Resolution.

(f) The Parity Obligations shall constitute special obligations of the Corporation, payable solely from, and equally and ratably secured by a parity pledge of and lien on, the Pledged Revenues, and not from any other revenues, properties or income of the Corporation. The Bonds may not be paid in whole or in part from any property taxes raised or to be raised by the City and shall not constitute debts or obligations of the State or of the City, and the Holders, shall never have the right to demand payment out of any funds raised or to be raised by any system of ad valorem taxation.

SECTION 24: Satisfaction of Obligation of Corporation. If the Corporation shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Resolution, then the pledge of the Pledged Revenues under this Resolution and all other obligations of the Corporation to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds or any principal amount(s) shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Obligations shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Obligations have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the Bonds on the Stated Maturities thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor accepted to the Paying Agent/Registrar have been made) the redemption date thereof. The Corporation covenants that no deposit of moneys or Government Obligations will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Obligations held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section in excess of the amount required for the payment of the Bonds shall be remitted to the Corporation or deposited as directed by the Corporation. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of four (4) years after the Stated Maturity, or applicable redemption date, of the Bonds such moneys were

deposited and are held in trust to pay shall, upon the request of the Corporation, be remitted to the Corporation against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the Corporation shall be subject to any applicable unclaimed property laws of the State of Texas.

**SECTION 25: Resolution a Contract - Amendments.** This Resolution, together with the Pricing Certificate, shall constitute a contract with the Holders from time to time, be binding on the Corporation, and shall not be amended or repealed by the Corporation while any Bond remains Outstanding except as permitted in this Section and in Section 41 hereof and the Pricing Certificate. The Corporation, may, without the consent of or notice to any Holders, from time to time and at any time, amend this Resolution in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the Corporation may, with the written consent from the owners holding a majority in aggregate principal amount of the Parity Obligations then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Resolution; provided that, without the written consent of all Holders of Outstanding Bonds effected, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Bonds, reduce the principal amount thereof, the redemption price therefor, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds or Parity Obligations, as the case may be, required to be held for consent to any such amendment, addition, or rescission.

**SECTION 26: Mutilated - Destroyed - Lost and Stolen Bonds.** In case any Bond shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond, or in lieu of and in substitution for such destroyed, lost or stolen Bond, only upon the approval of the Corporation and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the Corporation and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, or destroyed, lost or stolen.

Every new Bond issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Bond shall constitute a replacement of the prior obligation of the Corporation, whether or not the mutilated, destroyed, lost, or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Resolution equally and ratably with all other Outstanding Bonds.

**SECTION 27: Notices to Holders - Waiver.** Wherever this Resolution provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder as it appears in the Security Register.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Resolution provides for

notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**SECTION 28: Cancellation.** All Bonds surrendered for payment, redemption, transfer or exchange, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the Corporation, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The Corporation may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the Corporation may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Bonds held by the Paying Agent/Registrar shall be destroyed as directed by the Corporation.

**SECTION 29: Sale of Bonds – Official Statement.** The Bonds authorized by this Resolution are to be sold by the Corporation to the underwriter(s) (herein referred to as the "Purchasers") in accordance with a bond purchase agreement (the "Purchase Contract"), the terms and provisions of which Purchase Contract are to be determined by a Pricing Officer, in accordance with Section 3 hereof. With regard to such terms and provisions of said Purchase Contract, a Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

- (1) The details of the purchase and sale of the Bonds;
- (2) The details of the public offering of the Bonds by the Purchasers;
- (3) The details of an Official Statement (and, if appropriate, any Preliminary Official Statement) relating to the Bonds and the Corporation's Rule 15c2-12 undertaking;
- (4) A security deposit for the Bonds;
- (5) The representations and warranties of the Corporation to the Purchasers;
- (6) The details of the delivery of, and payment for, the Bonds;
- (7) The Purchasers' obligations under the Purchase Contract;
- (8) The certain conditions to the obligations of the Corporation under the Purchase Contract;
- (9) Termination of the Purchase Contract;
- (10) Particular covenants of the Corporation;
- (11) The survival of representations made in the Purchase Contract;
- (12) The payment of any expenses relating to the Purchase Contract;

(13) Notices; and

Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Bonds.

A Pricing Officer is hereby authorized and directed to execute said Purchase Contract for and on behalf of the Corporation and as the act and deed of this Board.

The President and Secretary of the Board of Directors of the Corporation are further authorized and directed to deliver for and on behalf of the Corporation copies of a Preliminary Official Statement and Official Statement, prepared in connection with the offering of the Bonds by the Purchasers, in final form as may be required by the Purchasers, and such Preliminary Official Statement and final Official Statement in the form and content as approved by a Pricing Officer or as manually executed by said officials shall be deemed to be approved by the Board of Directors of the Corporation and constitute the Official Statement authorized for distribution and use by the Purchasers.

SECTION 30: Financing/Use Agreement with the City. One or more "Financing/Use Agreements" (the "Agreement") by and between the Corporation and the City will be attached to and approved in the Pricing Certificate, and such Agreement in substantially the form and substance attached to the Pricing Certificate, together with such changes or revisions as may be necessary to accomplish the financing or benefit the Corporation, is hereby authorized to be executed by the Pricing Officer and as the act and deed of this Board; and such Agreement as executed by the Pricing Officer shall be deemed approved by the Board and constitute the Agreement herein approved.

SECTION 31: Proceeds of Sale. Immediately following the delivery of the Bonds, the proceeds of sale (less those proceeds of sale designated to pay costs of issuance and accrued interest received from the Purchasers of the Bonds and premium in the amount specified in the Pricing Certificate) shall be deposited in a construction fund in accordance with the Agreement or as providing in the Pricing Certificate. Pending expenditure for the Projects, such proceeds of sale may be invested in authorized investments and any investment earnings realized shall be expended for the Projects or deposited in the Bond Fund. All surplus proceeds of sale of the Bonds, including investment earnings, remaining after completion of the Projects, together with the accrued interest received from the Purchasers, shall be deposited to the credit of the Bond Fund.

The Corporation reasonably expects to reimburse, with proceeds of the Bonds, certain capital expenditures paid or incurred for the Projects before the date of the issuance of the Bonds and this Resolution shall constitute a declaration of official intent for such reimbursement as authorized by Section 1201.042, Texas Government Code.

SECTION 32: Legal Opinion. The obligation of the Purchasers to accept delivery of the Bonds is subject to being furnished final opinions of Norton Rose Fulbright US LLP, Attorneys, Dallas, Texas, approving such Bonds as to their validity, said opinions to be dated and delivered as of the date of delivery and payment for such Bonds. A true and correct reproduction of each opinion is hereby authorized to be printed on the definitive Bonds or an executed counterpart thereof shall accompany the global Bonds deposited with the Depository Trust Company.

SECTION 33: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP

numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof and neither the Corporation nor attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 34: Control and Custody of Bonds. The President of the Board shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, and shall take and have charge and control of the Initial Bonds pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

Furthermore, the President, Vice President and Secretary of the Board of Directors of the Corporation, any Director, any Ex-Officio Member of the Board of Directors and the Executive Director, individually, jointly or collectively, are hereby authorized and directed to furnish and execute such documents and certifications relating to the Corporation and the issuance of the Bonds, as may be necessary for the approval of the Attorney General, registration by the Comptroller of Public Accounts and delivery of the Bonds to the initial purchasers and, together with the Corporation's financial advisor, general counsel, bond counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond(s) to the Purchasers and the initial exchange thereof for definitive Bonds.

