



**AGENDA  
CITY OF ALLEN  
CITY COUNCIL REGULAR MEETING  
DECEMBER 13, 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.**

**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. Recognition of the Texas Amateur Athletic Federation (TAAF) Male and Female Athletes of the Year.

3. Presentation of a Proclamation by the Office of the Mayor:

- Presentation of a Proclamation to Ken Geest, Executive Director of the Allen Sports Association Proclaiming December 2016 as "Allen Sports Association Month."

4. Recognition of the Purchasing Division for Receipt of the 2016 Achievement of Excellence in Procurement Award.

**Consent Agenda.**

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

5. Approve Minutes of the November 22, 2016, Regular City Council Meeting.

6. Adopt a Resolution Authorizing the City Manager to Enter into an Interlocal Agreement Between the City of Allen and Town of Fairview Concerning the Improvements to the Intersection of Greenville Avenue and Stacy Road.



7. Adopt a Resolution Authorizing the City Manager Enter into an Interlocal Agreement Between the City of Allen and the Town of Fairview for the Purpose of Fairview Fire Department to Observe, Participate and Gain Experience in Allen's Fire Prevention Operations.
8. Authorize the City Manager to Amend a Professional Services Agreement with Scott, Douglass and McConnico, LLP for Legal Representation in Matters Involving a Transmission Line and Substation Project Proposed by Brazos Electric Cooperative, Inc. in Public Utility Commission of Texas Docket Number 46429.
9. Authorize the City Manager to Negotiate and Execute the Purchase of a Hosted Recreation Software System and Conversion Hardware for the Parks and Recreation Department with Active Network, LLC, for an Amount of \$71,165, with Five (5) Optional One-Year Renewals.
10. Authorize the City Manager to Purchase Ten (10) New Servers from CDW-G through the State of Texas Department of Information Resources (DIR) Purchasing Program for an Amount of \$83,024.71.
11. Authorize the City Manager to Execute a Contract with Trane U.S., Inc., for HVAC Preventative Maintenance and Service for the Allen Event Center Through the Texas Buyboard Local Government Purchasing Cooperative for an Amount of \$83,275 with Three (3) Optional One-Year Renewals.
12. Authorize the City Manager to Execute a One-Year Contract with AC Printing, LLC, Logan Graphics, and Marfield, Inc. for Printing Services for a Total Annual Amount of \$105,000 with Two (2) Optional One-Year Renewals.
13. Authorize the City Manager to Purchase Three (3) HD Cameras from Daktronics Through the Texas Buyboard Local Government Purchasing Cooperative for the Allen Event Center for an Amount of \$112,264.81.
14. Authorize the City Manager to Amend the Purchase of Law Enforcement Uniforms and Equipment with Red the Uniform Tailor to an Amount of \$110,000, and Award the Purchase of Fire Department Uniforms with Red the Uniform Tailor in the Amount of \$30,000 for a Total Amount of \$140,000.
15. Authorize the City Manager to Execute a Professional Services Agreement with Lee Engineering, Inc., for Design of the 2017 Median Improvement Project in the Amount of \$150,060.
16. Award Bid and Authorize the City Manager to Execute a One-Year Contract with Lattimore Materials Corporation for Concrete Mix in the Amount of \$200,000 with Two (2) Optional One-Year Renewals.
17. Award Bid and Authorize the City Manager to Execute a One-Year Contract with LawnStar Landscape and Blade Turners Maintenance for Mowing Services for Various City Properties for a Total Annual Amount of \$570,272 with Three (3) Optional One-Year Renewals.
18. Motion to Set Saturday, January 28, 2017, as the Date for the Strategic Planning Session with City Council.



### **Regular Agenda.**

19. Conduct a Public Hearing and Adopt an Ordinance to Amend the Development Regulations and Adopt a Concept Plan and Building Elevations for Lot 1, Block A, Allen Station Business Park #3; Generally Located North of Exchange Parkway and East of Andrews Parkway. [WatchGuard Video - Light Industrial]
20. 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.
21. 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.**

22. Calendar.
  - December 23 and 26 - City Hall Closed for Christmas Eve and Christmas Day Holidays
  - December 27 - Council Meeting Canceled
  - January 2, 2017 - City Hall Closed for New Year's Day Holiday
  - January 10, 2017 - Next Regular Council Meeting
23. 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.)

24. 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, December 9, 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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<b>AGENDA DATE:</b>	December 13, 2016
<b>SUBJECT:</b>	Recognition of the Texas Amateur Athletic Federation (TAAF) Male and Female Athletes of the Year.
<b>STAFF RESOURCE:</b>	Tim Dentler, Director of Parks and Recreation Joey Ramos, Athletic Program Supervisor, Parks and Recreation Anthony Garza, Recreation Specialist II (Athletics), Parks and Recreation

**BACKGROUND**

Texas Amateur Athletic Federation (TAAF) Local Athletes of the Year: Under this program each city or affiliate member may choose one female and one male athlete from participants in all athletic programs offered in the member's city. Candidates were chosen based on the following criteria:

- a) Participation in the particular sport
- b) Sportsmanship
- c) Attitude and effort
- d) Overall athletic participation and achievement/TAAF Awards

Cameron Corhen is the Texas Amateur Athletic Federation Male Athlete of the Year.  
Sarah Ahmadi is the Texas Amateur Athletic Federation Female Athlete of the Year.



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

December 13, 2016

**SUBJECT:**

Presentation of a Proclamation by the Office of the Mayor:

- Presentation of a Proclamation to Ken Geest, Executive Director of the Allen Sports Association Proclaiming December 2016 as *"Allen Sports Association Month."*

**STAFF RESOURCE:**

Shelley B. George, City Secretary



<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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<b>AGENDA DATE:</b>	December 13, 2016
<b>SUBJECT:</b>	Recognition of the Purchasing Division for Receipt of the 2016 Achievement of Excellence in Procurement Award.
<b>STAFF RESOURCE:</b>	Debra Morris, CPPO Purchasing Manager Mindy Gallegos, CPPB Contracts Administrator Rosanne Lemus, CPPB Buyer Ellen Ataie, Buyer

### **BACKGROUND**

The 2016 Achievement of Excellence in Procurement has been awarded to the City of Allen Purchasing Division by the National Purchasing Institute (NPI). This is the sixteenth consecutive year that the City has received this award.

The Achievement of Excellence in Procurement is an award designed to recognize organizational excellence in public procurement. The annual award is earned by those organizations, public or nonprofit, that demonstrate excellence by obtaining a high score based on standardized criteria. The criteria are designed to measure innovation, professionalism, productivity, and leadership attributes of the procurement organization.

A sampling of the standardized criteria in which applicants are rated include:

- Procurement
- Ethics
- Standards
- Electronic Procurement
- Internal Customer and Vendor Training
- Centralized Procurement Authority
- Comprehensive P-Card Program
- Use of Term/Requirements Contracts
- Certification/Professional Staff

The program was created in 1995 by the National Purchasing Institute's board of directors to:

- Recognize organizational excellence in public and nonprofit procurement,
- Encourage development of excellence, and
- Encourage continued excellence.

In addition to NPI, the Achievement of Excellence in Procurement award is sponsored by the National Institute of Governmental Purchasers (NIGP), the California Association of Public Purchasing Officers (CAPPO), the Florida Association of Public Purchasing Officers (FAPPO) and the Institute for Supply Management (ISM).







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

December 13, 2016

**SUBJECT:**

Approve Minutes of the November 22, 2016, Regular  
City Council Meeting.

**STAFF RESOURCE:**

Shelley B. George, City Secretary

**ATTACHMENTS:**

Minutes



## **ALLEN CITY COUNCIL**

### **REGULAR MEETING**

**NOVEMBER 22, 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 (absent)  
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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With a quorum of the Councilmembers present, the Workshop Session of the Allen City Council was called to order by Mayor Terrell at 6:30 p.m. on Tuesday, November 22, 2016, in the Council Conference Room of the Allen City Hall, 305 Century Parkway, Allen, Texas.

#### **1. Taping of the Christmas Message.**

The Workshop Session recessed at 6:31 p.m.

#### **Executive Session**

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In accordance with the Texas Government Code, the Allen City Council convened into Executive Session at 6:32 p.m. on Tuesday, November 22, 2016, in the Council Conference Room, 305 Century Parkway, Allen, Texas, in order to discuss matters pertaining to:

#### **4. Personnel Pursuant to Section 551.074 of the Texas Government Code — Discuss Appointment of Municipal Court Judge.**

The Executive Session adjourned at 6:46 p.m. on Tuesday, November 22, 2016.

#### **5. Reconvene and Consider Action on Items Discussed During Executive Session.**



**No action was taken on items discussed during the Executive Session.**

2. Committee Updates from City Council Liaisons.
3. Questions on Current Agenda.

With no further discussion, the Workshop Session of the Allen City Council was adjourned at 6:59 p.m. on Tuesday, November 22, 2016.

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

With a quorum of the Councilmembers present, the Regular Meeting of the Allen City Council was called to order by Mayor Terrell at 7:03 p.m. on Tuesday, November 22, 2016, in the Council Chambers of the Allen City Hall, 305 Century Parkway, Allen, Texas.

**Pledge of Allegiance**

Members of Boy Scout Troop 1299 posted the colors and lead the Pledge of Allegiance.

**Public Recognition**

Mayor Terrell moved to Agenda Item 2.

2. **Presentation of Proclamations by the Office of the Mayor.**
  - Presentation of a Proclamation to Allen Area Small Business Owners Proclaiming November 26, 2016, as "Small Business Saturday."

1. **Citizen's Comments.**

**Consent Agenda**

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

3. **Approve Minutes of the November 8, 2016, Regular City Council Meeting.**
4. **Adopt a Resolution Authorizing the City Manager to Execute the Release of a Temporary Street, Drainage, Water Line, and Sanitary Sewer Easement Located in The Village of Twin Creeks Phase Two.**

**RESOLUTION NO. 3438-11-16(R):** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AUTHORIZING RELEASE OF RELEASE OF TEMPORARY STREET, DRAINAGE, WATER LINE AND SANITARY SEWER EASEMENT; AND PROVIDING AN EFFECTIVE DATE.

5. **Authorize the City Manager to Approve Purchases from Acushnet Golf for Retail Sales at The Courses at Watters Creek in an Estimated Annual Amount of \$60,000.**



6. **Authorize the City Manager to Extend the First Amended and Restated Professional Services Agreement with Cynthia Porter Gore as Alternate Municipal Court Judge through January 31, 2016.**
7. **Motion to Cancel the December 27, 2016, City Council Meeting.**
8. **Receive the Capital Improvement Program (CIP) Status Reports.**
9. **Receive the Summary of Property Tax Collections as of October 2016.**

The motion carried.

**Regular Agenda**

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10. **Conduct a Public Hearing and Consider a Resolution Adopting the 2015-2016 Comprehensive Annual Performance Evaluation Report (CAPER) for the Community Development Block Grant (CDBG) Program.**

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

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

**RESOLUTION NO. 3439-11-16(R):** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE 2015-2016 COMPREHENSIVE ANNUAL PERFORMANCE EVALUATION REPORT (CAPER); AUTHORIZING ITS SUBMISSION TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD); REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

**MOTION:** Upon a motion made by Councilmember Herald and a second by Councilmember Obermeyer, the Council voted seven (7) for and none (0) opposed, to adopt Resolution No. 3439-11-16(R), as previously captioned, approving the 2015-2016 Comprehensive Annual Performance Evaluation Report for the Community Development Block Grant program and authorizing submission to the U.S. Department of Housing and Urban Development. The motion carried.

Councilmember Obermeyer filed an Affidavit of Conflict of Interest with the City Secretary for Agenda Item No. 11 and recused himself from the Council dais.

11. **Conduct a Public Hearing and Adopt an Ordinance Amending the Development Regulations of District E of Planned Development No. 108 and Adopt a Concept Plan and Building Elevations Relating to the Use and Development of a 9.661+/- Acre Portion of Land Generally Located South of Allen Drive and West of US Highway 75. [Pinstack - Entertainment Center]**

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

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



**ORDINANCE NO. 3440-11-16:** 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, ADOPTING A CONCEPT PLAN, BUILDING ELEVATIONS, AND A SIGN PLAN RELATING TO THE USE AND DEVELOPMENT OF A 9.661± ACRE PORTION OF TRACT 1-R-1, BLOCK F, BRAY CENTRAL ONE ADDITION, DESCRIBED IN EXHIBIT “A” HERETO, WHICH PROPERTY IS LOCATED IN AND SUBJECT TO THE REGULATIONS OF PLANNED DEVELOPMENT “PD” NO. 108 MIXED USE “MIX”; 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.

**MOTION:** Upon a motion made by Councilmember Sedlacek and a second by Councilmember Brooks, the Council voted six (6) for and none (0) opposed, to adopt Ordinance No. 3440-11-16, as previously captioned, amending the development regulations of District E of Planned Development No. 108 and adopt a Concept Plan and Building Elevations for Entertainment District E – Pinstack. The motion carried.

Councilmember Obermeyer returned to his seat at the Council dais.

**12. Conduct a Public Hearing and Adopt an Ordinance Approving Specific Use Permit No. 150 for a Minor Automotive Repair Use for Lot 12, Block A, Greenville Center Addition, Generally Located South of Stacy Road and West of Greenville Avenue. [Brakes Plus - Sales and Services]**

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

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

**ORDINANCE NO. 3441-11-16:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS AMENDING THE ALLEN LAND DEVELOPMENT CODE AND ZONING MAP, AS PREVIOUSLY AMENDED, BY GRANTING SPECIFIC USE PERMIT NO. 150 FOR A MINOR AUTOMOTIVE REPAIR USE FOR LOT 12, BLOCK A, GREENVILLE CENTER ADDITION (ALSO KNOWN AS 1711 N. GREENVILLE AVENUE) PRESENTLY ZONED SHOPPING CENTER “SC”; ADOPTING A SITE PLAN, LANDSCAPE PLAN, AND BUILDING ELEVATIONS; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

**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. 3441-11-16, as previously captioned, for Specific Use Permit No. 150 for a Minor Automotive Repair use for Brakes Plus. The motion carried.

**13. CONTINUED ITEM - 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] This Item is continued from the October 25, 2016, City Council Meeting.*

**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 remove agenda item 13 from the table. The motion carried.

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

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

Linda Robinson, 414 Ellis, Allen, Texas;  
Heath O'Brien, 536 Cedar Elm, Allen, Texas;  
Craig Kunkel, #9 Cedar Elm Circle, Allen, Texas;  
Sandra Duncan, 303 South Cedar, Allen, Texas; and,  
Julie Schornack, 1103 Shumard, Allen, Texas.

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

William Edwards, 6060 North Central #500, Dallas, Texas;  
Gary Nail, 6401 Steward Blvd., The Colony, Texas; and,  
Vinaya Reddy, 706 South Jupiter Road, Apt. 1507, Allen, Texas.

The following individuals spoke in opposition of the item:

Kenneth R. O'Brien, 536 Cedar Elm Lane, Allen, Texas;  
Sherilyn Kunkel, #9 Cedar Elm Circle, Allen, Texas; and,  
Mai El Moughayar, 410 Allenwood Drive, Allen, Texas.

The following individuals spoke in support of the item:

Jaipal Dasari, 327 S. Jupiter Road, Apt. 1121, Allen, Texas; and,  
Mahipal Dasari, 315 North Greenville, #414, Allen, Texas.