SECTION 35: Benefits of Resolution. Nothing in this Resolution, expressed or implied, is intended or shall be construed to confer upon any person other than the Corporation, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Resolution or any provision hereof, this Resolution and all its provisions being intended to be and being for the sole and exclusive benefit of the Corporation, the Paying Agent/Registrar and the Holders.

SECTION 36: Inconsistent Provisions. All orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict and the provisions of this Resolution shall be and remain controlling as to the matters contained herein.

SECTION 37: Governing Law. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 38: Severability. If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution and the application thereof to other circumstances shall nevertheless be valid, and the Board hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 39: Construction of Terms. If appropriate in the context of this Resolution, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 40: Continuing Disclosure Undertaking. This Section 40 shall apply unless the Pricing Officer determines in the Pricing Certificate that an undertaking is not required pursuant to the Rule.

(a) *Definitions*. As used in this Section, the following terms have the meanings ascribed to such terms below:

"MSRB" means the Municipal Securities Rulemaking Board.

"NRMSIR" means each person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

"SID" means any person designated by the State of Texas or an authorized department, officer, or agency thereof as, and determined by the SEC or its staff to be, a state information depository within the meaning of the Rule from time to time.

(b) *Annual Reports.* The Corporation shall provide annually to the MSRB (1) within six months after the end of each fiscal year of the Corporation beginning in the year stated in the Pricing Certificate, financial information and operating data with respect to the Corporation of the general type included in the final Official Statement approved by the Pricing Officer and described in the Pricing Certificate, and (2) if not provided as part such financial information and operating data, audited financial statements of the Corporation, when and if available. Any financial statements to be provided shall be (i) prepared in accordance with the accounting principles described in the Pricing Certificate, or such other accounting principles as the Corporation may be required to employ from time to time pursuant to state law or regulation, and in substantially the form included in the Official Statement, and (ii) audited, if the Corporation commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within twelve (12) months after any such fiscal year end, then the Corporation shall file unaudited financial statements within such twelve-month period and audited financial statements for the applicable fiscal year, when and if the audit report on such statements becomes available.

If the Corporation changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Corporation otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any documents available to the public on the MSRB's Internet web site or filed with the SEC.

(c) *Notice of Certain Events.* The Corporation shall provide notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;

5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the Corporation, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the Corporation or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

For these purposes, any event described in the immediately preceding subsection (c)12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Corporation in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Corporation, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Corporation.

The Corporation shall notify the MSRB, in a timely manner, of any failure by the Corporation to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) *Limitations, Disclaimers, and Amendments.* The Corporation shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the Corporation remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the Corporation in any event will give the notice required by subsection (c) of this Section of any Bond calls and defeasance that cause the Corporation to be no longer such an “obligated person.”

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds; and, nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Corporation undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section. Except as expressly provided within this Section, the Corporation does not undertake to provide any other information, whether or not it may be relevant or material to a complete presentation of the Corporation's financial results, condition, or prospects; nor does the Corporation undertake to update any information provided in accordance with this Section or otherwise. Furthermore, the Corporation does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CORPORATION BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CORPORATION, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the Corporation in observing or performing its obligations under this Section shall constitute a breach of or default under this Resolution for purposes of any other provision of this Resolution.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Corporation under federal and state securities laws.

(e) Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the Corporation from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Corporation, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Resolution that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a Person that is unaffiliated with the Corporation (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the Corporation if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the Corporation's right to do so would not prevent underwriters of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the Corporation so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.



SECTION 41: Further Procedures. Any one or more of the President, Vice President or Secretary of the Board, any Director, any Ex-Officio Member of the Board, or the Executive Director of the Corporation are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Corporation all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Resolution and the issuance of the Bonds. In addition, prior to the initial delivery of the Bonds, the President or Vice President of the Board, Secretary of the Board, or the Executive Director or Bond Counsel to the Corporation are each hereby authorized and directed to approve any changes or corrections to this Resolution or to any of the documents authorized and approved by this Resolution: (i) in order to cure any ambiguity, formal defect or omission in this Resolution or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of the Resolution, which determination shall be final. In the event that any officer of the Corporation whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 42: Public Meeting. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 43: Effective Date. This Resolution shall be in force and effect from and after its passage on the date shown below.

*[remainder of page left blank intentionally]*

PASSED AND ADOPTED, this October 12, 2016.

ALLEN ECONOMIC DEVELOPMENT  
CORPORATION

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President, Board of Directors

ATTEST:

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Secretary, Board of Directors

(Seal)

**EXHIBIT A**

**FORM OF PAYING AGENT/REGISTRAR AGREEMENT**

## **PAYING AGENT/REGISTRAR AGREEMENT**

THIS AGREEMENT is entered into as of \_\_\_\_\_, 2016 (this "Agreement"), by and between \_\_\_\_\_, a banking association duly organized and existing under the laws of the \_\_\_\_\_, or its successors or assigns (the "Bank") and the Allen Economic Development Corporation (the "Issuer"),

### **RECITALS**

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "Allen Economic Development Corporation Sales Tax Revenue Bonds, Taxable Series 2017B" (the "Securities"), dated \_\_\_\_\_, 2017, such Securities scheduled to be delivered to the initial purchasers thereof on or about \_\_\_\_\_, 2017; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

### **ARTICLE ONE APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR**

Section 1.01 **Appointment**. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 1.02 **Compensation**. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

## **ARTICLE TWO DEFINITIONS**

Section 2.01 **Definitions**. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

"Acceleration Date" on any Security means the date on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

"Authorizing Document" means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

"Bank Office" means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

"Financial Advisor" – means Estrada Hinojosa & Company, Inc.

"Holder" and "Security Holder" each means the Person in whose name a Security is registered in the Security Register.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

"Predecessor Securities" of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

"Redemption Date", when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

"Responsible Officer", when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Security Register" means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

"Stated Maturity" means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

Section 2.02 **Other Definitions.** The terms "Bank," "Issuer," and "Securities (Security)" have the meanings assigned to them in the recital paragraphs of this Agreement.

The term "Paying Agent/Registrar" refers to the Bank in the performance of the duties and functions of this Agreement.

### **ARTICLE THREE PAYING AGENT**

Section 3.01 **Duties of Paying Agent.** As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder's risk and expense.

Section 3.02 **Payment Dates.** The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

### **ARTICLE FOUR REGISTRAR**

Section 4.01 **Security Register - Transfers and Exchanges.** The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the "Security Register") for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such other information as may be reasonably required by the Issuer and subject to such reasonable

regulations as the Issuer and the Bank may prescribe. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the National Association of Securities Dealers, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

Section 4.02 **Securities**. The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

Section 4.03 **Form of Security Register**. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

Section 4.04 **List of Security Holders**. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

Section 4.05 **Return of Cancelled Securities.** The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

Section 4.06 **Mutilated, Destroyed, Lost or Stolen Securities.** The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

Section 4.07 **Transaction Information to Issuer.** The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

## **ARTICLE FIVE THE BANK**

Section 5.01 **Duties of Bank.** The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

### **Section 5.02 Reliance on Documents, Etc.**

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction,



consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, the Financial Advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

Section 5.03 **Recitals of Issuer.** The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

Section 5.04 **May Hold Securities.** The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

Section 5.05 **Moneys Held by Bank - Paying Agent Account/Collateralization.** A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become

due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

Section 5.06 **Indemnification**. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

Section 5.07 **Interpleader**. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

In the event the Bank becomes involved in litigation in connection with this Section, the Issuer, to the extent permitted by law, agrees to indemnify and save the Bank harmless from all loss, cost, damages, expenses, and attorney fees suffered or incurred by the Bank as a result. The obligations of the Bank under this Agreement shall be performable at the principal corporate office of the Bank in the City of Dallas, Texas.