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

**ORDINANCE NO. 3442-11-16:** 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 6.245± ACRE TRACT OF LAND IN THE HENRY WETSEL SURVEY, ABSTRACT NO. 977, PRESENTLY ZONED AS "R-3" SINGLE-FAMILY RESIDENTIAL BY CHANGING THE ZONING TO CREATE "PD" PLANNED DEVELOPMENT NO. 123 WITH A BASE ZONING OF "TH" TOWNHOME RESIDENTIAL DISTRICT AND ADOPTING DEVELOPMENT REGULATIONS, A CONCEPT PLAN, OPEN SPACE PLAN, AND BUILDING ELEVATIONS; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

**MOTION:** Upon a motion made by Councilmember Herald and a second by Councilmember Kizer, the Council voted four (4) for and three (3) opposed, with Mayor Terrell, Mayor Pro Tem Caplinger, and Councilmember Brooks casting the negative votes, to adopt Ordinance No. 3442-11-16, as previously captioned, amending the zoning from Single-Family Residential R-



3 to Planned Development No. 123 for Townhome Residential District, and adopt a Concept Plan, Open Space Plan, Development Regulations, with Building Elevations and screening walls to be approved the Community Development Director; for a 6.245± acre tract of land, generally located south of Main Street and east of Greenville Avenue. [Ashwood Creek Place - Townhome Development]. The motion carried.

**Other Business**

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**14. Calendar.**

- November 24-25 - City Facilities Closed in Observance of Thanksgiving Holiday
- December 2 - Christmas Tree Lighting, Allen Civic Plaza, 6:00 p.m.
- December 3 - Rudolph Run, Downtown Allen, 8 a.m.
- December 4 - Annual Rotary Christmas Parade, Downtown Allen, 2 p.m.

**15. Items of Interest.**

- The Kiwanis Pancake Breakfast with Santa will be held on Saturday, December 3 at the First Baptist Church in Allen at 7 a.m.
- The Nativity Exhibit will be held on December 2 and 3 at the Church of Jesus Christ of Latter Day Saints on Exchange Parkway in Allen.
- The Allen Eagles Football playoff game is on Friday, November 25 at 4 p.m. in San Angelo.
- Council recognized Boy Scouts from Troop No. 1299 in attendance as requirement for earning their Communication, Citizenship in the Community, and Personal Management merit badges.

**Executive Session**

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The 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 9:15 p.m. on Tuesday, November 22, 2016. The motion carried.

These minutes approved on the 13<sup>th</sup> day of December 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:**

December 13, 2016

**SUBJECT:**

Adopt a Resolution Authorizing the City Manager to Enter into an Interlocal Agreement Between the City of Allen and Town of Fairview Concerning the Improvements to the Intersection of Greenville Avenue and Stacy Road.

**STAFF RESOURCE:**

Chris Flanigan, Director of Engineering

**PREVIOUS COUNCIL ACTION:**

On February 8, 2011, City Council adopted a resolution supporting the Texas Department of Transportation plan to reconstruct Stacy Road from Greenville Avenue to FM 1378 as a four lane divided arterial.

On February 22, 2011, City Council adopted a resolution approving the terms and conditions of the Local Project Advance Funding Agreement (LPAFA) with The State of Texas acting by and through The Texas Department of Transportation for funding Stacy Road Right of Way Acquisition.

On November 12, 2013, City Council adopted a resolution authorizing the City Manager to enter into an Interlocal Agreement between the City of Allen, Town of Fairview, and Collin County concerning the construction of Stacy Road from Greenville Avenue to FM 1378 and establish a project budget in the amount of \$1,100,605.

On January 13, 2015, City Council adopted a resolution approving the terms and conditions of a Local Project Advance Funding Agreement (LPAFA) with The State of Texas acting by and through The Texas Department of Transportation for funding Stacy Road Improvements.

**ACTION PROPOSED:**

Adopt a Resolution Authorizing the City Manager to Enter into an Interlocal Agreement Between the City of Allen and Town of Fairview Concerning the Improvements to the Intersection of Greenville Avenue and Stacy Road.



## **BACKGROUND**

Stacy Road is identified on the City of Allen Thoroughfare Plan as a 6-lane divided arterial with traffic volumes anticipated to exceed 50,000 vehicles per day at buildout. Today, traffic volumes along Stacy Road are already 20,000 vehicles per day east of Greenville Avenue. TxDOT has already begun construction for a widened (4-lane) section that will be completed in the summer of 2018.

Regrettably, the current construction project does not build the Stacy & Greenville intersection to the fullest extent - it does not add the maximum lanes needed for the foreseeable future. Therefore, while the project is under construction (and the scope of work able to be amended with the existing contractor), TxDOT has agreed to certain additional improvements to the intersection. Specifically, these improvements will be additional lanes of travel added to the intersection and associated modifications to the proposed permanent traffic signal (in accordance with plans to be prepared and approved by the City of Allen and Town of Fairview). TxDOT requires that the additional improvements are to be funded by the City of Allen and Town of Fairview. Consequently, the agreement proposes a split based on area of pavement added to the intersection relative to the corporate limits between the two communities, resulting as follows:

- City of Allen portion is 67% up to \$122,000
- Town of Fairview portion is 33% up to \$66,000

Design costs will be split 50/50 between the two communities, expected to be approximately \$25,500. Kimley-Horn and Associates (KHA) was selected by the Town of Fairview to perform this work, and they are committed to getting plans prepared quickly, so that the proposed intersection improvements can be integrated into the existing TxDOT project by change order. Allen will contract with KHA and TxDOT for the design and construction expenses, respectively (total project budget increase of \$213,500) and seek reimbursement from the Town of Fairview for their share of expenses, in accordance with the terms of the proposed agreement.

## **BUDGETARY IMPACT**

Funding for the Greenville Avenue and Stacy Road Improvements will be funded with impact fee funds available in the Capital Improvement Program.

## **STAFF RECOMMENDATION**

Staff recommends that the City Council adopt a resolution authorizing the City Manager to enter into an Interlocal Agreement between the City of Allen and Town of Fairview concerning the improvements to the intersection of Greenville Avenue and Stacy Road.

## **MOTION**

*I make a motion to adopt Resolution No. \_\_\_\_\_ authorizing the City Manager to enter into an Interlocal Agreement between the City of Allen and Town of Fairview concerning the improvements to the intersection of Greenville Avenue and Stacy Road.*

## **ATTACHMENTS:**



Resolution

Interlocal Cooperation Agreement

Diagram of Improvements

Location Map



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF ALLEN, TEXAS, AND THE TOWN OF FAIRVIEW, TEXAS, RELATING TO ENGINEERING AND CONSTRUCTION OF GREENVILLE AVENUE AND STACY ROAD INTERSECTION IMPROVEMENTS; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Allen, Texas, has been presented a proposed Interlocal Agreement by and between the City of Allen, Texas, and the Town of Fairview, Texas, a copy of which is attached hereto and incorporated herein by reference (herein called "Agreement") regarding improvements to the intersection of Greenville Avenue and Stacy Road; and,

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

**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 interests of the City of Allen and its citizens, be, and the same is hereby, in all things approved.

**SECTION 2:** The City Manager or designee, 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 establishment of sewer service to the Served Property.

**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 take effect immediately from and after its passage, and it is accordingly so resolved.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13<sup>th</sup> DAY OF DECEMBER 2016.**

**APPROVED:**

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**Stephen Terrell, MAYOR**

**ATTEST:**

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



**STATE OF TEXAS                   §                   INTERLOCAL COOPERATION AGREEMENT**  
**§                   FOR INTERSECTION IMPROVEMENTS TO GREENVILLE**  
**COUNTY OF COLLIN           §                   AVENUE AND STACY ROAD**

This Interlocal Cooperation Agreement (“Agreement”) is entered into by and between the City of Allen, Texas (the “City”) and the Town of Fairview, Texas (“Fairview”) (each a “Party” or collectively the “Parties”), acting by and through their authorized representatives.

**RECITALS:**

**WHEREAS**, the Texas Department of Transportation (“TxDOT”) has contracted to design and construct certain improvements to the intersection of Greenville Avenue and Stacy Road in the City and Fairview consisting of the widening of Stacy Road also known as FM 2786 from Greenville Avenue to Country Club Road also known as FM 1378 (the “TxDOT Project”); and

**WHEREAS**, TxDOT has agreed to cause certain additional improvements to Greenville Avenue and Stacy Road consisting of traffic signal modifications and the construction of additional lanes of travel for the intersection of Greenville Avenue and Stacy Road in accordance with plans approved by the Parties (the “Roadway Project”) for the benefit of the Parties pursuant to a change order to the TxDOT contract(s) for the TxDOT Project provided the Parties pay the costs of such Roadway Project; and

**WHEREAS**, the Parties desire set forth the terms and conditions for the Parties to share in the costs for design and construction the Roadway Project; and

**WHEREAS**, the Interlocal Cooperation Act, Chapter 791, of the Texas Government Code, authorizes units of local government to contract with one or more units of local government to perform governmental functions and services; and

**WHEREAS**, any payments that either Party is required to make hereunder, if any, shall be from current or other available revenue;

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**Article I**  
**Term**

The term of this Agreement shall commence on the Effective Date and shall continue until the Parties have satisfied their respective obligations under this Agreement.



## **Article II Purpose**

The purpose of this Agreement is to set forth the terms and conditions under which the Parties shall share in the costs of the Roadway Project.

## **Article III Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly requires otherwise:

“Change Order” shall mean that certain change order to be issued by TxDOT to its contractor(s) for the construction of the Roadway Project.

“City” shall mean the City of Allen, Texas, acting by and through its City Manager, or designee.

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

“Fairview” shall mean the Town of Fairview, Texas, acting by and through its Town Manager, or designee.

## **Article IV Roadway Project**

4.1 Roadway Project Design. City shall contract for the design of the Roadway Project on behalf of the Parties. The Parties agree to share equally in the costs of the design of the Roadway Project. Fairview shall pay its share of the costs of the design of the Roadway Project within fifteen (15) business days after receipt of an invoice from the City. City shall submit a written invoice to Fairview with a copy of the contract for the design of the Roadway Project promptly after City receipt of an invoice for the Roadway Project design contractor.

4.2 Roadway Project Construction. The Parties agree to share in the costs of construction of the Roadway Project as follows: (i) City shall be responsible for payment of the lesser of One Hundred Twenty-Two Thousand Dollars (\$122,000.00) or sixty-seven percent (67%) of the total cost of the Change Order; and (ii) Fairview shall be responsible for the payment of the lesser of Sixty-Six Thousand Dollars (\$66,000.00) or thirty-three percent (33%) of the total cost of the Change Order. City shall pay TxDOT for the costs of construction for the Roadway Project on behalf of both Parties. Fairview shall pay to City Fairview’s costs for the construction of the Roadway Project within s fifteen (15) business days after receipt of an invoice from the City, from time to time for such costs as the construction progresses or as otherwise may be required by TxDOT and its contractors. .



4.3 Change Order. The obligations of the Parties are subject to and conditioned on TxDOT issuing the Change Order.

4.4 Governmental Immunity. It is expressly understood and agreed that, in the execution of this Agreement, no Party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to or against claims arising in the exercise of governmental functions relating hereto or otherwise. By entering into this Agreement, the Parties do not create any obligations, expressed or implied, other than those set forth herein, and this Agreement shall not create any rights in any parties not signatory hereto. Each Party agrees to and accepts full responsibility for the acts, negligence and/or omissions of such Party's officers, agents and employees in the execution and performance of this Agreement.

## **Article V**

### **Miscellaneous**

5.1 Notice. All notices required or permitted by this Agreement shall be in writing and be deemed received when deposited in the United States mail, postage prepaid, addressed to the following or such other person or address as the Parties may designate in writing, or by hand delivery or facsimile transmission to the address set forth below:

If intended for the City, to:

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

With a copy to:

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

With a copy to:

Chris Flanigan  
Director of Engineering  
City of Allen, Texas  
305 Century Parkway  
Allen, Texas 75013



If intended for Fairview, to:

Julie Couch  
Town Manager  
Town of Fairview, Texas  
372 Town Place  
Fairview, Texas 75069

With a copy to:

Clark. H. McCoy, Jr.  
2591 Dallas Parkway  
Suite 205  
Frisco, Texas 75034

5.2 Amendment. This Agreement may be amended by the mutual written agreement of the Parties to this agreement.

5.3 Laws Governing. This Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the state district court of Collin County, Texas. The Parties agree to submit to the personal and subject matter of said court.

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

5.5 Entire Agreement. This Agreement embodies the complete understanding of the Parties hereto, superseding all oral or written previous and contemporaneous agreements between the Parties and relating to the matters in this Agreement.

5.6 Authorization. By executing this Agreement, each Party represents that it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement, and that this Agreement has been authorized by the governing body of the respective Party.

5.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitutes one and the same instrument.

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

***[Signature Page to Follow]***



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

**CITY OF ALLEN, TEXAS**

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

**APPROVED AS TO FORM:**

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

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

**TOWN OF FAIRVIEW, TEXAS**

By: \_\_\_\_\_  
Julie Couch, Town Manager

**ATTEST:**

By: \_\_\_\_\_  
Liz Cappon, Town Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Clark H. McCoy Jr., City Attorney





**TOWN OF FAIRVIEW**  
**FAIRVIEW PARKWAY**  
TXDOT STACY ROAD IMPROVEMENTS  
(CURRENTLY UNDER CONSTRUCTION)

**Kimley»Horn**  
FOR REVIEW ONLY  
Not for construction or permit purposes  
Engineer: L. NATIYAN ANTE  
P.E. No. 38898 Date: 3/02/2016



GRAPHIC SCALE IN FEET  
0 30 60 120

**Kimley»Horn**

2201 WEST ROYAL LANE, SUITE 275 IRVING, TX 75063  
PHONE: 972-420-6900  
WWW.KIMLEY-HORN.COM  
© 2016 KIMLEY-HORN AND ASSOCIATES, INC.  
TEXAS REGISTERED ENGINEERING FIRM #P-928



## LOCATION MAP

Interlocal Cooperation Agreement  
Greenville Avenue & Stacy Road Intersection  
(December 13, 2016)





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

**AGENDA DATE:**

December 13, 2016

**SUBJECT:**

Adopt a Resolution Authorizing the City Manager Enter into an Interlocal Agreement Between the City of Allen and the Town of Fairview for the Purpose of Fairview Fire Department to Observe, Participate and Gain Experience in Allen's Fire Prevention Operations.

**STAFF RESOURCE:**

Bill Hawley, Fire Chief  
David Cannady, Assistant Fire Chief/Fire Marshal

**ACTION PROPOSED:**

Adopt a Resolution Authorizing the City Manager Enter into an Interlocal Agreement Between the City of Allen and the Town of Fairview for the Purpose of Fairview Fire Department to Observe, Participate and Gain Experience in Allen's Fire Prevention Operations.

**BACKGROUND**

The Town of Fairview recently created a Fire Marshal position in their fire department. The person they appointed has limited experience in fire investigations. Therefore, the Fire Chief of the Town of Fairview requested that the newly appointed Fire Marshal shadow the City of Allen's arson investigators when called out on fire investigations in Allen. This training will also include all fire prevention activities to broaden the scope of experience for their employee.

Attached is a letter from Fire Chief Bell of Fairview and the Interlocal Agreement, which has been passed by the Town of Fairview's City Council.

**STAFF RECOMMENDATION**

Staff recommends that the City Council adopt a resolution authorizing the City Manager enter into an Interlocal Agreement between the City of Allen and the Town of Fairview for the purpose of Fairview Fire Department to observe, participate and gain experience in Allen's Fire Prevention operations.

**MOTION**

*I make a motion to adopt Resolution No. \_\_\_\_\_ authorizing the City Manager enter into an Interlocal Agreement between the City of Allen and the Town of Fairview for the purpose of Fairview Fire Department to observe, participate and gain experience in Allen's Fire Prevention operations.*



**ATTACHMENTS:**

Resolution

Interlocal Agreement

Letter from Fairview



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AUTHORIZING AN INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF ALLEN AND TOWN OF FAIRVIEW FOR OBSERVATION OF FIRE PRESENTION ACTIVITIES; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, upon full review and consideration of the Interlocal Cooperation Agreement (“Agreement”), and all matters related thereto, the City Council is of the opinion and finds that the terms and conditions thereof should be approved, and that the City Manager or designee should be authorized to execute the Agreement on behalf of the City of Allen, Texas.

**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, be, and the same is hereby, in all things approved.

**SECTION 2.** 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 the Agreement.

**SECTION 3.** 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 8<sup>TH</sup> DAY OF DECEMBER 2016.**

**APPROVED:**

---

**Stephen Terrell, MAYOR**

**ATTEST:**

---

**Shelley B. George, CITY SECRETARY**



STATE OF TEXAS

§

COUNTY OF COLLIN

§

§

**INTERLOCAL COOPERATION AGREEMENT  
FOR OBSERVATION OF FIRE PREVENTION  
ACTIVITIES**

This Interlocal Cooperation Agreement ("Agreement") is entered into by and between the City of Allen, Texas (the "City") and the Town of Fairview, Texas ("Fairview") (each a "Party" or collectively the "Parties"), acting by and through their authorized representatives.

**RECITALS**

**WHEREAS**, City's Fire Department employees are experienced in various fire prevention activities such as inspections, fire/arson investigation, public education, and plan review; and

**WHEREAS**, Fairview desires to send various members of the Fairview Fire Department to observe and/or participate in said fire prevention activities with the City's Fire Department; and

**WHEREAS**, the City desires to allow Fairview Fire Department personnel to observe and/or participate in said fire prevention activities with the City's Fire Department as set forth herein; and

**WHEREAS**, Fairview Fire Department personnel will benefit from learning standards procedures and common practices for fire prevention activities, and the City Fire Department will benefit from having the assistance of Fairview Fire Department personnel;

**WHEREAS**, the governing bodies of the City and Fairview have authorized this Interlocal Cooperation Agreement; and

**WHEREAS**, the Interlocal Cooperation Act, Chapter 791, of the Texas Government Code, authorizes units of local government to contract with one or more units of local government to perform governmental functions and services; and

**WHEREAS**, any payments that either Party is required to make hereunder, if any, shall be made from current, available revenue;

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**Article I  
Term**

The term of this Agreement shall commence on the Effective Date and shall continue for a period of one (1) year, unless sooner terminated as provided herein. Thereafter, the term of this Agreement shall automatically renew for successive terms of one (1) year each, unless either provides



written notice to terminate the Agreement at least thirty (30) days prior to the expiration of the then current term. Either Party may terminate this Agreement if the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof. Either Party may terminate this Agreement by providing thirty (30) days prior written notice to the other Party. City may suspend or immediately terminate the Agreement for any unsafe, dangerous or other unauthorized activity of any Fairview Fire Department employee.

## **Article II Purpose**

The purpose of this Agreement is to allow FFD personnel to gain experience in fire prevention activities such as inspections, fire/arson investigation, public education, and plan review by observing and/or participating in these activities with the AFD. AFD will integrate FFD personnel into these processes to the extent practical. In return, AFD will benefit from assistance of FFD personnel.

## **Article III Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly requires otherwise:

"AFD " shall mean the City of Allen Fire Department.

"City" shall mean the City of Allen, Texas, acting by and through its City Manager, or designee.

"Effective Date" shall mean the last date of execution of this Agreement by all of the Parties.

"Fairview" shall mean the Town of Fairview, Texas, acting by and through its Town Manager, or designee.

"FFD" shall mean the Town of Fairview Fire Department.

"FFD personnel" shall mean the employees, officers, and volunteers of the FFD.



## **Article IV Investigative Notification**

4.1 Notification. AFD agrees to notify FFD upon initiation of a relevant fire investigation. Notification is at the sole discretion of the on-call AFD Fire Department Arson Investigator conducting the investigation.

4.2 Coordination. Where notification of FFD is made, the on-call City Fire Department Arson Investigator shall be designated as the lead investigator and shall have authority over all personnel for the purpose of conducting fire and arson investigations within the City of Allen. The AFD lead investigator may assign FFD personnel tasks and/or responsibilities based upon investigation experience and training. The AFD Fire Department Arson Investigator will utilize the Incident Command System (ICS) at fire scenes for the purposes of safely coordinating investigations and fire scene examinations. FFD personnel shall be responsible to safely and legally complete assigned investigative functions.

## **Article V Fairview Fire Department Responsibilities**

FFD personnel shall be responsible for the following:

- (a) Reporting to the Incident Commander (IC) upon arrival;
- (b) Obtaining safety briefing and assignment;
- (c) Performing as instructed by his assigned officer;
- (d) Participating in the AFD accountability system;
- (e) Wearing PPE and SCBA as assigned (to be provided by Fairview); and
- (f) Conducting proper decontamination as assigned.

## **Article VI Investigation Protocol**

6.1 Fairview Fire Department personnel actions taken while participating in AFD fire investigations shall conform to the investigative methods and protocols of AFD at all times.

6.2 AFD recognizes that arson cases are frequently circumstantial in nature and often depend heavily on developing pertinent information from fact witnesses. AFD also recognizes that proper fire scene origin and cause examinations can be a complex process requiring the development of information from early witnesses to fire including victims, the reporting party, first arriving firefighters, and other persons. Such witness observations usually serve to corroborate the origin and cause examination results. It is critical that these persons be identified and interviewed.

6.3 Scene Processing. Excavation of collapsed debris not germane to the cause of the fire and reconstruction of remains of furniture or other items to their pre-fire position are important



phases of fire flow analysis. Each area of fire origin requires thorough excavation, reconstruction, analysis and documentation. Evidence shall be collected in accordance with best practices providing that all phases of recovery are documented and a chain of custody is constantly maintained. All evidence taken shall be properly secured using AFD resources.

## **Article VII**

### **Media and Confidentiality**

7.1 Communicating with the Media. FFD personnel shall not interact with any member of the media concerning fire inspections, fire/arson investigation, public education, plan reviews and planned developments conducted or proposed within the city limits of the City.

7.2 Confidentiality. To maintain investigative integrity and for the purpose of preventing the unauthorized disclosure of confidential information, law enforcement sensitive information, or the release of information regarding an active or closed investigation, FFD personnel shall keep and maintain any and all information obtained in relation to any and all active or closed investigations, inspections, or plan reviews involving planned developments conducted by the AFD in the strictest of confidence. FFD personnel shall not, at any time, publish, copy, communicate, or otherwise disclose to any other person or entity any information regarding an active or closed investigation, inspection, or plan review involving planned developments conducted by the AFD. Fairview shall notify the City within forty-eight (48) hours of the receipt of any requests made pursuant to the Texas Public Information Act relating to any active or closed investigations, inspections, or plan reviews involving planned developments conducting by the AFD.

7.3 Insurance. Fairview shall obtain and maintain in full force and effect, at its expense, the following policies of insurance and coverage:

- (a) Commercial General Liability Policy. 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 claims, demands or actions relating to FFD personnel observation and/or participation in AFD fire prevention activities pursuant to this Agreement with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit, and Two Million Dollars (\$2,000,000) aggregate. This policy shall be primary to any policy or policies carried by or available to the City, as relates to Fairview operations.
- (b) Workers' Compensation/Employer's Liability Insurance Policy. 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 \$1,000,000/\$1,000,000/\$1,000,000.
- (c) Automobile Liability Insurance Policy. Automobile liability insurance policy covering all operations of Fairview pursuant to this Agreement 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.

- (d) Excess Coverage. The above insurance limits can be provided by primary policies reflecting required limits or through a combination of primary and excess liability insurance policies. The general liability and automobile liability insurance shall be primary and any excess or umbrella coverage shall follow form to the primary coverage.
- (e) Waiver of Subrogation Rights. All such policies of insurance shall waive the insurer's right of subrogation against the City. The Commercial General Liability, Worker's Compensation, and Auto insurance required pursuant to this Agreement shall provide for waivers of all rights of subrogation against the City.
- (f) Additional Insured Status. With the exception of Worker's Compensation Insurance/Employer's Liability Insurance, all insurance required pursuant to this Agreement shall be endorsed to name City as additional insureds using Additional Insured Endorsements for the City under Texas law, including products/completed operations.
- (g) 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 FFD personnel observation and/or participation in AFD fire prevention activities pursuant to this Agreement and annually thereafter until the expiration or termination of this Agreement. All required policies shall be endorsed to provide the City with thirty (30) days' written notice of cancellation, waiver of subrogation, City as additional insureds, and shall be primary with City insurance coverage being non-contributory. At the renewal of the required insurance policies, Fairview shall cause a Certificate of Insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to City. In addition, Fairview shall, within ten (10) business days after written request, provide City with Certificates of Insurance and policy endorsements for the insurance required herein. The delivery of the Certificates of Insurance and the policy endorsements to the City is a condition precedent to FFD personnel observing and/or participating in AFD fire prevention activities pursuant to this Agreement. The failure to provide valid Certificates of Insurance and policy endorsements shall be deemed a default and/or breach of this Agreement. All policies and endorsement shall remain in effect until the expiration or termination of this Agreement. All policies must be written on a primary, non-contributory basis with any other insurance coverage and/or self-insurance maintained by City as relates to Fairview operations.
- (h) Carriers. All policies of insurance required to be obtained by Fairview pursuant to this Agreement shall be maintained with insurance carriers that are reasonably 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 - VII or better" by AM Best or other equivalent rating service.

7.4 Governmental Immunity. It is expressly understood and agreed that, in the execution of



this Agreement, no Party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to or against claims rising in the exercise of governmental functions relating hereto or otherwise. By entering into this Agreement, the Parties do not create any obligations, expressed or implied, other than those set forth herein, and this Agreement shall not create any rights in any parties not signatory hereto. Each Party agrees to and accepts full responsibility for the acts, negligence and/or omissions of such Party's officers, agents and employees in the execution and performance of this Agreement, in accordance with applicable law in absence of this Agreement.

## **Article VIII Miscellaneous**

8.1 Notice. All notices required or permitted by this Agreement shall be in writing and be deemed received when deposited in the United States mail, postage prepaid, addressed to the following or such other person or address as the Parties may designate in writing, or by hand delivery or facsimile transmission to the address set forth below:

If intended for the City, to:

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

With a copy to:

Peter G. Smith  
City Attorney  
Nichols, Jackson, Dillard,  
Hager & Smith, L.L.P.  
500 N. Akard, Suite 1800  
Dallas, Texas 75201

If intended for Fairview, to:

Julie Couch  
Town Manager  
Town of Fairview, Texas  
372 Town Place  
Fairview, Texas 75069

With a copy to:

Chief Jeff Bell  
Town of Fairview, Texas  
372 Town Place  
Fairview, Texas 75069



8.2 Amendment. This Agreement may be amended by the mutual written agreement of the Parties to this agreement.

8.3 Laws Governing. This Agreement shall be governed by the laws of the State of Texas; 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 of said court.

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

8.5 Entire Agreement. This Agreement embodies the complete understanding of the Parties hereto, superseding all oral or written previous and contemporaneous agreements between the Parties and relating to the matters in this Agreement.

8.6 Authorization. By executing this Agreement, each Party represents that it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement, and that this Agreement has been authorized by the governing body of the respective Party.

8.7 Employment of FFD and AFD Personnel. FFD personnel observing and/or participating in AFD fire prevention activities pursuant to this Agreement are not employees of the City and shall be considered volunteers or employees (as applicable) of FFD for pay, compensation, workers compensation, or any other benefits. Nothing in this Agreement shall be construed as creating any kind of employment relationship between the Town of Fairview and any AFD personnel.

8.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitutes one and the same instrument.

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

*[Signature Page to Follow]*



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

**CITY OF ALLEN, TEXAS**

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

**APPROVED AS TO FORM:**

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

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

**TOWN OF FAIRVIEW, TEXAS**

By:  \_\_\_\_\_  
Julie Couch, Town Manager

**ATTEST:**

By:  \_\_\_\_\_  
Elizabeth Cappon, Town Secretary

**APPROVED AS TO FORM:**

By:  \_\_\_\_\_  
Clark McCoy, Town Attorney





372 Town Place • Fairview, TX 75069 • Town Hall 972-562-0522

September 9, 2015

RE: Travis Green, Fire Investigator Training

Chief Hawley,

Travis Green will be coming online as my new Fire Marshal in January of 2017. He has been through Fire Inspector training as well as Fire Investigator Training. The summer of 2017 I plan on sending him to the Police academy at Collin College to further his abilities within Fairview. Can you please allow Travis to respond with your Fire Marshal's office to help him gain experience? We are planning on mirroring your program and that would help us learn the steps from start to finish as we add this new complete program to the Town of Fairview. Fairview does not get enough fires to adequately prepare him for his new role. Travis will be getting paid by Fairview and will therefore be covered under the town's Workers Compensation plan.

Sincerely,

Jeff Bell  
Fire Chief  
Fairview Fire Rescue



## **CITY COUNCIL AGENDA COMMUNICATION**

**AGENDA DATE:**

December 13, 2016

**SUBJECT:**

Authorize the City Manager to Amend a Professional Services Agreement with Scott, Douglass and McConnico, LLP for Legal Representation in Matters Involving a Transmission Line and Substation Project Proposed by Brazos Electric Cooperative, Inc. in Public Utility Commission of Texas Docket Number 46429.

**STAFF RESOURCE:**

Eric Ellwanger, Assistant City Manager

**PREVIOUS COUNCIL ACTION:**

On July 26, 2016, City Council adopted a Resolution opposing the proposed Kittyhawk Transmission Line and Substation Project by Brazos Electric Power Cooperative, Inc. regarding its proposed routes in Allen.

**ACTION PROPOSED:**

Authorize the City Manager to Amend a Professional Services Agreement with Scott, Douglass and McConnico, LLP for Legal Representation in Matters Involving a Transmission Line and Substation Project Proposed by Brazos Electric Cooperative, Inc. in Public Utility Commission of Texas Docket Number 46429.

### **BACKGROUND**

The City of Allen was approached by CoServ Electric in late February 2016 to inform City officials of their intent, through their generation and transmission provider Brazos Electric Cooperative (Brazos), to pursue the development of a new electric substation and transmission lines in the general vicinity of Alma and SH121. The City quickly sought legal representation and turned to the attorney who had successfully represented the interests of Allen in a similar case involving Brazos around 2007.

In March 2016, the City of Allen engaged the services of Catherine J. Webking with Scott, Douglass & McConnico, LLP (SD&M) for legal representation in matters involving the transmission line and substation (Kittyhawk Project) proposed by Brazos. SD&M agreed to bill on a monthly basis all related hourly fees and expenses and included a stipulation that SD&M would advise the City when those fees reached a cap of \$40,000.

After extensive negotiation with CoServ and Brazos, consultation with City staff, filing of legal documents and motions at the Public Utility Commission of Texas (PUC), etc., SD&M has reached the \$40,000 cap stipulated in the original agreement. City staff is confident that SD&M is providing the professional and technical expertise necessary to navigate the PUC process and ultimately serve the best interests of the citizens of Allen.



This agenda item gives the City Manager the authority to extend the current agreement with SD&M beyond the \$40,000 cap so that the City can continue to utilize the professional services of Ms. Webking as the PUC process evolves.

The agreement establishes Ms. Webking's hourly rate of \$575. From time to time, other SD&M Associates, Paralegals, and Case Clerks may assist in the representation. Hourly rates for these individuals vary from \$70 to \$395. Every effort is made to utilize lower hourly rate clerks when appropriate and necessary.