Section 5.08 **DTC Services**. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for "Depository Trust Company" services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the "Operational Arrangements", which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

Section 5.09 **Tax Reporting**. It shall be the duty of the Bank, on behalf of the Issuer, to report to the Holders and the Internal Revenue Service, to the extent required by the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, (i) the amount of "reportable payments," if any, subject to backup withholding during each year and the amount of tax withheld, if any, with respect to payments of the Bonds and (ii) the amount of interest or amount treated as interest on the Bonds and required to be included in gross income of the Holder.

## **ARTICLE SIX MISCELLANEOUS PROVISIONS**

Section 6.01 **Amendment**. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 6.02 **Assignment**. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 6.03 **Notices**. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page hereof.

Section 6.04 **Effect of Headings**. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 6.05 **Successors and Assigns**. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 6.06 **Severability**. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.07 **Merger, Conversion, Consolidation, or Succession**. Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

Section 6.08 **Benefits of Agreement**. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

Section 6.09 **Entire Agreement**. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

Section 6.10 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.11 **Termination**. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor

Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

Section 6.12 **Governing Law**. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

*[Remainder of page left blank intentionally.]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Attest:

\_\_\_\_\_  
Title: \_\_\_\_\_

ALLEN ECONOMIC DEVELOPMENT  
CORPORATION

By: \_\_\_\_\_  
Pricing Officer

Address: 700 Central Expressway South  
Suite 210  
Allen, Texas 75013

October 12, 2016



# Allen Economic Development Corporation

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Firm Update  
Market Update  
Refunding/Defeasance Analysis  
New Money Analysis  
Schedule

ESTRADA • HINOJOSA  
INVESTMENT BANKERS

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Dallas • Austin • Chicago • Houston • Los Angeles • Miami • New York • San Antonio

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## Executive Summary

The proposed plan of finance in this presentation includes three components:

■ **1. Refund (refinance) the existing tax-exempt debt for savings**

- ✓ Produces NPV savings of approximately \$1.29 million or about 9.0% (net of all expected fees and contributions)
- ✓ Produces cash flow savings of approximately \$1.50 million
- ✓ Debt restructured to smooth portfolio
- ✓ Current restricted debt service reserve funds of \$146,702 contributed to transaction
- ✓ New debt service reserve uses a “surety policy” instead of cash

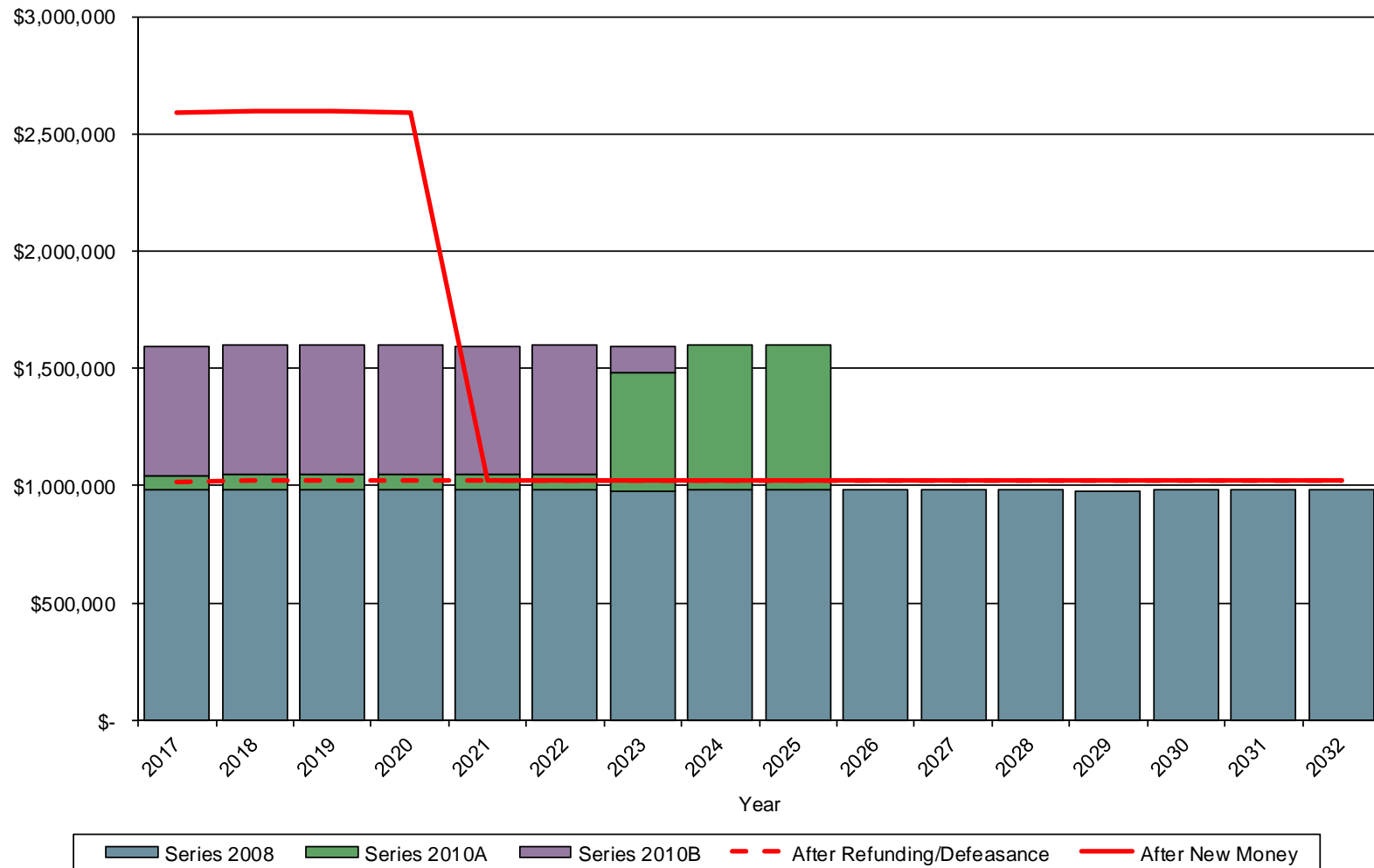
■ **2. Cash “Defease” (pay off with cash) the existing taxable debt**

- ✓ Allows the AEDC to re-write existing bond covenants
- ✓ Provides average cash flow savings of about \$490,000 per year through 2023
- ✓ Uses approximately \$2.74 million of unassigned cash
- ✓ Current restricted debt service reserve funds of \$472,098 contributed to the defeasance

■ **3. Issue \$6 million of taxable new money to pay for land purchase**

- ✓ Level debt service for 3-1/2 years (9/1 principal payments)
- ✓ True Interest Cost of about 1.75%, about 2.30% after all costs (includes 0.20% of cushion)
- ✓ Assumes no debt service reserve fund required
- ✓ Closes on 1/4/17 – AEDC advances money for land purchase on 12/27/16 and is repaid

## Pro Forma AEDC Debt Profile After All Transactions







- Section 1: Firm Update
- Section 2: Market Update
- Section 3: Refunding/Defeasance Analysis
- Section 4: New Money Analysis
- Section 5: Schedule