Brazos has officially filed their application to proceed with the Kittyhawk Project at the PUC. The process from this point forward typically takes around twelve months, but could be longer or shorter depending on the level of participation from intervening parties and the possibility of a negotiated settlement at some point during the process. It is anticipated that SD&M will ultimately provide approximately 350 hours of professional service related to PUC Docket No. 46429. If approved, extension of this agreement will allow Ms. Webking to continue to represent the City of Allen and utilize her many years of experience in utility related matters before the PUC to benefit the citizens of Allen.

### **BUDGETARY IMPACT**

Funds are budgeted for expenditures related to the use of outside counsel when necessary and are available in the Fiscal Year 2017 budget.

### **STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to amend a Professional Services Agreement with Scott, Douglass and McConnico, LLP, for legal representation in matters involving a transmission line and substation project proposed by Brazos Electric Cooperative, Inc.

### **MOTION**

*I make a motion to authorize the City Manager to amend a Professional Services Agreement with Scott, Douglass and McConnico, LLP, for legal representation in matters involving a transmission line and substation project proposed by Brazos Electric Cooperative, Inc.*

### **ATTACHMENTS:**

Letter of Engagement





March 28, 2016

Catherine J. Webking  
DID Number: 512.495.6337  
Email: cwebking@scottdoug.com

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

Re: Engagement of Scott, Douglass & McConnico, LLP

Dear Mr. Vargas;

Thank you for asking Scott, Douglass & McConnico, L.L.P. ("SD&M") to represent the City of Allen (the "Client"). This letter sets forth the terms of our representation.

#### PURPOSE AND SCOPE OF REPRESENTATION

SD&M agrees to advise the Client in matters involving a transmission line proposed by Brazos Electric Cooperative, Inc. Any expansion of the scope of this agreement will be subject to a supplemental engagement agreement.

#### COOPERATION

To enable us to effectively represent the Client, it is essential that the Client disclose fully and accurately all facts and keep us apprised of all developments relating to the matters for which SD&M has been retained. The Client agrees to cooperate fully with us.

#### LEGAL FEES AND EXPENSES

The Client agrees to pay SD&M its fees at the following hourly rates. My hourly rate for this representation will be discounted to \$575. From time to time, other partners of mine and associates may also assist in the representation of your interests. The hourly rates of my partners range from \$370 to \$775. The hourly rates for associates range from \$260 to \$395.

1302752

Scott Douglass & McConnico LLP | Attorneys at Law

303 Colorado Street, Suite 2400, Austin, TX 78701 | p : 512.495.6300 | f : 512.495.6399 | [www.scottdoug.com](http://www.scottdoug.com)



Paralegals and case clerks are billed at \$160 and \$70 per hour, respectively. These rates are reviewed and may be adjusted annually in January.

Our fees are based on the time spent by the attorneys and staff who work on the Matter. We will advise you if our fees reach a cap of \$40,000. If our fees approach that level we will bill additional time to this Matter without your express consent. We will charge for all time spent in representing the interests of the Client, including, by way of illustration, telephone and office conferences with you and your representatives, opposing counsel, and others; conferences among our attorneys and paralegal personnel; factual investigation; legal research; responding to the Client's requests for us to provide information to the Client or its auditors; drafting letters and other documents; and travel.

In addition to SD&M's hourly fees, SD&M will bill the Client, and the Client agrees to pay, expenses SD&M incurs in its representation of the Client. These expenses include, but are not limited to: filing fees, copy costs, expert witness and consulting expert fees and expenses, commercial computer data base charges, legal transcription charges, charges for demonstrative aids, and travel expenses.

#### CLIENT DOCUMENTS

We will maintain all documents the Client furnishes us in our client files. At the conclusion of the Matter, it is the Client's obligation to advise us as to which, if any, of the documents in our files you wish us to return to you. We may keep copies for our records. We will retain any remaining documents in our files for a period of time and ultimately destroy those documents in accordance with our record retention program. Under our present policy, unless otherwise directed by you, these records will be destroyed two years after the conclusion of SD&M's representation of the Client in each given matter.

#### APPLICABLE LAW

This Agreement shall be construed by the laws of the State of Texas. All obligations of the parties are performable in Travis County, Texas. If any legal action occurs between the signatories of this Agreement concerning SD&M's representation of the Clients in this Matter, it is agreed by all parties that venue will be in State District Court of Travis County, Texas.

#### ENTIRE AGREEMENT

This Agreement constitutes the only agreement of the parties.

#### BILLING

SD&M will bill its fees and expenses on a monthly basis until this representation is concluded. The Client agrees that such fees and expenses shall be paid within thirty days from



the date of the invoice. Unless otherwise agreed in a writing executed by each of the parties, SD&M will bill the Client directly for all fees and expenses relating to SD&M's representation of the Client.

We will not be offended if you have questions about our bills. We want you to address such questions to us as soon as they occur to you. It is our belief that problems can be resolved by a frank and good faith discussion. We know litigation and other legal services are expensive. Our goal is to achieve a good result in a cost effective way.

#### TERMINATION OF AGREEMENT

This agreement may be terminated by SD&M or by the Client by written notice. In the event of such termination, the Client agrees to promptly pay SD&M for all services, including fees, charges, and expenses incurred. In addition to terminating this agreement, if SD&M's fees and expenses are not timely paid, SD&M specifically reserves the right to withdraw from representation of the Client, and the Client agrees to take all necessary steps to facilitate SD&M's withdrawal.

The Client agrees that SD&M has the right to re-evaluate any matter for which SD&M has been retained as facts are discovered. SD&M has discretion to determine whether to continue its representation of the Client in a given matter and may withdraw from representation of the Client if such withdrawal is appropriate under the guidelines set by the Texas Rules of Professional Conduct.

#### RESOLUTION

SD&M prides itself on maintaining good working relationships with our clients. If you become dissatisfied with any aspect of our relationship, we encourage you to bring that to our attention immediately.

#### CONFIDENTIALITY

The Client and SD&M agree to keep the terms of this letter agreement confidential and will not disclose this letter agreement and its terms to any third party except as required by applicable law. Further, the Client and SD&M agree to take all necessary steps to preserve any privileges that are applicable to this letter agreement.

#### TEXAS LAWYER'S CREED

The Supreme Court of Texas has adopted a Lawyer's Creed, which sets forth standards for attorney professionalism. A copy can be found at [www.txethics.org/reference\\_creed.asp](http://www.txethics.org/reference_creed.asp).



City of Allen  
March 28, 2016  
Page 4

By signing this letter, the Client agrees to maintain the confidentiality of information and legal advice received in the course of our representation of the Client.

If the foregoing meets with your approval, and the Client consents to our representation under the terms outlined in this letter, please date and sign a copy of this letter. Please keep a copy of this agreement for your files. If you have any questions regarding any of these arrangements, please call us.

We are honored to represent you. We look forward to working with you.

Sincerely,



Catherine J. Webking

APPROVED BY:

CITY OF ALLEN

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

Date: \_\_\_\_\_



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

**AGENDA DATE:**

December 13, 2016

**SUBJECT:**

Authorize the City Manager to Negotiate and Execute the Purchase of a Hosted Recreation Software System and Conversion Hardware for the Parks and Recreation Department with Active Network, LLC, for an Amount of \$71,165, with Five (5) Optional One-Year Renewals.

**STAFF RESOURCE:**

Tim Dentler, Director of Parks and Recreation  
Carrie Cessna, Assistant Director of Parks and Recreation  
Debra Morris, Purchasing Manager

**ACTION PROPOSED:**

Authorize the City Manager to Negotiate and Execute the Purchase of a Hosted Recreation Software System and Conversion Hardware for the Parks and Recreation Department with Active Network, LLC, for an Amount of \$71,165, with Five (5) Optional One-Year Renewals.

**BACKGROUND**

Allen Parks and Recreation Department has utilized Class recreation software (a product of ACTIVE Net) since the late 1990's. Class brought automation to Parks and Recreation organizations in the 1980's to help community organizations manage recreation programs, enrollment, point of sale and membership more efficiently. While Class has been a leading recreation software product for decades, technology and other user needs have significantly evolved. The Class software product will no longer be supported after 2017 and will become obsolete.

ACTIVE Net has combined the best of earlier Class tools with new technology and features and will be moving to a fully hosted web based Software-as-a-Service (SaaS) solution. It is a fully hosted, web based software solution providing customers and staff 24/7 access, anytime, anywhere in real time. There are no software license fees, annual maintenance costs or online user costs to budget or incur, as all Active Net costs are built into the pricing model. Initial costs are for implementation services, necessary conversion hardware and training. Also noteworthy, this product is compliant with the 2016 PCI/EMV requirements.

As a Class customer, the City of Allen is receiving a \$15,000 "group buy" discount by executing this agreement by December 2016. The "group buy" incentive is a pricing reduction offered to Texas municipalities who intend to convert to the ACTIVE Net product and execute agreements by December 2016.

The City will be utilizing the cooperative purchasing agreement with the City of Arlington, which allows us to utilize the pricing offered in Arlington's contract with ACTIVE Net. a DRAFT agreement is attached for additional information.



## **BUDGETARY IMPACT**

Project funds are budgeted and available in FY2017 General Fund Budget for the Parks and Recreation Department.

## **STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to negotiate and execute the purchase of a hosted recreation software system and conversion hardware for the Parks and Recreation Department with Active Network, LLC, for an amount of \$71,165, with five (5) optional one-year renewals.

## **MOTION**

*I make a motion to authorize the City Manager to negotiate and execute the purchase of a hosted recreation software system and conversion hardware for the Parks and Recreation Department with Active Network, LLC, for an amount of \$71,165, with five (5) optional one-year renewals.*

## **ATTACHMENTS:**

DRAFT Agreement  
Interlocal Agreement with City of Arlington



**STATE OF TEXAS           §  
   §**

**AGREEMENT FOR HOSTED RECREATION  
MANAGEMENT SOFTWARE SYSTEM AND  
CONVERSION HARDWARE**

**COUNTY OF COLLIN       §**

This agreement ("Agreement") is made by and between the City of Allen, Texas ("City") and Active Network, LLC ("Contractor") acting by and through their authorized representatives.

**Recitals:**

**WHEREAS**, the City Council has duly passed and approved a Resolution 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 the City of Arlington, Texas, providing for a Cooperative Purchasing Program for goods and services; as executed on December 22, 2014, copy of which is attached hereto and incorporated herein as Exhibit "E," and incorporated herein by reference (herein called "Interlocal Agreement"); and,

**WHEREAS**, Company entered a bid response to the City of Arlington, Texas, RFP No. 15-0109 and was awarded a contract for the Hosted Recreation Management System; and

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

**Article I  
Scope of Services**

**Contractor shall provide all labor, supervision, materials and equipment necessary to provide a Hosted Recreation Management Software System and Conversion Hardware. These services shall be provided in accordance with the Contractor's Statement of Work, a copy of which is attached hereto and incorporated herein for all purposes as Exhibit "A" and with City of Arlington Contract #01350005 on file with the Procurement and Project Management Department of the City of Allen. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:**

- (a)     The Terms and Conditions as agreed to by the City of Allen and Contractor (Exhibit "A");**
- (b)     The Contractor's Statement of Work (Exhibit "B");**
- (c)     The Contractor's Quote (Exhibit "C");**
- (d)     City of Arlington Contract #01350005 on file with the Procurement and Project Management Department of the City of Allen;**



- (e) Insurance Requirements (Exhibit “D”); and**
- (f) Interlocal Agreement by and between the City of Allen, Texas, and the City of Arlington, Texas, providing for a Cooperative Purchasing Program for goods and services; as executed on December 22, 2014 (Exhibit “E”).**

**These documents make up the Contract Documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract Documents, the inconsistency or conflict shall be resolved by giving precedence first to this written agreement then to the Contract Documents in the order in which they are listed above. These documents shall be referred to collectively as the “Contract Documents.”**

## **Article II**

### **Compensation and Method of Payment**

Charges. City shall compensate Contractor for the Services, including all implementation, installation, maintenance, support, equipment/hardware and software as provided in Exhibit “B.” The total compensation to Contractor shall not exceed \$71,165 during the initial term or any renewal term under this Agreement. Contractor shall provide the City with a written invoice describing the work and Services performed as provided in Exhibit “C.” Upon approval, City shall compensate Contractor as provided herein and in Exhibit “C” with the payment term being net 30 days after the date the City is delivered a written invoice for Services completed.

## **Article III**

### **Availability of Funds**

**City’s obligations and all amounts payable hereunder are contingent upon sufficient appropriations therefor by City’s Governing Body. If sufficient appropriations are not made, City shall notify Contractor of the same, and this Agreement shall terminate forthwith. City represents that it intends to fulfill its obligations under this Agreement and reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, City shall use its best efforts to satisfy any requirement for payment from any other source of funds legally available for this purpose. Notwithstanding the foregoing, City shall notify Contractor within ten (10) days of any action by City's governing body not to appropriate funds for payment of City's obligations hereunder, and shall provide with such notice a copy of the resolution, minutes or recording of such action.**



**Article IV**  
**Miscellaneous**

12.1 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.

12.2 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.

12.3 Independent Company. It is understood and agreed by and between the parties that Company, 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 Company pursuant to this Agreement shall be in the capacity of an independent Company, and not as an agent or employee of City. Company 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.

12.4 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 H. Vargas, City  
Manager  
305 Century Parkway  
Allen, Texas 75013  
Facsimile: 214/509-4118

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



If intended for Company:

ACTIVE Network, LLC  
Attn: Sheryl D. Hoskins, General  
Manager  
717 N. Harwood St., Ste. 2500  
Dallas, Texas 75201

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

12.6 Warning Devices and Barricades. The Company shall furnish and maintain such warning devices, barricades, lights, signs, and other devices as may be necessary or appropriate or required by the City to protect persons or property in, near or adjacent to the jobsite. The Company shall comply with all applicable Federal, State, and Local Laws regarding occupational safety and health as well as providing protection of the environment. This shall include but not be limited to compliance with U.S. Department of Labor-Occupational Safety and Health Administration (OSHA), and U.S. Environmental Protection Agency (EPA) guidelines and regulations. No separate compensation shall be paid to the Company for such measures.

12.7 Protection of Utilities. The Company shall use best efforts to leave undisturbed and uninterrupted all irrigation systems, utilities, and utility services provided to the job site or which presently exist at, above, or beneath the location where the work is to be performed. In the event that any irrigation system, utility, or utility service is disturbed or damaged during the progress of the work, the Company shall forthwith repair, remedy or restore the utility at Company's sole expense. The Company is responsible for an inspection of the site prior to



## DRAFT

commencing work on site to ensure that no damage is existing or will not occur when maintenance begins. If damage is noted or if probable damage will occur then it is the Company's responsibility to notify the City of Allen representative so that the City of Allen can take action to correct and document the problem(s). The Company is responsible for the replacement of all irrigation heads that are damaged by mowing with like equipment approved by the City of Allen.