## Section 1

### Firm Update

## Estrada Hinojosa is a Leader with a Growing National Footprint...

### ■ In 24 years the Firm has completed:

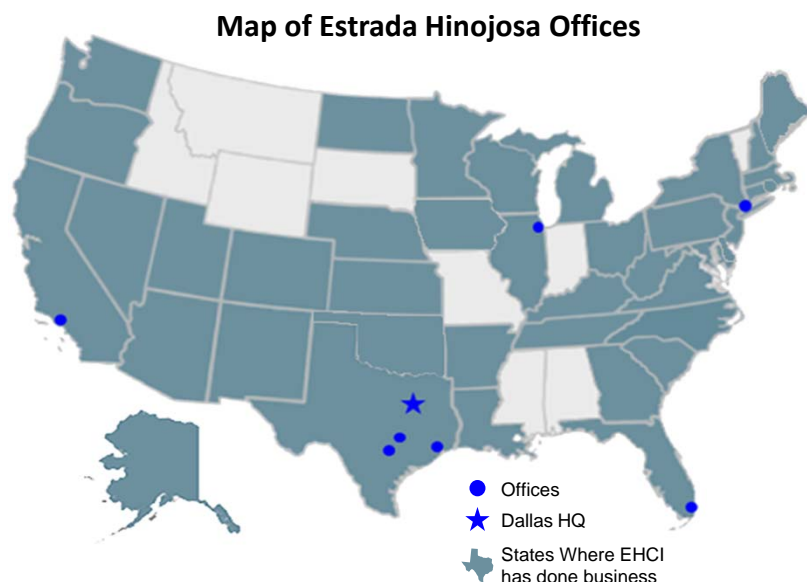
- ✓ Financial Advisory Services- 1,676 financings totaling \$105.2 billion
- ✓ Underwriting Services- 2,766 financings totaling \$280 billion

### ■ For calendar year ended 2015, the Firm completed:

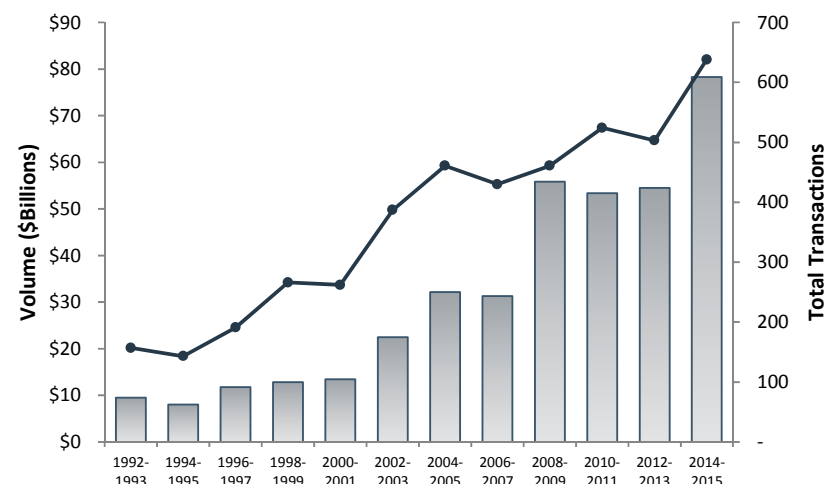
- ✓ Financial Advisory Services- 118 financings totaling \$9.8 billion
- ✓ Underwriting Services- 231 financings totaling \$30.3 billion

### Texas FA Rankings (Last 5 Years 2011-2015)

	\$ Volume	# of Deals
First Southwest	\$92,760.6	3,285
Estrada Hinojosa	18,964.6	404
RBC Capital	15,883.1	701
PFM	12,048.0	146
SAMCO	5,355.4	306



### Estrada Hinojosa Growth of FA and Underwriting Experience



# Representative Financial Advisory Recent Transactions

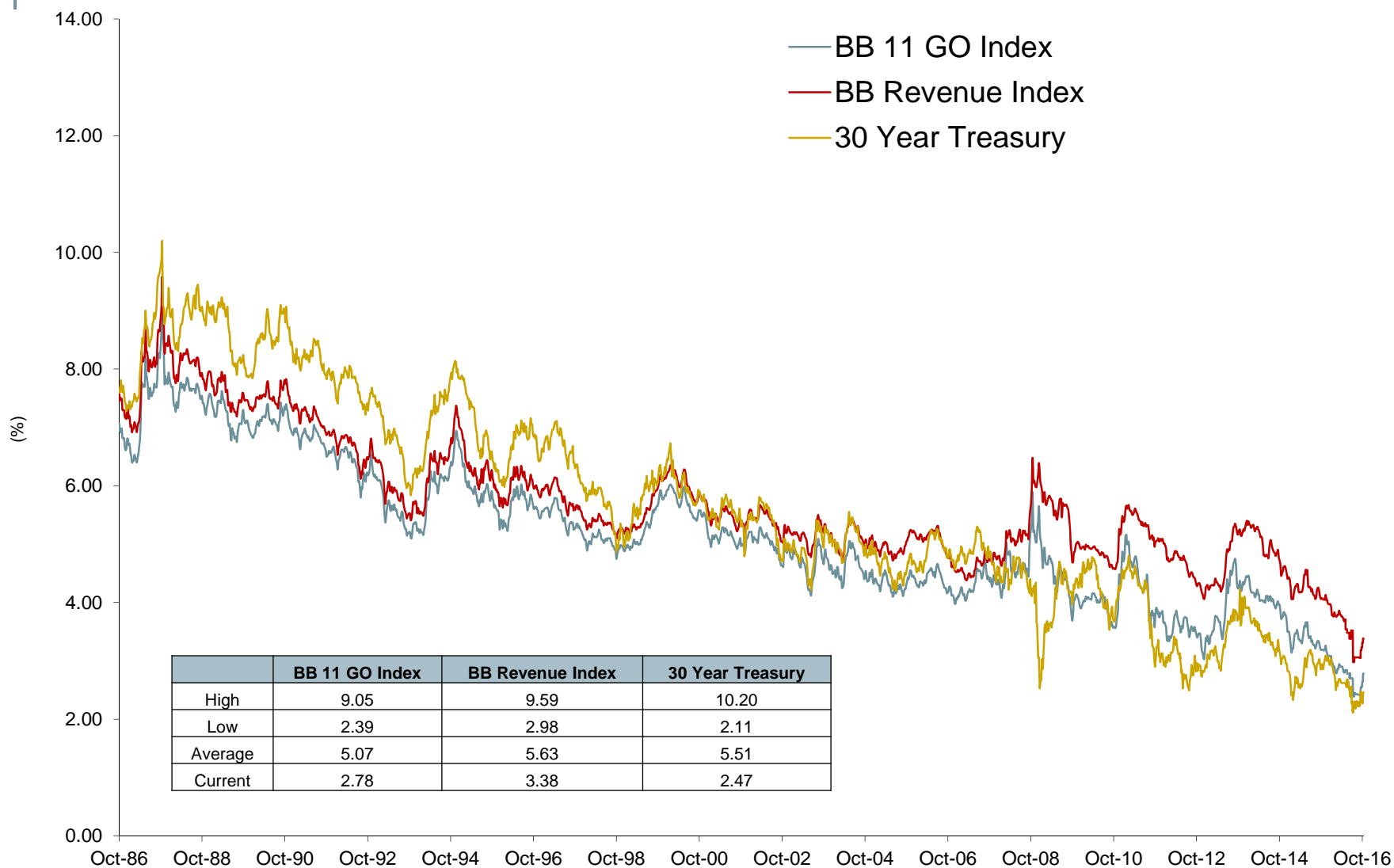
<p><i>\$39.185 Million</i></p> <p><b>City of Arlington, Texas</b></p>  <p>Water &amp; Wastewater System Revenue Bonds, Series 2016A</p> <p>Financial Advisor</p>	<p><i>\$37.420 Million</i></p> <p><b>Cameron County, Texas</b></p>  <p>Certificates of Obligations, Series 2016A-B</p> <p>Financial Advisor</p>	<p><i>\$122.415 Million</i></p> <p><b>Dallas County Community College District</b></p>  <p>GO Refunding Bonds, Series 2016</p> <p>Financial Advisor</p>	<p><i>\$31.235 Million</i></p> <p><b>Allen Community Development Corporation</b></p>  <p>Sales Tax Revenue Refunding Bonds, Taxable Series 2016</p> <p>Financial Advisor</p>	<p><i>\$52.625 Million</i></p> <p><b>Hidalgo County Drainage District # 1</b></p>  <p>Unlimited Tax Refunding Bonds, Series 2016</p> <p>Financial Advisor</p>
<p><i>\$280.43 Million</i></p> <p><b>Dallas Fort Worth International Airport</b></p>  <p>Joint Revenue Refunding &amp; Improvement Bonds, Series 2016 (AMT)</p> <p>Financial Advisor</p>	<p><i>\$3.485 Million</i></p> <p><b>South Padre Island Economic Development Corp</b></p>  <p>Sales Tax Revenue Refunding Bonds, Series 2016</p> <p>Financial Advisor</p>	<p><i>\$35.045 Million</i></p> <p><b>Hidalgo County, Texas</b></p>  <p>Certificates of Obligations, Series 2016</p> <p>Financial Advisor</p>	<p><i>\$482.53 Million</i></p> <p><b>Dallas Area Rapid Transit</b></p>  <p>Senior Lien Sales Tax Revenue Refunding Bonds, Series 2016A</p> <p>Financial Advisor</p>	<p><i>\$540.345 Million</i></p> <p><b>City of Dallas, Texas</b></p>  <p>Waterworks &amp; Sewer System Rev Ref Bonds, Series 2016A and Taxable Series 2016B</p> <p>Financial Advisor</p>
<p><i>\$987.790 Million</i></p> <p><b>North Texas Tollway Authority</b></p>  <p>System First Tier Revenue Refunding Bonds, Series 2016A</p> <p>Financial Advisor</p>	<p><i>\$67.645 Million</i></p> <p><b>Del Mar College District</b></p>  <p>Limited Tax Bonds, Series 2016</p> <p>Financial Advisor</p>	<p><i>\$27.485 Million</i></p> <p><b>City of Donna, Texas</b></p>  <p>Comb Tax &amp; Intl Toll Bridge Revenue Ref Bonds, Series 2016</p> <p>Financial Advisor</p>	<p><i>\$4.545 Million</i></p> <p><b>Brazosport College District</b></p>  <p>Combined Fee Revenue Refunding Bonds, Series 2016</p> <p>Financial Advisor</p>	<p><i>\$75.89 Million</i></p> <p><b>City of Fort Worth, Texas</b></p>  <p>Waterworks &amp; Sewer System Rev Ref Bonds, Series 2016</p> <p>Financial Advisor</p>