*(Signature page to follow)*



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

**CITY OF ALLEN**

By: \_\_\_\_\_  
PETER H. VARGAS, CITY MANAGER

305 Century Parkway  
Allen, Texas 75013

**ATTEST**

\_\_\_\_\_  
SHELLEY B. GEORGE, CITY SECRETARY

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

**COMPANY – ACTIVE Net, LLC.**

By: \_\_\_\_\_  
Signature of Authorized Officer

Name: \_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

717 N. Harwood St., Ste. 2500  
Dallas, Texas 75201



**Exhibit "A"**

TERMS APPLICABLE TO ALL PRODUCTS AND SERVICES

1. INTERPRETATION

1.1 Definitions. For the purposes of interpreting this Agreement, the following terms will have the following meanings:

- (a) "Active" means Active Network, LLC as referenced on the first page of this Agreement.
- (b) "Affiliates" of a designated corporation, company or other entity means all entities which control, are controlled by, or are under common control with the named entity, whether directly or through one or more intermediaries. For purposes of this definition "controlled" and "control" mean ownership of more than fifty percent (50%) of the voting capital stock or other interest having voting rights with respect to the election of the board of directors or similar governing authority.
- (c) "Agreement" means this Products and Services Agreement, inclusive of all Appendices, Schedules and exhibits.
- (d) "Client" means the legal entity other than Active entering this Agreement.
- (e) "Effective Date" means the last date set forth on page one of this Agreement.
- (f) "Hosted Software" means computer code and programs, in executable code form only, including related data files, rules, parameters and documentation, which have been created or licensed by Active and are identified in a Schedule as licensed (or sublicensed) to Client by Active in connection with this Agreement, and which reside on Active's servers and are accessible by Client's staff or Users via the Internet.
- (g) "Maintenance" means the provision of maintenance services as set out in the Support and Maintenance Handbook attached as Exhibit A.
- (h) "Online Services" means services, such as Internet registration, that are enabled by Hosted Software and available to the public via the Internet.
- (i) "Other Services" means Services other than Professional Services as provided in an agreed Schedule.
- (j) "Products" means the Hosted Software and other products (including documentation) provided to Client by or on behalf of Active.
- (k) "Professional Services" means any and all types of services which Active provides, to Client and/or to other clients of Active, in the course of Active's business, including but not limited to services relating to the installation, implementation, optimization, administration, training and troubleshooting of computers, computer software, computer networks, databases, internet-related equipment and applications, but expressly excludes Support and Maintenance. Professional Services shall be as set forth in the applicable Schedule.



- (l) "Schedule" means a schedule, quote, pricing form, order form, or similar document associated with this Agreement that lists the Products and Services provided by Active to Client hereunder and the related fees. The features, services, options, and fees may be described more fully on web pages describing the Software and Services, and/or in an applicable Schedule. Each Schedule will reference this Agreement or the Contract Number above (if applicable), must be signed by Client and will be governed by and incorporated into this Agreement.
- (m) "Services" means all Professional Services, Support and Maintenance, Online Services, and Other Services provided to Client by or on behalf of Active.
- (n) "Software" means the Hosted Software as defined elsewhere in this Section.
- (o) "Support" means the ongoing telephone, email, web-based and dial-in support and problem resolution to assist Client in the use of the Hosted Software, and Other Services and Products of Active as set out in the Support and Maintenance Handbook attached as Exhibit A.
- (p) "Support and Maintenance Handbook" means the documents published by Active setting out the applicable service levels, processes, restrictions, and other particulars of Support and Maintenance provided in respect of the Software and Other Services and Products of Active attached as Exhibit A, as amended from time to time upon notice to Client.
- (q) "Third Party Products" means those hardware, firmware and/or software products, provided to Active by third parties, listed in a Schedule, together with all user manuals and other documents accompanying the delivery of the Third Party Products, provided that the Third Party Products shall not include software developed by Active.
- (r) "User" means a person who accesses and uses any of the Products in any manner whatsoever.

1.2 Headings. The headings contained in this Agreement are inserted for convenience and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

## 2. CHARGES AND PAYMENTS

2.1 Taxes. Client will pay all applicable sales, use, withholding and excise taxes, and any other assessments against Client in the nature of taxes, duties or charges however designated on the Services and Products or their license or use, on or resulting from this Agreement, exclusive of taxes based on the net income of Active, unless exempted by law and unless a valid tax exemption certificate has been provided to Active prior to invoicing.

2.2 Currency. Unless otherwise indicated in a Schedule, all prices are in the currency of the country in which Client is located.

2.3 Delivery. Delivery for Products supplied by Active under this Agreement will be deemed to have occurred F.O.B. origin, which in the case of Hosted Software will typically be in the form of an email from Active providing a FTP (i.e. file transfer protocol) downloadable link. To the extent applicable, Client will be responsible for shipping and handling costs.

2.4 Invoices/Payment. Active will provide invoices to Client for all amounts owing by Client hereunder. Payment of invoices is due within thirty (30) days from the date of invoice.



### 3. CLIENT INFORMATION; CONFIDENTIALITY

3.1 Client Information and Obligations. In order to assist Active in the successful provision of Services and Products to Client, Client shall (i) provide to Active information relating to Client's organization, technology platforms, systems configurations, and business processes and otherwise relating to Client that is reasonably requested by Active from time to time, (ii) make available such personnel assistance to Active as may be reasonably necessary for Active to perform hereunder; and (iii) carry out in a timely manner all other Client responsibilities set forth herein. Any delay by Client hereunder shall result in a day-for-day extension of Active's dependent obligations.

#### 3.2 Confidential Information.

(a) In the performance of or otherwise in connection with this Agreement, one party ("Disclosing Party") may disclose to the other party ("Receiving Party") certain Confidential Information of the Disclosing Party. "Confidential Information" means any information of either party, which is not generally known to the public, whether of a technical, business or other nature (including, but not necessarily limited to: trade secrets, know how, computer program source codes, and information relating to the clients, business plans, promotional and marketing activities, finances and other business affairs of such party); provided that the same is conspicuously marked or otherwise identified as confidential or proprietary information prior to, upon or promptly after receipt by the other party; and provided further that the any software or software application server source code provided by Active or its licensors shall be deemed to constitute Confidential Information without further designation by Active. The Receiving Party will treat such Confidential Information as confidential and proprietary of the Disclosing Party and will use such Confidential Information solely for the purposes for which it is provided by the Disclosing Party and will not disclose such Confidential Information to any third party (other than a third party under contract whereby that third party has agreed in writing to keep the Confidential Information confidential).

(b) Exclusions. The obligations under this paragraph will not apply to any: (i) use or disclosure of any information pursuant to the exercise of the Receiving Party's rights under this Agreement; (ii) information that is now or later becomes publicly available through no fault of the Receiving Party; (iii) information that is obtained by the Receiving Party from a third party authorized to make such disclosure (other than in connection with this Agreement) without any obligation of secrecy or confidentiality; (iv) information that is independently developed by the Receiving Party (e.g., without reference to any Confidential Information); (v) any disclosure required by applicable law (e.g., pursuant to applicable securities laws or legal process), provided that the Receiving Party will use reasonable efforts to give advance notice to and cooperate with the Disclosing Party in connection with any such disclosure; and (vi) any disclosure with the consent of the Disclosing Party.

(c) Active is aware that under the Texas Public Information Act, if Client spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining any information, such information may be considered public information and must be maintained as required by law.

### 4. EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY



4.1 SPECIFIC EXCLUSION OF OTHER WARRANTIES. THE EXPRESS WARRANTIES SET OUT IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTEES OF ANY KIND WHATSOEVER APPLICABLE, EITHER EXPRESS OR IMPLIED BY LAW (IN CONTRACT OR TORT OR OTHERWISE) OR CUSTOM, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING MERCHANTABILITY, FITNESS FOR PURPOSE, DURABILITY, CORRESPONDENCE TO SAMPLE, TITLE, DESIGN, CONDITION, OR QUALITY. WITHOUT LIMITING THE ABOVE, ACTIVE DOES NOT WARRANT THAT ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER WILL MEET THE REQUIREMENTS OF CLIENT OR THAT THE OPERATION OF PRODUCTS AND SERVICES PROVIDED HEREUNDER WILL BE FREE FROM INTERRUPTION OR ERRORS.

4.2 RESTRICTIONS ON WARRANTY. ACTIVE HAS NO OBLIGATION TO REPAIR OR REPLACE PRODUCTS DAMAGED BY EXTERNAL CAUSE OR THROUGH THE FAULT OR NEGLIGENCE OF ANY PARTY OTHER THAN ACTIVE.

4.3 NO INDIRECT DAMAGES. WITHOUT LIMITING THE GENERALITY OF SECTIONS 4.1 AND 4.4, IN NO EVENT WILL ACTIVE BE LIABLE TO CLIENT OR TO ANY OTHER PARTY FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT OR TORT OR OTHERWISE), INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, OR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES.

4.4 LIMITS ON LIABILITY. IF, FOR ANY REASON, ACTIVE BECOMES LIABLE TO CLIENT OR ANY OTHER PARTY FOR DIRECT OR ANY OTHER DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT OR OTHERWISE), THEN:

(a) THE TOTAL AGGREGATE LIABILITY OF ACTIVE TO CLIENT WILL BE LIMITED TO TWO (2) TIMES THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT TO ACTIVE AS CONSIDERATION FOR THE PRODUCTS AND SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE; PROVIDED THAT THIS PROVISION WILL NOT AFFECT THE PARTIES' RIGHT OF INDEMNIFICATION AS PROVIDED IN SECTION 9; AND

(b) IN ANY CASE CLIENT MAY NOT BRING OR INITIATE ANY ACTION OR PROCEEDING AGAINST ACTIVE ARISING OUT OF THIS AGREEMENT OR RELATING TO ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER MORE THAN TWO YEARS AFTER THE RELEVANT CAUSE OF ACTION HAS ARISEN, EXCEPT AS MAY BE PROVIDED UNDER APPLICABLE TEXAS LAW.

4.5 SEPARATE ENFORCEABILITY. SECTIONS 4.1 THROUGH 4.4 ARE TO BE CONSTRUED AS SEPARATE PROVISIONS AND WILL EACH BE INDIVIDUALLY ENFORCEABLE.

4.6 For the purposes of this Section 4, reference to Active shall also include its suppliers and licensors.

## 5. RESTRICTIONS

5.1 U.S. GOVERNMENT RESTRICTED RIGHTS. The Products are provided with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (b)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The Manufacturer is Active Network, LLC or one of its Affiliates or subsidiaries.



5.2 Export Restrictions. The Products may include encryption software or other encryption technologies that may be controlled for import, export, or purposes under the laws and regulations of the countries and/or territories in which the Products are used ("Applicable Law"). Client may not export, re-export, or assist or facilitate in any manner the export or re-export of, any portion of the Products, as determined by Applicable Law under which Client operates: (i) to any country on Canada's Area Control List; (ii) to any country subject to UN Security Council embargo or action; (iii) contrary to Canada's Export Control List Item 5505; (iv) to countries subject to U.S. economic sanctions and embargoes; and (v) to persons or entities prohibited from receiving U.S. exports or U.S.-origin items. Client hereby represents and covenants that: (i) to the best of Client's knowledge Client is eligible to receive the Products under Applicable Law; (ii) Client will import, export, or re-export the Products to, or use the Products in, any country or territory only in accordance with Applicable Law; and (iii) Client will ensure that Client's Users use the Products in accordance with the foregoing restrictions.

5.3 Third Party Software and Open Source Components. The Software may contain open source components or other third party software of which the use, modification, and distribution is governed by license terms (including limitations of liability) set out in the applicable documentation (paper or electronic) or read me files.

5.4 Restrictions; Acceptable Use Policies. Client shall: (i) use the Products exclusively for authorized and legal purposes, consistent with all applicable laws, regulations, and the rights of others, including privacy and anti-spamming laws; (ii) not reverse engineer, disassemble, or decompile any Products or prepare derivative works thereof; (iii) not copy, modify, transfer, display, or use any portion of the Products except as expressly authorized in this Agreement or in the applicable documentation; (iv) not contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary or intellectual property rights, title, or interest of Active in and to any Products; (v) not obliterate, alter, or remove any proprietary or intellectual property notices from the Products in physical or electronic forms; (vi) not use the Products to transmit, publish, or distribute any material or information: (a) for which Client does not have all necessary rights and licenses, including any material or information that infringes, violates, or misappropriates the intellectual property rights of any third party; (b) that contains a computer virus or other code, files, or programs designed to disrupt or interfere with the functioning of the Products; or (c) that is or that may reasonably be perceived as being harmful, threatening, offensive, obscene, or otherwise objectionable; (vii) not attempt to gain access to any systems or networks that connect thereto except for the express purpose of using the Products for their intended use; (viii) not rent, lease, sublicense, resell, or provide access to the Products on a time-share or service bureau basis; and (ix) not input credit card information into the Products or solicit the input of such information other than in pre-defined fields within the Products that are intended for that purpose.

## 6. TERMINATION

6.1 Termination. This Agreement will terminate:

(a) at the option of either party if the other party materially defaults in the performance or observance of any of its obligations hereunder and fails to remedy the default within thirty (30) days after receiving written notice thereof; and



(b) without limiting (a), at the option of Active if Client breaches its payment obligations, provided that the right of termination will be in addition to all other rights and remedies available to the parties for breach or default by the other.

6.2 Suspension of Obligations. If either party should materially default in the performance or observance of any of its obligations hereunder, then, in addition to all other rights and remedies available to the non-defaulting party, the non-defaulting party may suspend performance and observance of any or all its obligations under this Agreement, without liability, until the other party's default is remedied, provided however that this Section will not permit Client to suspend its obligation to make any payments due for Products or Services that are unrelated to any default alleged against Active.

6.3 Return of Materials. In the event of termination of this Agreement for any reason whatsoever, Client will immediately (i) return to Active all physical copies of Products delivered by Active to Client or otherwise in Client's possession or control, or (ii) if expressly permitted by Active, destroy all physical copies of the Products not returned to Active and delete all electronic copies of the Products from its systems and certify in writing to Active that such actions have all been completed.

6.4 Return of Data. In the event of termination of this Agreement for any reason whatsoever, Active will immediately (i) return to Client all data delivered by Client to Active into the Online Services or (ii) provide the necessary access to Client to allow the Client to download all such data. The format of such data will be the current version of database management system used by the Online Services. Active will provide any then available database schema and any then available record counts to the Client. Client is the owner of all of such data and such data's work product under this Agreement. Such data and work product does not include any of the Products or Services provided by Active or proprietary or confidential information owned or provided by Active for the purposes of this Agreement.

## 7. AUDIT AND MONITORING RIGHTS

7.1 Active may, upon a minimum of twenty-four (24) hours written notice to Client, attend upon Client's premises and verify that the Products are being used only as permitted hereby. Such inspections shall be limited to a maximum of twice per calendar year, and will be performed only during Client's regular business hours and conducted in a manner as to minimize, to the extent reasonable, interference with Client's business. Further, Active may, using automatic means which do not interfere with the use of the Products by Client or Users other than as described in this provision, monitor at any time usage of the Products by Client and or its Users.

7.2 Active agrees that the City shall, until the expiration of three (3) years after the applicable document is made final by Active, have access to and the right to examine any directly pertinent books, documents, papers and records of Active involving fee invoices and related support of the applicable invoice amount. Active agrees that the City shall have access, during normal working hours, to all necessary Active facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this section. Any such audit may occur no more than once in an annual period, upon no less than thirty (30) days prior written notice to Active, during Active's regular business hours and conducted in a manner to not disrupt Active's business activities.



## 8. INTELLECTUAL PROPERTY RIGHTS

8.1 Warranty of Title. Active warrants that it has all rights necessary to make the grant of license herein by having all right, title, and interest in and to the Products (other than Third Party Products) or as licensee of all such rights from the owner thereof.

8.2 Intellectual Property. Active and its licensors shall retain all right, title, and interest in and to the Products and the results of the Services and to all software, trademarks, service marks, logos, and trade names and other worldwide proprietary rights related thereto ("Intellectual Property"). Client shall use the Intellectual Property only as provided by Active, and shall not alter the Intellectual Property in any way, or act or permit action in any way that would impair Active's or its licensors' rights in its Intellectual Property. Client acknowledges that its use of the Intellectual Property shall not create in Client or any other person any right, title, or interest in or to such Intellectual Property. Any goodwill accruing from the use of the Intellectual Property shall inure solely to the benefit of Active or its licensors, as applicable.