## Section 2

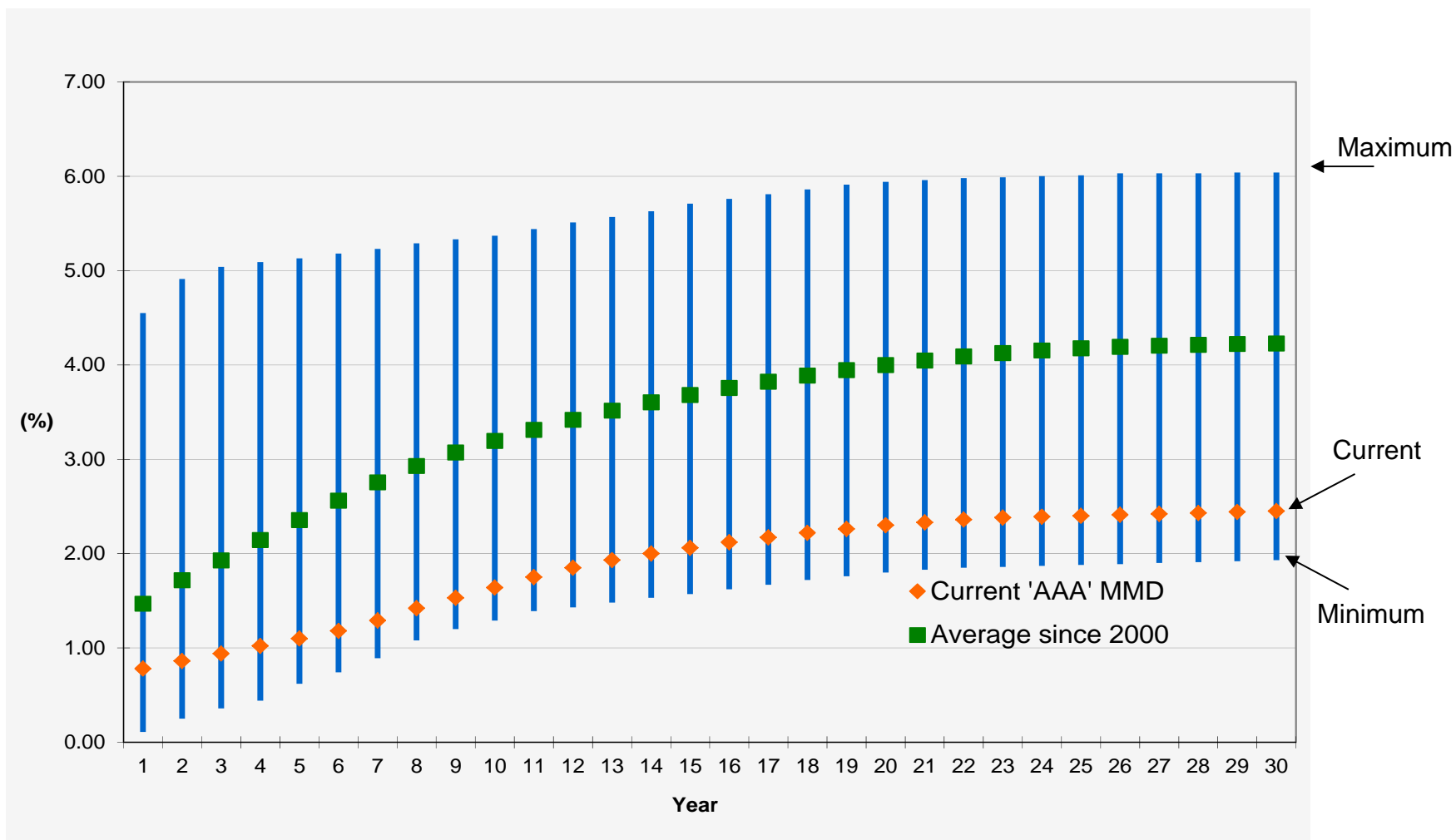
# Market Update

## Bond Buyer Indices vs. 30 Year Treasury: 30 Year History



Source: Bond Buyer

## 'AAA' MMD History Since 2000



Maturity	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
% of time above current MMD	53%	56%	63%	71%	83%	87%	89%	93%	95%	96%	96%	96%	96%	96%	96%	96%	96%	96%	96%	96%	96%	96%	96%	96%	97%	97%	97%	97%	97%	97%

As of 10/7/2016



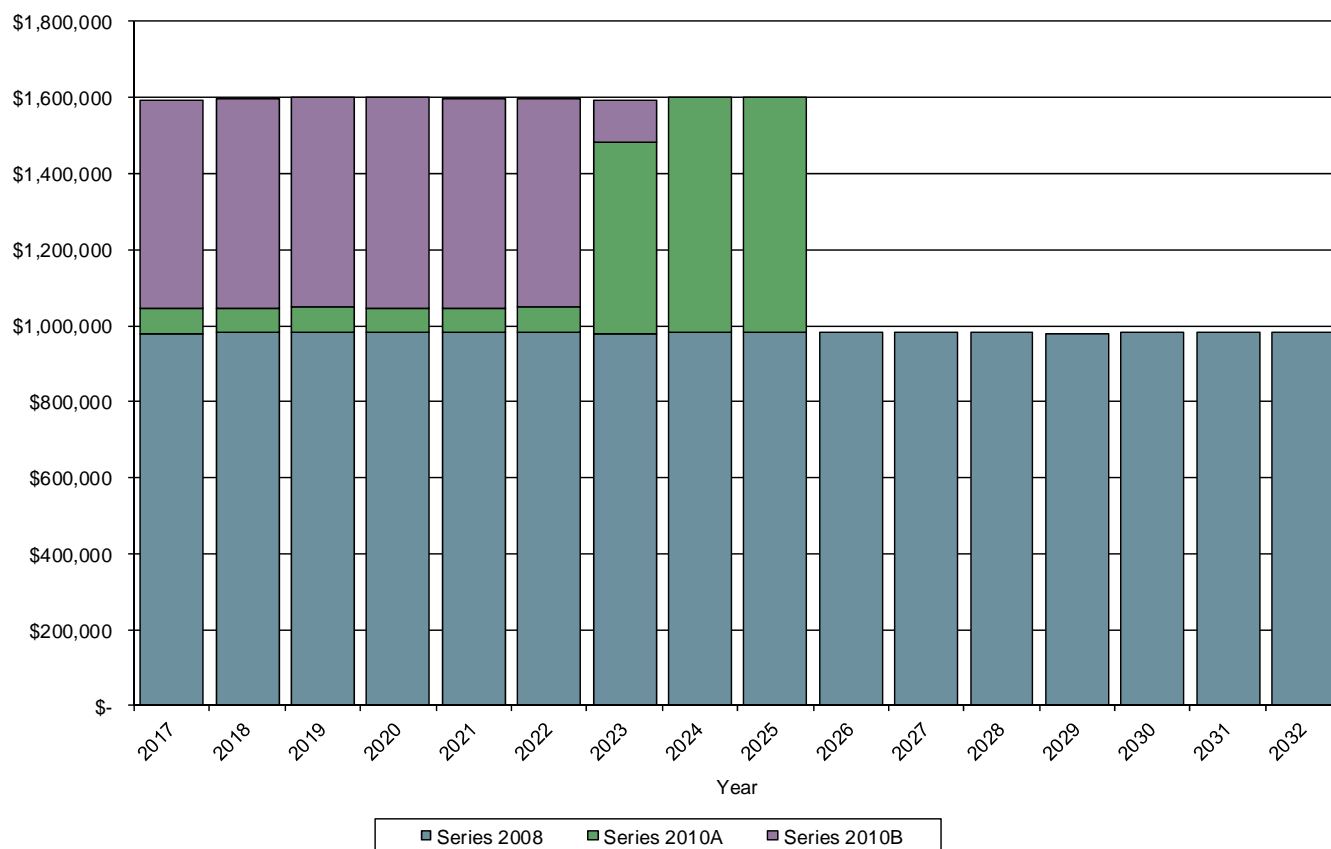
## Section 3

# Refunding/Defeasance Analysis



## AEDC Debt Profile

Series Name	Dated Date	Outstanding Par (\$ mm)	Next Call Date	Call Price
<b>TOTALS</b>		<b>\$ 15.695</b>		
Sales Tax Rev Bds Ser 2010A	05/15/10	1.605	09/01/19	100.0
Sales Tax Rev Bds Taxable Ser 2010B	05/15/10	2.900	09/01/19	100.0
Sales Tax Rev Bds Ser 2008	01/15/08	11.190	09/01/17	100.0



## Eligible Bonds to be Refunded

- Included in the refunding analysis herein is a refunding of the outstanding 2008 and 2010A Bonds.
- As shown to the right, current rates offer savings on a maturity-by-maturity basis versus the existing interest rates.
- This analysis assumes Aa2 market rates, 9/27/16.
- The analysis assumes that all outstanding AEDC debt is either refunded or defeased to allow us to rewrite covenants to be able to use a AA surety in the debt service reserve fund.

Eligible Bonds to be Refunded							
Series	Maturity Date	Existing Coupon		Par Amount	Call Date	Call Price	Current Rates Rate Difference
<b><i>Sales Tax Revenue Bonds, Series 2008</i></b>							
	9/1/2017	3.500%	Serial	\$510,000	-	-	0.910% 2.590%
	9/1/2018	3.500%	Serial	535,000	9/1/2017	100%	1.030% 2.470%
	9/1/2019	3.625%	Serial	555,000	9/1/2017	100%	1.140% 2.485%
	9/1/2020	3.750%	Serial	575,000	9/1/2017	100%	1.320% 2.430%
	9/1/2021	3.875%	Serial	595,000	9/1/2017	100%	1.450% 2.425%
	9/1/2022	4.000%	Serial	620,000	9/1/2017	100%	1.580% 2.420%
	9/1/2023	4.000%	Serial	640,000	9/1/2017	100%	1.730% 2.270%
	9/1/2024	4.125%	Serial	670,000	9/1/2017	100%	1.870% 2.255%
	9/1/2025	4.200%	Serial	695,000	9/1/2017	100%	1.990% 2.210%
	9/1/2026	4.250%	Serial	725,000	9/1/2017	100%	2.100% 2.150%
	9/1/2027	4.300%	Serial	755,000	9/1/2017	100%	2.290% 2.010%
	9/1/2028	4.375%	Serial	790,000	9/1/2017	100%	2.480% 1.895%
	9/1/2029	4.500%	Term1	820,000	9/1/2017	100%	2.620% 1.880%
	9/1/2030	4.500%	Term1	860,000	9/1/2017	100%	2.730% 1.770%
	9/1/2031	4.500%	Term1	900,000	9/1/2017	100%	2.790% 1.710%
	9/1/2032	4.500%	Term1	940,000	9/1/2017	100%	3.020% 1.480%
				<b>\$11,185,000</b>			
<b><i>Sales Tax Revenue Bonds, Series 2010A</i></b>							
	9/1/2023	4.000%	Serial	\$440,000	9/1/2019	100%	1.730% 2.270%
	9/1/2024	4.000%	Serial	570,000	9/1/2019	100%	1.870% 2.130%
	9/1/2025	4.000%	Serial	595,000	9/1/2019	100%	1.990% 2.010%
				<b>\$1,605,000</b>			
				<b>\$12,790,000</b>	<b>Total Bonds to be Refunded</b>		

Note: Closing after 6/2/17 would provide some additional option value but would also have additional market risk.

## Eligible Bonds to be “Defeased”

- Included in the analysis herein is a cash defeasance of the 2010B Taxable Bonds.
- In a cash defeasance, the AEDC can use excess cash to pay off debt early. The funds would be deposited into an escrow account and invested in allowable securities (SLGS) to retire bonds on their maturity or call date.
- About \$2.74 million would be required to defease the outstanding 2010B Taxable Bonds assuming the contribution of \$472,098 debt service reserve fund balance.