## 9. INDEMNIFICATION

(a) Each party (the "Indemnifying Party") shall defend, settle, and pay damages (including reasonable attorneys' fees) ("Damages") relating to any third party claim, demand, cause of action or proceedings (whether threatened, asserted, or filed) ("Claims") against the other party hereto (the "Indemnified Party") to the extent that such Claim is based upon provision, by the Indemnifying Party, of materials, products, or services as part of such party's obligations hereunder that infringe the intellectual property rights of any third party provided that such materials, products, or services are used in accordance with this Agreement.

(b) If any Claim that Active is obligated to defend, settle, and pay damages to Client under this Section 9(a) has occurred or, in Active's opinion, is likely to occur, Active may, at its option and expense either (1) obtain for Client the right to continue to use the applicable Software, (2) replace or modify the Software so it becomes non-infringing, without materially adversely affecting the Software's specified functionality, or (3) if (1) or (2) are not readily available after using reasonable commercial efforts or, if neither of the foregoing options is commercially reasonable, refund a pro-rata portion of the fees paid by Client based on its lost use and terminate this Agreement. Active shall not be obligated to defend, settle, or pay Damages for any Claims to the extent based on: (x) any Client or third party intellectual property or software incorporated in or combined with the Software where in the absence of such incorporated or combined item, there would not have been infringement, but excluding any third party software or intellectual property incorporated into the Software at Active's discretion; (y) Software that has been altered or modified by Client, by any third party or by Active at the request of Client (where Active had no discretion as to the implementation of modifications to the Software or documentation directed by Client), where in the absence of such alteration or modification the Software would not be infringing; or (z) use of any version of the Software with respect to which Active has made available a non-infringing updated, revised or repaired subsequent version or other applicable update, patch or fix.

(c) Indemnification Claims Procedure. Each party's obligations under this Section are conditioned upon (1) prompt written notice of the existence of a Claim, provided that a failure of prompt notification shall not relieve the Indemnifying Party of liability hereunder except to the extent that defenses to such Claim are materially impaired by such failure of prompt notification; (2) sole control over the defense or



settlement of such Claim by the Indemnifying Party; and (3) the provision of assistance by the Indemnified Party at the Indemnifying Party's request to the extent reasonably necessary for the defense of such Claim.

(d) For the purposes of this Section 9, reference to Active shall also include its suppliers and licensors.

(e) Notwithstanding the foregoing, Client shall not be bound by the terms of this Section 9 to the extent precluded by applicable law (e.g., sovereign immunity of a governmental entity).

## 10. GENERAL

10.1 Entire Agreement. This Agreement, including all attachments and referenced Appendices, Schedules and exhibits, constitutes the complete and exclusive statement of the agreement between Active and Client with respect to the subject matter hereof. It supersedes and replaces all oral or written RFPs, proposals, prior agreements, and other prior or contemporaneous communications between the parties concerning the subject matter of this Agreement, except as those documents may be specifically incorporated into this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties, except that Active may fill future purchase or other orders for further goods or services available under this Agreement and, if Active does so, the provisions of this Agreement will contain the only commercial terms applicable to such transaction despite such purchase or other order stating otherwise. Any addendum attached hereto shall form an integral part of this Agreement and, in the event of any inconsistency between this Agreement and any addendum, the provisions of the addendum shall prevail; provided however, in the case of indemnification, limitations of liability, and confidentiality obligations, this Agreement shall always control. Any 'click-wrap' agreement, terms of use, electronic acceptance or other terms and conditions which attempt to govern the subject matter of this Agreement that either party might be required to acknowledge or accept before entering into this Agreement are of no force and effect as between Client and Active and are superseded by this Agreement.

## 10.2 INTENTIONALLY OMITTED

10.3 Force Majeure. Dates or times by which either party is required to perform under this Agreement, excepting the payment of any fees or charges due hereunder, will be postponed automatically to the extent that any party is prevented from meeting them by causes beyond its reasonable control, provided such party promptly notifies the other thereof and makes reasonable efforts to perform.

10.4 Notices. All notices and requests in connection with this Agreement will be given to the respective parties in writing and will be deemed given as of the first business day of the notified party following the day the notice is faxed or sent via overnight courier, providing a hard copy acknowledgment of such successful faxed notice transmission or evidence of such courioring, as applicable, is retained. Notice may also be deposited in the mails, postage pre-paid, certified or registered, return receipt requested, and addressed to the parties as indicated on the face of this Agreement or such other address of which the party gives notice in accordance herewith, and receipt of any such notice will be deemed to be effective as of the third business day following such deposit.



10.5 Governing Law. This Agreement shall be governed by the laws of the State of Texas, without giving effect to the conflict of laws provisions thereof. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act shall apply to this Agreement. Any legal action or proceeding relating to this Agreement shall be instituted only in any state or federal court in Collin County, Texas.

10.6 Attorney Fees. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees.

10.7 Affiliates. During the term of this Agreement, Client or Client's Affiliates may order additional Products and/or Services from Active or one of Active's Affiliates by entering into a Schedule. In the event that Client or Client's Affiliate enters into a Schedule with Active or an Affiliate of Active, reference in this Agreement to "Client" and "Active" shall mean the respective entity that executed the applicable Schedule. A breach of this Agreement by Active's Affiliate or Client's Affiliate shall not affect the rights, privileges, or obligations of Active or Client, as applicable, or any other Affiliate not in breach of this Agreement.

10.8 Non-Assignability. Neither party may assign its rights or obligations arising out of this Agreement without the other party's prior written consent, except that (i) Active may assign this Agreement to one of its affiliates or in connection with any sale or security interest involving all or substantially all of its assets or any other transaction in which more than fifty percent of its voting securities are transferred; and (ii) Client automatically assigns this Agreement to the purchaser of all or substantially all of Client's assets or equity securities or to any successor by way of any merger, consolidation or other corporate reorganization of Client. In the event that any such assignment is made by Client pursuant to (ii), Client must provide Active with written notice of such event within thirty (30) days of such assignment. Active shall have thirty (30) days from its receipt of such notice to terminate this Agreement without further liability or obligation to Client.

10.9 Term and Survival. The term of this Agreement shall commence on the Effective Date set out on the cover page hereof and shall continue as set forth in Sections 16 or 23.1, as applicable, or until terminated in accordance with Section 6. Sections 1.1, 4, 5.4, 6.3, 8.2, 9, 10, 27.1, and 27.2 of this Agreement, along with all unpaid payment obligations, will survive termination and expiration of this Agreement.

10.10 No Authority to Bind. Neither party shall incur any obligations for or in the name of the other party, or have the authority to bind or obligate the other party. Neither party shall make, issue or authorize any statements (whether oral or written) in contravention of the foregoing.

10.11 Counterparts. This Agreement may be executed in separate counterparts and delivered by facsimile or such other electronic means as are available to the Parties. Such counterparts taken together shall constitute one and the same original document.

10.12 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions shall remain in full force and effect.



10.13 Cooperative Procurement. Upon consent by Active, this Agreement may be used for permitted cooperative procurement by any public or municipal body, entity, agency or institution. If so authorized, and in order to forego a related entity RFP or similar competitive bidding process, this Agreement may be extended to such other entities indicated above for the procurement of similar products and/or services provided to Client herein and at fees in accordance with this Agreement unless separately negotiated between such other entities and Active. Further related entities participating in a cooperative procurement process shall place their own orders directly with Active and will fully and independently administer their use of this Agreement to include such contractual obligations as those entities and Active deem appropriate without direct administration from the original Client. Client is a confirmed participant in the Group Buy offer which expires Dec 1, 2016. When the Group Buy rates are confirmed, this Agreement will be revised, to the extent necessary, to reflect the Group Buy rates.

#### 10.14 Insurance

Active will, at all times during the term of this Agreement, maintain the following insurance. A current ACORD certification of insurance must be submitted upon request by Client. Client reserves the right to require or receive any additional documents necessary to confirm that the insurance requirements are being met, including but not limited to, policies and endorsements. However, an insurance certificate is required to be on file prior to start of any work.

Commercial General Liability: \$1,000,000.00 per occurrence, \$1,000,000.00 products/completed operations and \$2,000,000.00 general aggregate for bodily injury, personal injury and property damage.

Automobile Liability: \$1,000,000.00 combined single limit per accident for bodily injury and property damage. Coverage should be provided for any auto, including hired and non-owned vehicles.

Workers' Compensation and Employers' Liability: Statutory. Employers' Liability policy limits of \$1,000,000.00 for each accident, \$1,000,000.00 policy limit – disease, \$1,000,000.00 each employee - disease.

Umbrella or Excess Liability: \$2,000,000.00 per occurrence and aggregate.

Technology Professional Liability: \$1,000,000.00 per claim, \$2,000,000.00 aggregate. Active shall maintain this policy for a period of one (1) years after termination of the Agreement or shall purchase extended reporting period or “tail” coverage insurance.

Cyber Risk Liability (Network Security/Privacy Liability): including cloud computing and mobile devices, for protection of private or confidential information whether electronic or non-electronic, network security and privacy; privacy against liability for system attacks, digital asset loss, denial or loss of



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service, introduction, implantation or spread of malicious software code, security breach, unauthorized access and use; including regulatory action expenses; and notification and credit monitoring expenses with at least minimum limits as follows subject to the terms, conditions, and exclusions of the policy:

\$1,000,000.00 per occurrence or claim

\$2,000,000.00 aggregate

Coverage may be written as a stand-alone policy, or included as part of the Professional Liability policy. If Cyber Risk is included on the General Liability policy, the minimum policy limits required are \$2,000,000 per occurrence or claim and \$4,000,000 aggregate. If coverage is written on a claims made basis, Active must maintain this policy for a period of one (1) years after termination of the Agreement or shall purchase an extended reporting period or “tail” coverage insurance.

### Other Insurance Provisions

Client, its officials, employees and volunteers shall be included as an additional insured on the Commercial General Liability, Automobile Liability and Umbrella Liability insurance policies. These insurance policies shall contain the appropriate additional insured endorsement to cover premises/operations and products/completed operations, including materials, equipment or supplies provided by Client.

All policies except Professional Liability shall be endorsed with a waiver of subrogation in favor of Client, including its officials, employees and volunteers for losses arising from the activities under this Agreement.



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## APPENDIX 1: TERMS APPLICABLE ONLY TO HOSTED SOFTWARE

### 11. HOSTED SOFTWARE

11.1 Active will provide Client with access to hosted versions of the Products identified in the applicable Schedule and associated Online Services, and Active hereby grants to Client a limited, non-exclusive, non-transferable license to use the Hosted Software in accordance with the applicable documentation.

11.2 Client agrees to receive notifications regarding free product, promotional items, and giveaways at Client's Event(s) or facility(ies), but Client may opt not to receive the items from Active. Client's customers who register for, sign up, or otherwise interact with the Online Services ("End Users") may opt-in to receive information, items, or promotions/deals from Active, in which case, Active will be responsible for fulfillment and for providing customer service for any such offers.

11.3 Client acknowledges that Active: (a) does not monitor or police communications or data transmitted through the Hosted Software or Online Services by Client or any third party, or any communications or data transmitted by any third party suppliers through the Hosted Software or Online Services; (b) shall not be responsible for the content of any such communication or transmission; (c) shall have no liability of any kind with respect to any materials or information that Client inputs into or transmits, publishes, or distributes through the Hosted Software or Online Services; and (d) may remove or modify any such communication or transmission deemed offensive for which Active has received more than one complaint.

### 12. LICENSE AND BRANDING

Active hereby grants to Client a limited, non-exclusive, non-transferable license to display, reproduce, distribute, and transmit in digital form Active's name and logo in connection with promotion of the Online Services only in the manner approved of by Active during the term of this Agreement. Client hereby grants to Active a limited non-transferable license to use, display, reproduce, distribute, adapt and transmit in digital or printed form information provided by Client relating to its organization, including its name, trademarks, service marks and logo, in connection with the implementation and promotion of the Online Services; provided, however, that such use shall be as necessary to Active's performance under this Agreement. Client will use reasonable efforts to encourage adoption of the Online Services, including displaying Active's name and logo, in the form supplied by Active from time to time and in a manner approved by Active, in any medium used by Client to promote its programs or services to prospective participants.

### 13. INFORMATION COLLECTION AND AUTHORIZED USERS

Active may collect certain information from individuals as part of a registration process. Client may login to Active's data management system to access this information. Both parties agree to use the collected information in compliance with (i) all applicable laws, rules and regulations, including, without limitation, those governing online privacy and use of credit card data (i.e. using credit card information only for purposes authorized by the cardholder); (ii) applicable Payment Card Industry Data Security



Standards; and (iii) Active's privacy policy as published on its website. Client is solely responsible for the security of its login information, authorization credentials, and similar access information (collectively "Login Information") and for the use or misuse of such Login Information. Client agrees to only allow access to and use of the Products to its authorized users. Client acknowledges and agrees that Active may provide access to or use of the Software and Services to anyone utilizing Client's Login Information or who is otherwise authorized by Client to use or access the Software and Services on Client's behalf. Client is responsible for such users' compliance with the terms and conditions of this Agreement. Active may suspend or terminate any such user's access to the Software and Services upon notice to Client if Active reasonably determines that any such user has violated the terms and conditions of this Agreement or is otherwise using the Products for suspect purposes. Client will immediately either notify Active in writing or disable such user's access if any previously authorized Client user is no longer authorized to use the Login Information or otherwise use or access the Software and Services. Active may rely, without independent verification, on such notice, and Client, inclusive of Client's parent, subsidiary and affiliate entities, as applicable, and each of their respective officers, directors, managers, shareholders, owners, agents, employees, contractors, and representatives covenant not to sue and agree to defend, indemnify, and hold harmless Active for any claims arising from Active providing, denying, suspending, or modifying access to or use of the Software and Services of any individual as directed by Client or by someone who Active reasonably, under the circumstances, believes is authorized to act on behalf of Client.

#### 14. FEES FOR HOSTED SOFTWARE

##### 14.1 Transaction fees.

- (a) Client shall pay to Active the Hosted Software service fees ("Service Charge(s)") as set out in the applicable Schedule.
- (b) In cases where Active's banking or financial partners or similar service providers impose changes in processing costs payable by Active, Active reserves the right to modify Service Charges to reflect such changes. Active further reserves the right to modify the Service Charges once per calendar year, provided that any increase will not exceed eight (8) percent (8%).
- (c) Active will be responsible for collecting all payments processed through the Online Services and all Service Charges assessed by Active. On a bi-weekly basis, unless otherwise set forth in the applicable Schedule, Active will pay Client sums due to Client based on the total registration fees collected, net of Active's Service Charges as set forth in the applicable Schedule and any other deductions provided herein.
- (d) If Client enters transactions at fee amounts less than those actually charged to Client's Users, thus reducing or avoiding applicable Service Charges, such action shall constitute a material breach of this Agreement.
- (e) Active shall not be responsible for processing or making any refunds. In the event Client initiates a refund, a fee may be charged by Active to Client as set out in the applicable Schedule. Active may set off against user fees collected by Active to the amount of any credit card chargebacks and associated fees applicable to user transactions and to reimburse itself for any overdue fees owed to Active by



Client. To the extent that such funds are not available for set off, Client shall promptly reimburse Active for any deficiency.

(f) In the event Client is entering into this Agreement and using the Hosted Software for the benefit of a third-party event or organization ("Third Party Beneficiary"), Client agrees that Active may send fees collected by Active directly to the Third Party Beneficiary.

(g) All fees described in the applicable Schedule are in consideration of the Software and Services that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agrees not to impose such a surcharge on any End User.

#### 14.2 Subscription fees.

To the extent set forth in the applicable Schedule, Client shall pay to Active the Hosted Software subscription fees ("Subscription Fees") for the term of this Agreement established in Section 16 below. Client will be invoiced for their first year Subscription Fees upon the first live operational use of the Hosted Software ("Go-Live Date"), with subsequent annual Subscription Fees being invoiced upon each anniversary of Go-Live Date. Payment will be made Net thirty (30) days from invoice date.

#### 15. EXCLUSIVITY FOR HOSTED SOFTWARE.

During the term of this Agreement, Active will be the sole and exclusive provider of registration and other services similar to the Hosted Software provided to Client hereunder for the events or transactions for which Client is using Active's Software and Services.

#### 16. TERM FOR HOSTED SOFTWARE

Unless otherwise provided in the applicable Schedule, Active shall provide to Client, and Client shall license from Active, the Hosted Software commencing on the Effective Date of this Agreement, and remaining in full force for a period of three (3) years from the Go-Live Date of the Hosted Software (the "Initial Term"), with automatic renewals for one (1) year terms for each of two (2) such renewals (each a "Renewal Term") thereafter until either party gives written notice to terminate the Hosted Software no less than twelve (12) months prior to the end of the Initial Term or Renewal Term, as applicable.



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## APPENDIX 2: TERMS APPLICABLE ONLY TO THIRD PARTY PRODUCTS AND SERVICES

### 17. PURCHASE AND SALE; DELIVERY

17.1 Purchase Commitment and Price. Active hereby agrees to sell to Client, and Client hereby agrees to purchase from Active, the Third Party Products listed in a Schedule in the volumes and at the prices described therein.

17.2 Delivery. Active will ship all or any part of the Third Party Products to Client as soon as reasonably practicable (or, if the below-described purchase order documentation does not seek immediate shipping, at the time Active considers reasonable in order to meet the desired delivery date described) after receipt by Active of a purchase order from Client specifying the particular Third Party Products sought, the number of such Third Party Products sought, the price payable therefor, and the desired date and location of delivery thereof. Any such purchase order must, at a minimum, reference quantity, description and price.

17.3 Changes by Client to Delivery Schedule. Following delivery by Client of any purchase order documentation described in Section 24.2, no changes by Client to the shipment schedule described therein will be permitted unless Active is notified thereof in writing at least ninety (90) days in advance of the delivery date sought in such purchase order documentation.

17.4 Acceptance of Purchase Orders. Purchase orders delivered by Client to Active in respect of Third Party Products are not binding upon Active until accepted by Active in writing. In any case, despite any indication to the contrary contained in any such purchase order documentation, no terms or conditions on purchase order documentation issued by Client, other than the information required by Active as set forth expressly in this Agreement, will be binding upon Active, nor will any such terms or conditions modify or supplement this Agreement in any way, notwithstanding the fact that Active may accept or otherwise approve such purchase orders. Active reserves the right to refuse any such purchase order for any reason not contrary to this Agreement, including without limitation pricing differences as described in Section 25.2.

17.5 Additional Third Party Products. Client may purchase Third Party Products in addition to those listed in a Schedule by issuing additional purchase order documentation as described herein, provided that the supply (or non-supply) of such additional Third Party Products will be subject to this Agreement as though such additional Third Party Products had been included in a Schedule on the date of execution of such Schedule subject to the following:

(a) the price for such additional Third Party Products is subject to agreement between the parties each in their own absolute discretion, and

(b) Active shall have the right to discontinue delivery of such additional Third Party Products upon at least ninety (90) days written notice to Client without any liability to Client whatsoever for such discontinuance.

### 18. CHARGES AND PAYMENTS



18.1 Prices. The pricing applicable to Third Party Products is as set out in the applicable Schedule in the form finally agreed to by the parties.

18.2 Pricing Variability. Client acknowledges that:

(a) the prices described in a Schedule are applicable for six (6) months after the date of execution hereof, and such prices are based upon Client taking delivery of the full number of any particular Third Party Product listed in the applicable Schedule in a single shipment; and

(b) Client hereby agrees that after the expiry of such initial six-month period or, in case of Client seeking, in a particular shipment, delivery of less than all of the Third Party Products of a particular type listed a Schedule, the actual prices may be higher. Prior to shipment of any Third Party Products that would be subject to pricing that differs from that described in the applicable Schedule, Active will notify Client of any such different pricing and Client will accept such different pricing, as mutually agreed between Client and Active, in writing.

## 19. SUPPORT FOR THIRD PARTY PRODUCTS

For the purpose of isolating support issues and responsibility in respect of Third Party Products and their interaction with any Products, Active will provide initial first-tier support, to a maximum of fifteen (15) minutes per support inquiry, for Third Party Products, as further specified in the Support and Maintenance Handbook.

## 20. PROPRIETARY RIGHTS

20.1 Third Party Proprietary Rights. Client acknowledges that any Third Party Products supplied by Active hereunder are supplied by Active as a reseller thereof and that the Third Party Products are subject to the intellectual property rights of the various third party developers and/or manufacturers thereof, as applicable, including without limitation copyright, trade secret, trademark, and patent rights. Client will maintain in confidence and not use or disclose any and all confidential business or technical information connected with any Third Party Product except as specifically permitted by a party having legal control of such rights.

20.2 Additional Terms. Client acknowledges that the possession, installation and use of Third Party Products may be subject to additional terms and conditions accompanying such Third Party Products at the time of delivery.

## 21. WARRANTY

21.1 Warranty. Active warrants to Client that Active has the right to deliver the Third Party Products subject to any documentation accompanying such Third Party Products at the time of delivery and/or any licensing mechanisms, physical, electronic or otherwise, included in any Third Party Products that are software.

Warranties Provided by Third Party Suppliers. Third Party Products are warranted by the manufacturers, suppliers or licensors thereof in accordance with the warranty statements accompanying delivery of the Third Party Products, and Client agrees that Client will rely solely on such Third Party Product warranties. Client agrees not to make a claim against Active on account of any warranty, express or implied, which may apply to any Third Party Product. If Client notifies Active of a defect or nonconformity within thirty



(30) days of the date of delivery of such Third Party Product, Active will assist Client in troubleshooting such Third Party Product in accordance with Section 19. If such defect or nonconformity cannot be remedied during such troubleshooting and such Third Party Product is still under the Third Party Product warranty, Active shall contact the applicable manufacturer, supplier or licensor of such Third Party Product to coordinate any returns or refunds. If a notice of a defect or nonconformity is received by Active from Client of the defect or nonconformity following the initial the 30-day period, Active's sole obligation and liability will be to provide support in accordance with Section 26. Returns and refunds are at the sole discretion of the applicable manufacturer, supplier or licensor.



## EXHIBIT A: SUPPORT AND MAINTENANCE SERVICES

Annual Support and Maintenance Services. The following supplies and services are included in the Support Services and Maintenance Services provided by Active as determined by the level of Support Services and Maintenance Services purchased which are set forth in a separate Schedule.

### 1. General.

1.1 In order to receive the benefit of the service levels contained herein, Client must be in compliance with the obligations of the Agreement.

1.2 Client understands and acknowledges that the Product is a commercial off-the-shelf product with core architecture that services many clients, and that Active is permitted to make changes to the Product hosting environment, network, telecommunications, data storage, and any/all other information technology infrastructure that underlies the Product, without seeking or obtaining any consent from Client.

### 2. Technical Support.

2.1 Standard: This is the default level of Support and is included with your license to use Active's Software. Available between 5:00am and 6:00pm Pacific Time, Monday through Friday, via web portal (<http://www.activenetwork.com/service-and-support/customer-support>).

2.2 Advanced: If you have purchased Advanced Support, Support is available between 5:00am and 6:00pm Pacific Time, Monday through Friday, via telephone (800-663-4991) or web portal (<http://www.activenetwork.com/service-and-support/customer-support>).

2.3 Enterprise: If you have purchased Enterprise Support, Support is available between 5:00am and 6:00pm Pacific Time, Monday through Friday via telephone (800-663-4991) or web portal (<http://www.activenetwork.com/service-and-support/customer-support>) with preferred access to second tier resources.

**3. Phone Support.** Unlimited phone Support for system down issues on a twenty-four (24) hours x seven (7) days a week basis, provided that: (a) support calls, placed during "Extended Support Hours" (those occurring after 6:00pm and before 5:00am Pacific Time, Monday through Friday, and any time during the weekend and holidays), are placed by an authorized contact person and (b) the requested phone support consists of a "Call Priority Level 1" issue, as defined in the table below. Unlimited phone Support is offered to Desktop Software Clients only if the site has remote access and Internet email capability.

**4. Online Support.** Access to the Active customer care web portal, discussion forums, knowledgebase and online training materials, which are available at <http://www.activenetwork.com/service-and-support/customer-support>.



**5. Upgrades.** Active shall also provide Upgrades of the Software and free assistance in planning the Upgrades.

**6. Support Issue Priorities and Timelines.** New Support incidents are assigned one of the following levels, each with its respective standard ticket resolution target. The Client is an Enterprise customer.

Call Priority Level	Description	Standard Completion Target
Priority 1	Issues that result in Client's inability to fulfill critical business functions (i.e. those pertaining to core functionality such as processing registrations, memberships, rentals) and that have no reasonable work-around.	All: 1 business Day
Priority 2	Issues significantly impacting the use of the system but which do not prevent core functions from being fulfilled.	Standard: 3 business day Advanced: 2 business days Enterprise: 1 business day
Priority 3	All other issues, except those classified as Priority 4 (i.e. how-to questions, reporting/reconciliation issues).	Standard: 5 business days Advanced: 3 business days Enterprise: 2 business days
Priority 4	Issues that are not time-sensitive or may be undertaken as a customer service initiative outside the scope of this attachment.	All: None

**7. Services Not Included.**

The following are excluded from all offered Support Services and Maintenance Services:

- Services which are required to remedy problems that stem from changes to or defects in system configuration upon which the Software was originally installed.
- Services which are required to remedy problems which do not stem from any defect in the Software.
- Services which are required to remedy problems caused by lack of training of the Client's personnel.
- Improper treatment or use of the Software.
- Onsite or remote training services.
- Full report customization service.
- Database-specific services or assistance.

**8. Restrictions.**



The following actions will void the Support Services and Maintenance Services portions of the Agreement:

- The use of any other application that modifies data in the database, whether created by you or otherwise.
- The use or creation of any other application that competes with or replaces a module that is offered by Active to work with either the application or the application's database.

#### **9. Annual Support and Maintenance Related to SaaS Services Only.**

The following Support Services and Maintenance Services are offered in conjunction with the above for SaaS Services Clients.

- Monitoring of connectivity and critical functionality at all times.
- Site-down/critical issues response time of one (1) hour, with commercially reasonable efforts to advise your organization of the current status and expected resolution time.
- Scheduled maintenance and Updates designed to address performance, with reasonable efforts to notify Clients of scheduled maintenance times and potential impacts to service.
- Urgent maintenance (done to correct network, hardware or software issues that are likely to cause significant service disruption and that require immediate action). Active may undertake urgent maintenance at any time deemed necessary and shall provide status updates to Clients as soon as possible.



## INTERLOCAL AGREEMENT

This Interlocal Agreement ("the Agreement") is made and entered into by and between the CITY OF ALLEN, TEXAS, a municipal corporation ("the CITY/COUNTY") and CITY OF ARLINGTON ("ARLINGTON"), each organized and existing under the laws of the State of Texas, and acting by, through and under the authority of their respective governing bodies and officials in accordance with the "Interlocal Cooperation Act," Chapter 791 of the Texas Government Code (the "Act").

WHEREAS, the CITY and ARLINGTON are both governmental entities engaged in the purchase of goods and services, which is a recognized governmental function; and

WHEREAS, the CITY and ARLINGTON wish to enter into this Agreement to set forth the terms and conditions upon which they may purchase various goods and services commonly utilized by each entity; and

WHEREAS, participation in this Agreement will be highly beneficial to the taxpayers of the CITY and ARLINGTON through the anticipated savings to be realized and is of mutual concern to the parties; and

WHEREAS, the CITY and ARLINGTON have current funds available to satisfy any fees owed pursuant to this Agreement.

NOW THEREFORE, the CITY and ARLINGTON, for and in consideration of the premises and the mutual covenants set forth in this Agreement, and pursuant to the authority granted by the governing bodies of each of the parties hereto, do hereby agree as follows:

1. The CITY and ARLINGTON may cooperate in the purchase of various goods and services commonly utilized by the parties, where available and applicable, and may purchase goods and services from vendors under present and future contracts;
2. The CITY and ARLINGTON shall each be individually responsible for payments directly to the vendor and for the vendor's compliance with all conditions of delivery and quality of the purchased items under such contracts. The CITY and ARLINGTON shall each make their respective payments from current revenues available to the paying party;
3. The head of CITY's and ARLINGTON's respective purchasing department is designated to act on all matters related to this Agreement;
3. The Agreement shall be in full force and effect for a period of 12 months and then continue to automatically renew for additional 12 month periods unless it is terminated by either party as provided below.
4. Notwithstanding anything herein to the contrary, participation in this Agreement may be terminated by either party upon thirty (30) days written notice to the other party;



5. The undersigned officer and/or agents of the party(ies) hereto are duly authorized officials and possess the requisite authority to execute this Agreement on behalf of the parties;

6. This Agreement may be executed separately by the parties, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective upon execution and dating by each party. This Agreement shall be effective from the last date signed and marked on this Agreement by a participating party.

APPROVED BY THE CITY MANAGER OF THE CITY OF ALLEN, TEXAS:

BY:

  
PETER H. VARGAS, CITY MANAGER

DATE: October 27, 2014

ATTEST:

  
SHELLEY B. GEORGE, TRMC, CMC, CITY SECRETARY

APPROVED AS TO FORM:

  
PETE SMITH, CITY ATTORNEY

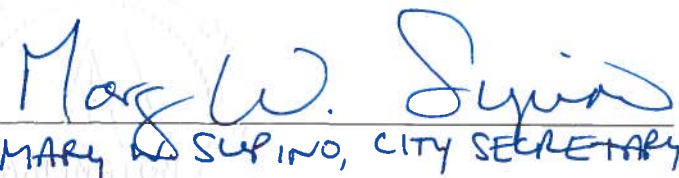
APPROVED BY: CHIEF FINANCIAL OFFICER OF THE CITY OF ARLINGTON, TEX

BY:

  
\_\_\_\_\_

DATE: 12/22/14

ATTEST:

  
MARY W. SUPINO, CITY SECRETARY

APPROVED AS TO FORM:  
URSULA MONROE PATTERSON,  
Interim City Attorney:

BY 



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

**AGENDA DATE:** December 13, 2016

**SUBJECT:** Authorize the City Manager to Purchase Ten (10) New Servers from CDW-G through the State of Texas Department of Information Resources (DIR) Purchasing Program for an Amount of \$83,024.71.

**STAFF RESOURCE:** Kevin Cameron, IT Project Manager

**ACTION PROPOSED:** Authorize the City Manager to Purchase Ten (10) New Servers from CDW-G through the State of Texas Department of Information Resources (DIR) Purchasing Program for an Amount of \$83,024.71.

**BACKGROUND**

This purchase is to provide for the necessary replacement of ten (10) servers which were purchased in 2010. These servers were originally installed for the Closed Circuit Television (CCTV) network. The current 2010 servers have reached capacity and end of life. This equipment supports approximately 220 security cameras at numerous city facilities, which is significantly more cameras than were on the system as the time of the 2010 server purchase.

This purchase will be accomplished through the State of Texas Department of Information Resources (DIR) Purchasing Program for the purpose of purchasing selected information technology items at a previously negotiated rate as described in the attached amendment to the DIR contract.