Eligible Bonds to be Defeased							
Series	Maturity Date	Existing Coupon		Par Amount	Call Date	Call Price	Current Taxable Rates Rate Difference
<b><i>Sales Tax Revenue Bonds, Taxable Series 2010B</i></b>							
	9/1/2017	4.000%	Serial	415,000	-	-	-
	9/1/2018	4.250%	Serial	435,000	-	-	-
	9/1/2019	4.550%	Serial	455,000	-	-	-
	9/1/2020	4.700%	Serial	475,000	9/1/2019	100%	-
	9/1/2021	4.800%	Serial	495,000	9/1/2019	100%	-
	9/1/2022	4.950%	Serial	520,000	9/1/2019	100%	-
	9/1/2023	5.100%	Serial	105,000	9/1/2019	100%	-
				<b><u>\$2,900,000</u></b>	<b><i>Total Bonds to be Refunded</i></b>		

# AEDC 2015 and 2014 Balance Sheets

**CITY OF ALLEN, TEXAS  
COMPARATIVE BALANCE SHEETS  
ALLEN ECONOMIC DEVELOPMENT CORPORATION  
SEPTEMBER 30, 2015 AND 2014**

**EXHIBIT F-1**

	<u>2015</u>	<u>2014</u>
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 5,976,111	\$ 5,581,166
Investments	10,025,083	6,891,910
Sales tax receivable	1,531,556	1,436,156
Accounts receivable	-	2,534
Accrued interest receivable	35,676	26,813
Prepaid items	6,298	6,298
<b>TOTAL ASSETS</b>	<u>\$ 17,574,724</u>	<u>\$ 13,944,877</u>
<b>LIABILITIES AND FUND BALANCES</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable	\$ 66,741	\$ 65,095
Accrued and other liabilities	17,335	13,878
<b>TOTAL LIABILITIES</b>	<u>84,076</u>	<u>78,973</u>
<b>FUND BALANCES</b>		
Nonspendable	6,298	6,298
Restricted		
Debt service	752,316	751,646
Unassigned	16,732,034	13,107,960
<b>TOTAL FUND BALANCES</b>	<u>17,490,648</u>	<u>13,865,904</u>
<b>TOTAL LIABILITIES AND FUND BALANCES</b>	<u>\$ 17,574,724</u>	<u>\$ 13,944,877</u>

# Savings Summary

Refunding					Defeasance	Total	
FYE 9/30	Prior Debt Service	Refunding Debt Service	Cash Flow Savings	Present Value Savings	Cash Flow Savings	Total Combined CF Savings	FYE 9/30
2017	\$ 896,449	\$ 836,826	\$ 21,419	\$ 20,583	\$ 547,970	\$ 569,389	2017
2018	1,046,130	1,020,075	26,055	25,477	551,370	577,425	2018
2019	1,047,405	1,022,675	24,730	23,645	552,883	577,613	2019
2020	1,047,286	1,019,675	27,611	25,747	552,180	579,791	2020
2021	1,045,724	1,020,075	25,649	23,415	549,855	575,504	2021
2022	1,047,668	1,019,475	28,193	25,131	551,095	579,288	2022
2023	1,482,868	1,022,875	459,993	395,199	110,355	570,348	2023
2024	1,599,668	1,020,075	579,593	486,489	-	579,593	2024
2025	1,599,230	1,021,275	577,955	474,010	-	577,955	2025
2026	981,240	1,021,275	(40,035)	(32,009)	-	(40,035)	2026
2027	980,428	1,020,075	(39,648)	(30,977)	-	(39,648)	2027
2028	982,963	1,022,675	(39,713)	(30,325)	-	(39,713)	2028
2029	978,400	1,018,875	(40,475)	(30,211)	-	(40,475)	2029
2030	981,500	1,018,875	(37,375)	(27,267)	-	(37,375)	2030
2031	982,800	1,022,475	(39,675)	(28,302)	-	(39,675)	2031
2032	982,300	1,019,475	(37,175)	(25,924)	-	(37,175)	2032
	\$ 17,682,057	\$ 16,146,751	\$ 1,497,102	\$ 1,294,683	\$3,415,708	\$ 4,912,809	

Savings Summary			
Net FV Savings from cash flow:	\$1,497,102	\$3,415,708	\$4,912,809
Net PV Savings from cash flow:	\$1,151,087 *	\$94,060 **	\$1,245,147
% Savings of Refunded Bonds:	9.000%	3.243%	
Avg. Annual Savings (FYE 2017-2032):	\$93,569 (FYE 2017-2023):	\$487,958	
Defeasance Contribution (including COI):		\$2,741,619	\$2,741,619
Contribution from Debt Service Reserve:	\$146,702	\$472,098	\$618,800
Negative Arbitrage:	\$204,178		

\*Less Prior Fund on Hand \$146,702.22. Plus rounding \$3,106.57.

\*\* Using a 1.0% discount rate.

## Refunding Summary

- Based on current rates, NPV and annual savings can be realized by refunding the EDC's Sales Tax Revenue Bonds, Series 2008 and Sales Tax Revenue Bonds, Series 2010A and cash defeasing the Sales Tax Revenue Bonds, Taxable Series 2010B using excess available cash.
- The cash defeasing would use approximately \$2.74 million of available AEDC funds.
- The refunding and defeasance assume that a total of \$618,800 of existing debt service reserve funds are contributed to the transactions and that a surety policy is used to fund the reserve requirement on the refunding.
- Assumes that the refunding and defeasance escrows are funded with SLGS.
- Assumes that today's rates are available at the time of pricing.
- Alternate debt structures could be used to smooth out the 2010A portion of the refunding (e.g., make the total resulting debt portfolio level, etc.).

	Refunding	Defeasance	Combined Total
Delivered:	1/4/2017	1/4/2017	
Par Amount of Refunding Bonds:	\$11,960,000	\$0	\$11,960,000
Par Amount of Refunded Bonds:	\$12,790,000	\$2,900,000	\$15,690,000
Net PV Savings:	\$1,151,087	\$94,060	\$1,245,147
% Savings of Refunded Bonds:	9.000%	3.243%	7.936%
Avg. Annual Savings (FYE 2017-2032):	\$93,569	\$213,482	\$307,051
Avg. Coupon of Refunded Bonds:	4.287%	4.755%	
True Interest Cost (TIC):	2.583%		
Negative Arbitrage:	\$204,178		
Rates as of:	9/27/2016	9/27/2016	



## Section 4

# New Money Analysis

## Pro Forma New Money Debt Service and Coverage

					TIC: 1.750% CM Aa2 Taxable Rates + 20 bps, 9/29/16 \$6,090,000 Delivery: 1/04/2017 Sales Tax Rev Bonds, Taxable Series 2017			Par Amount: \$ 6,090,000 Project Funds: 6,000,000 DSRF Contribution: - <sup>(2)</sup> Issuance Costs: 90,000 <sup>(3)</sup>			
FYE	[A] Projected Pledged		[B] Existing Debt	[C] Debt Service	[D]	[E]	[F]=[D]+[E]	[G]=[C]+[F]	[H]=[A]/[G]	[I]=[A]-[G]	
9/30	Revenues <sup>(1)</sup>	Growth	Service	After Ref & Def	Principal	Interest	Debt Service	Total Debt Service	Debt Service Coverage	Remaining Revenue	FYE 9/30
2017	\$ 9,000,000		\$ 1,592,125	\$ 1,017,561	\$ 1,515,000	\$ 58,317	\$ 1,573,317	\$ 2,590,878	3.47 X	\$ 6,409,122	2017
2018	9,000,000	0.0%	1,597,500	1,020,075	1,505,000	72,524	1,577,524	2,597,599	3.46 X	6,402,402	2018
2019	9,000,000	0.0%	1,600,288	1,022,675	1,525,000	51,755	1,576,755	2,599,430	3.46 X	6,400,571	2019
2020	9,000,000	0.0%	1,599,466	1,019,675	1,545,000	27,965	1,572,965	2,592,640	3.47 X	6,407,361	2020
2021	9,000,000	0.0%	1,595,579	1,020,075	-	-	-	1,020,075	8.82 X	7,979,925	2021
2022	9,000,000	0.0%	1,598,763	1,019,475	-	-	-	1,019,475	8.83 X	7,980,525	2022
2023	9,000,000	0.0%	1,593,223	1,022,875	-	-	-	1,022,875	8.80 X	7,977,125	2023
2024	9,000,000	0.0%	1,599,668	1,020,075	-	-	-	1,020,075	8.82 X	7,979,925	2024
2025	9,000,000	0.0%	1,599,230	1,021,275	-	-	-	1,021,275	8.81 X	7,978,725	2025
2026	9,000,000	0.0%	981,240	1,021,275	-	-	-	1,021,275	8.81 X	7,978,725	2026
2027	9,000,000	0.0%	980,428	1,020,075	-	-	-	1,020,075	8.82 X	7,979,925	2027
2028	9,000,000	0.0%	982,963	1,022,675	-	-	-	1,022,675	8.80 X	7,977,325	2028
2029	9,000,000	0.0%	978,400	1,018,875	-	-	-	1,018,875	8.83 X	7,981,125	2029
2030	9,000,000	0.0%	981,500	1,018,875	-	-	-	1,018,875	8.83 X	7,981,125	2030
2031	9,000,000	0.0%	982,800	1,022,475	-	-	-	1,022,475	8.80 X	7,977,525	2031
2032	9,000,000	0.0%	982,300	1,019,475	-	-	-	1,019,475	8.83 X	7,980,525	2032
Total			\$ 21,245,470	\$ 16,327,486	\$ 6,090,000	\$ 210,559	\$ 6,300,559	\$ 22,628,045			Total

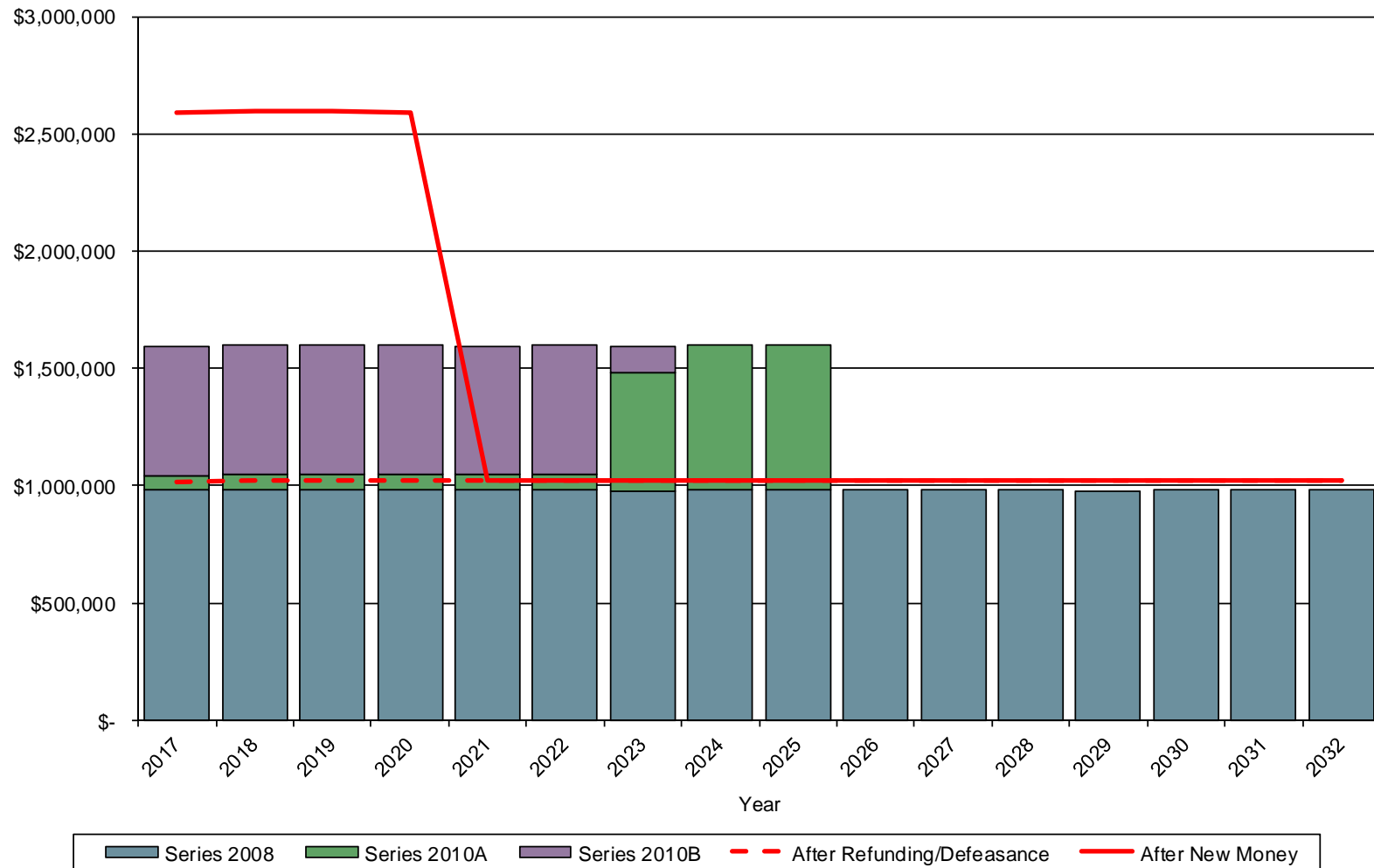
<sup>(1)</sup> Assumed revenue with no growth.

(2) Covenants re-written to not require a debt service reserve fund deposit for short term borrowings.

<sup>(3)</sup> Includes estimated underwriters' discount and other costs of issuance. All-in TIC = 2.30%.



## Pro Forma AEDC Debt Profile After All Transactions





## Section 5 Schedule

# Schedule

OCTOBER						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23/30	24/31	25	26	27	28	29

NOVEMBER						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

DECEMBER						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

JANUARY						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

<u>Date</u>	<u>Day</u>	<u>Event</u>	<u>Responsibility</u>
October 3, 2016	(Monday)	Present plan of finance to AEDC	AEDC, FA
October 12, 2016	(Wednesday)	Board meets to adopt parameters resolution to issue the Bonds and complete the defeasance	AEDC, BC
October 31, 2016	(Monday)	Send first draft of Preliminary Official Statement to working group	FA
October 31, 2016	(Monday)	Submit information to surety providers	FA
November 8, 2016	(Tuesday)	Receive comments on first draft of Preliminary Official Statement	AEDC, City, BC, FA
November 8, 2016	(Tuesday)	Present plan of finance to City Council	City, FA
November 8, 2016	(Tuesday)	Council meets to adopt parameters resolution to issue the Bonds and complete the defeasance	City, BC
November 9, 2016	(Wednesday)	Send second draft of Preliminary Official Statement to working group	FA
November 9, 2016	(Wednesday)	Submit information to bond rating agency	FA
November 16, 2016	(Wednesday)	Moody's Rating Call (if required)	AEDC, City, FA
November 16, 2016	(Wednesday)	Receive comments on second draft of Preliminary Official Statement	Working Group
November 22, 2016	(Tuesday)	TBD: Due diligence call (to be confirmed)	UC
November 22, 2016	(Tuesday)	Receive rating	Rating Agency
November 22, 2016	(Tuesday)	Receive surety bids.	Insurance Companies
<i>Subject to market conditions</i>			
November 28, 2016	(Monday)	Send Preliminary Official Statement to printer	FA
December 6, 2016	(Tuesday)	Price Bonds	UW, FA
December 6, 2016	(Tuesday)	Pricing Officer approves the sale of the Bonds	AEDC, City, BC, FA
December 7, 2016	(Wednesday)	Submit Bond documents to Attorney General	BC
December 27, 2016	(Tuesday)	Obtain Attorney General approval of Bonds	AG, BC
January 4, 2017	(Wednesday)	Deliver Bonds and fund project and escrow funds	UW, FA

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