**BUDGETARY IMPACT**

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

**STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to purchase ten (10) new servers from CDW-G through the State of Texas Department of Information Resources (DIR) Purchasing Program for an amount of \$83,024.71.

**MOTION**

***I make a motion to authorize the City Manager to purchase ten (10) new servers from CDW-G through the State of Texas Department of Information Resources (DIR) Purchasing Program for an amount of \$83,024.71.***



**ATTACHMENTS:**

Quote

DIR Contract Amendment



# QUOTE CONFIRMATION



DEAR BRANDI GARCIA,

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
HNND507	11/30/2016	DIR ONE	5933646	\$83,024.71

QUOTE DETAILS				
ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
<b><u>HPE ProLiant DL380 Gen9 - no CPU - 0 MB - 0 GB</u></b> Mfg. Part#: 719061-B21 UNSPSC: 43211501 BOM 1 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)	4	3525855	\$1,099.98	\$4,399.92
<b><u>Intel Xeon E5-2620V3 / 2.4 GHz processor</u></b> Mfg. Part#: 719051-L21 BOM 1 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)	4	3499733	\$426.49	\$1,705.96
<b><u>HPE - DDR4 - 8 GB - DIMM 288-pin</u></b> Mfg. Part#: 726718-B21 UNSPSC: 43201402 BOM 1 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)	8	3508488	\$92.63	\$741.04
<b><u>HP 6TB 6G SATA 7.2K 3.5IN 512E HDD</u></b> Mfg. Part#: 765255-B21 BOM 1 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)	12	3628961	\$603.56	\$7,242.72
<b><u>HPE - hard drive - 300 GB - SAS 12Gb/s</u></b> Mfg. Part#: 737261-B21 BOM 1 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)	8	3540963	\$351.06	\$2,808.48
<b><u>HPE Smart Array P840/4GB with FBWC - storage controller (RAID) - SATA 6Gb/s</u></b> Mfg. Part#: 761874-B21 BOM 1 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)	4	3525859	\$734.49	\$2,937.96
<b><u>HPE SAS internal cable kit</u></b> Mfg. Part#: 785991-B21 BOM 1 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)	4	3525860	\$66.40	\$265.60
<b><u>HPE Large Form Factor Easy Install Rail Kit - rack rail kit - 2U</u></b> Mfg. Part#: 733662-B21 UNSPSC: 24102001 BOM 1 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)	4	3379398	\$58.83	\$235.32



**QUOTE DETAILS (CONT.)**

<b><u>HPE - power supply - hot-plug / redundant - 800 Watt - 915 VA</u></b>	8	3501016	\$199.99	\$1,599.92
Mfg. Part#: 720479-B21 UNSPSC: 39121004 BOM 1 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<b><u>HPE Foundation Care Next Business Day Service - extended service agreement</u></b>	4	3541012	\$1,173.34	\$4,693.36
Mfg. Part#: H7J32A5#TT3 UNSPSC: 81111812 BOM 1 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<b><u>HPE ProLiant DL380 Gen9 - no CPU - 0 MB - 0 GB</u></b>	5	3525855	\$1,135.22	\$5,676.10
Mfg. Part#: 719061-B21 UNSPSC: 43211501 BOM 2 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<b><u>Intel Xeon E5-2620V3 / 2.4 GHz processor</u></b>	5	3499733	\$433.23	\$2,166.15
Mfg. Part#: 719051-L21 BOM 2 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<b><u>HPE - DDR4 - 8 GB - DIMM 288-pin</u></b>	10	3508488	\$100.24	\$1,002.40
Mfg. Part#: 726718-B21 UNSPSC: 43201402 BOM 2 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<b><u>HP 6TB 6G SATA 7.2K 3.5IN 512E HDD</u></b>	40	3628961	\$644.53	\$25,781.20
Mfg. Part#: 765255-B21 BOM 2 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<b><u>HPE - hard drive - 300 GB - SAS 12Gb/s</u></b>	10	3540963	\$352.20	\$3,522.00
Mfg. Part#: 737261-B21 BOM 2 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<b><u>HPE Smart Array P840/4GB with FBWC - storage controller (RAID) - SATA 6Gb/s</u></b>	5	3525859	\$759.10	\$3,795.50
Mfg. Part#: 761874-B21 BOM 2 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<b><u>HPE SAS internal cable kit</u></b>	5	3525860	\$67.75	\$338.75
Mfg. Part#: 785991-B21 BOM 2 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<b><u>HPE Large Form Factor Easy Install Rail Kit - rack rail kit - 2U</u></b>	5	3379398	\$61.46	\$307.30
Mfg. Part#: 733662-B21 UNSPSC: 24102001 BOM 2 Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<b><u>HPE - power supply - hot-plug / redundant - 800 Watt - 915 VA</u></b>	10	3501016	\$214.20	\$2,142.00
Mfg. Part#: 720479-B21 UNSPSC: 39121004 BOM 2				




**QUOTE DETAILS (CONT.)**

Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<u>HPE Foundation Care Next Business Day Service - extended service agreement</u>	5	3541012	\$1,193.11	\$5,965.55
Mfg. Part#: H7J32A5#TT3				
UNSPSC: 81111812				
BOM 2				
Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<u>HPE ProLiant DL360 Gen9 Rack Mountable Server</u>	1	3508484	\$1,042.59	\$1,042.59
Mfg. Part#: 755258-B21				
UNSPSC: 43211501				
BOM 3				
Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<u>Intel Xeon E5-2630V3 / 2.4 GHz processor</u>	1	3539282	\$642.83	\$642.83
Mfg. Part#: 755384-L21				
UNSPSC: 43201503				
BOM 3				
Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<u>Intel Xeon E5-2630V3 / 2.4 GHz processor</u>	1	3539283	\$650.72	\$650.72
Mfg. Part#: 755384-B21				
UNSPSC: 43201503				
BOM 3				
Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<u>HPE - DDR4 - 4 GB - DIMM 288-pin</u>	4	3582478	\$88.30	\$353.20
Mfg. Part#: 726717-B21				
UNSPSC: 43201402				
BOM 3				
Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<u>HPE Enterprise - hard drive - 300 GB - SAS 12Gb/s</u>	5	4089435	\$303.25	\$1,516.25
Mfg. Part#: 759208-B21				
UNSPSC: 43201803				
BOM 3				
Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<u>HPE Smart Array P440ar/2 GB Storage controller (RAID) with FBWC</u>	1	3501015	\$309.35	\$309.35
Mfg. Part#: 749974-B21				
BOM 3				
Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<u>HPE Small Form Factor Easy Install Rail Kit - rack rail kit - 1U</u>	1	3207983	\$57.23	\$57.23
Mfg. Part#: 734807-B21				
UNSPSC: 24102001				
BOM 3				
Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<u>HPE - power supply - hot-plug / redundant - 500 Watt - 564 VA</u>	2	3508496	\$171.18	\$342.36
Mfg. Part#: 720478-B21				
UNSPSC: 39121004				
BOM 3				
Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				
<u>HPE Foundation Care Next Business Day Service - extended service agreement</u>	1	3732775	\$782.95	\$782.95
Mfg. Part#: H7J32A5#TT5				
UNSPSC: 81111812				
BOM 3				
Contract: Texas HP DIR TSO 3359 (DIR-TSO-3359)				



<b>PURCHASER BILLING INFO</b>	<b>SUBTOTAL</b>	<b>\$83,024.71</b>
<b>Billing Address:</b> CITY OF ALLEN ACCTS PAYABLE 305 CENTURY PKWY ALLEN, TX 75013-8042 <b>Phone:</b> (214) 509-4100 <b>Payment Terms:</b> Net 30 Days-Govt State/Local	<b>SHIPPING</b>	<b>\$0.00</b>
	<b>GRAND TOTAL</b>	<b>\$83,024.71</b>
<b>DELIVER TO</b>	<b>Please remit payments to:</b>	
<b>Shipping Address:</b> CITY OF ALLEN BRANDI GARCIA 305 CENTURY PKWY ALLEN, TX 75013-8042 <b>Shipping Method:</b> DROP SHIP-GROUND	CDW Government 75 Remittance Drive Suite 1515 Chicago, IL 60675-1515	

Need Assistance? CDW•G SALES CONTACT INFORMATION			
	Lena Pekaj	(866) 567-1653	lenapek@cdwg.com

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For more information, contact a CDW account manager  
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**Amendment Number 1**  
**to**  
**Contract Number DIR-TSO-3359**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**Hewlett Packard Enterprise Company**

This Amendment Number 1 to Contract Number DIR-TSO-3359 (“Contract”) is between the Department of Information Resources (“DIR”) and Hewlett Packard Enterprise Company (“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 for one (1) year through July 3, 2017, or until terminated pursuant to the termination clauses contained in the Contract. There is one (1) remaining one-year renewal option to extend the contract.

**2. Appendix A. Standard Terms and Conditions For Product and Related Services Contracts**, is hereby restated in its entirety and replaced with the attached **Appendix A. Standard Terms and Conditions For Product and Related Services Contracts** dated 04/21/2016 except where previous authorized exceptions to Appendix A were allowed and documented as part of the Contract. In such cases, the previously authorized exceptions shall be applied to the portions of the new Appendix A which are comparable to those in the earlier Appendix A for which they were written, and this without regard for the numbering or lettering associated with any of the documents. Applied in such manner, the exceptions shall remain in full force and effect until such time the contract expires or is terminated.

**A. Section 3. Definitions** is hereby replaced in its entirety as follows:

**A. Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government



Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.

- B. Compliance Check** – an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.
- C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. CPA** – refers to the Texas Comptroller of Public Accounts.
- E. Day** – shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. Order Fulfiler** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- G. Purchase Order or 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).
- H. State** – refers to the State of Texas.
- I. Affiliate** of a party means an entity controlling, controlled by, or under common control with, that party.



- J. HPE Branded** means Products and Services bearing a trademark of service mark of Hewlett Packard Enterprise Company or any Hewlett Packard Enterprise Company Affiliate.
- K. Product** means hardware and software listed in HPE's standard price list at the time of HPE's acceptance of Customer purchase order, and including products that are modified, altered, or customized to meet Customer requirements ("Custom Products").
- L. Technical Service** means integration or other technical or customizable services performed by HPE under a Statement of Work or other Supporting Materials.
- M. Service** means Support and Technical Services.
- N. Specification** means technical information about Products published in HPE Product manuals, user documentation, and technical data sheets in effect on the date HPE delivers Products to Customer.
- O. Support** means hardware maintenance and repair, software maintenance, training, installation and configuration, and other standard support services provided by HPE, and includes "Custom Support," which is any agreed non-standard Support as described in a Statement of Work.
- P. Supporting Material** may include (as examples) product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and their supplements, Statements of Work, published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated Vendor website.
- Q. Contractor** means Hewlett Packard Enterprise Company, excluding Order Fulfillers.

**B. Section 4. General Provisions, A. Entire Agreement** is hereby replaced in its entirety as follows:

**A. Entire Agreement**

The documents set forth in Contract section 1.C (Order of Precedence) constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract documents.

**C. Section 4. General Provisions, B. Modification of Contract Terms and/or Amendments, 2)** is hereby replaced in its entirety as follows:

2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order or Statement of Work and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the



Contract, the Contract term shall control.

**D. Section 5. Intellectual Property Matters, A. Definitions, 1)** is hereby replaced in its entirety as follows:

1) "Work Product" or "Deliverables" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible items or things that have been prepared, created, developed, invented or conceived at any time following the effective date of the Contract.

**E. Section 5. Intellectual Property Matters, A. Definitions, 3)** is hereby replaced in its entirety as follows:

3) "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables.

**F. Section 5. Intellectual Property Matters, A. Definitions, 4)** is hereby replaced in its entirety as follows:

4) "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract.

**G. Section 5. Intellectual Property Matters, A. Definitions, 5)** is hereby replaced in its entirety as follows:

5) "Vendor IP" means, as between Vendor and Customer, Vendor's ownership of all materials, software (whether written or machine-readable) and the copyrights, patents, trademarks, trade secrets and all other (a) owned by or licensed to Vendor or one of its Affiliates prior to the Effective Date of the Contract; (b) all Intellectual Property Rights developed by Vendor or one of its Affiliates outside the scope of this Contract, and (c) all modifications, enhancements, and derivative works thereof.

**H. Section 5. Intellectual Property Matters, B. Ownership** is hereby replaced in its entirety as follows:

#### **B. Ownership**

As between Vendor and Customer,

a) The Deliverable(s) and all Intellectual Property Rights associated with those Deliverable(s) will be owned by the Vendor at creation and will not be considered works made for hire. The Vendor grants to the Customer a non-exclusive, royalty-free, site-wide, irrevocable license to use, copy, and distribute the Deliverable(s) and related documentation according to the terms and conditions of this Contract and Supporting Materials. For the purposes of this license, "site-wide" includes any State of Texas office regardless of its physical location. Customer may further sublicense those



Deliverables to its Affiliates or third party service providers, strictly in furtherance of Customer's internal use.

b) The State may modify the Deliverable(s) and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademark, patent and other intellectual property rights in any derivative work, excluding any rights or interest in the Deliverable(s) other than those granted in this Contract.

c) The State may copy the Deliverable(s) to multiple hard drives or networks.

d) The State may copy the Deliverable(s) in the course of routine backups for the purpose of recovery.

e) In the event that the Vendor ceases to conduct business, or ceases to support the Deliverable(s), the State's license will not cease. The license may be terminated if used in a manner that would violate the terms of this Contract and Supporting Material.

f) Notwithstanding the license grants, any Third Party IP incorporated into any licensed Deliverable(s) will be subject to the license terms applicable to such Third Party IP.

g) The State and the Vendor will continue to own their respective Intellectual Property Rights developed before entering into the Contract or developed outside the scope of this Contract, and all modifications or derivative works thereof. Any software licensed through the Vendor and sold to the State will be licensed directly to the State.

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

**C. Further Actions**

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of applicable Intellectual Property Rights in the Work Product to Customer including but not limited to the execution, acknowledgement and delivery of such further documents in a form agreed by the parties.

**J. Section 5. Intellectual Property Matters, D. Waiver of Moral Rights** is hereby replaced in its entirety as follows:

**D. Waiver of Moral Rights**

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in any portion of the Work Product that contains "Customer" content, which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. However, Vendor does not waive any Moral Rights or rights in the Work Product for any Software or templates that Vendor may deliver as part of the Services. Vendor acknowledges the receipt



of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

**K. Section 5. Intellectual Property Matters, E. Confidentiality** is hereby replaced in its entirety as follows:

#### **E. Confidentiality**

In the performance of the Services hereunder, either party may receive or have access to documents, technical information, information about product plans and strategies, promotions, customers, and related technical, financial or business information, which the disclosing party considers to be the confidential information of that party or its third party contractors or suppliers ("Confidential Information"). The following will apply to any such Confidential Information to the extent consistent with the Texas Public Information Act and its trade secret exemptions:

- 1) Before any Confidential Information is disclosed, the parties will first agree to disclose and receive such information in confidence. If then disclosed, the Confidential Information will be marked as confidential at the time of disclosure, or if disclosed orally but stated to be confidential, will be designated as confidential in a writing by the disclosing party summarizing the Confidential Information disclosed and sent to the receiving party within thirty (30) days after such oral disclosure;
- 2) Confidential Information may be used by the receiving party only with respect to the performance of its obligations under this Contract, and only by the employees or contractors of the receiving party and its employees, agents or contractors who have a need to know such information for purposes of this Contract. The receiving party will protect, and will ensure that its employees, agents and contractors will protect, the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the receiving party uses to protect its own confidential information of a like nature;
- 3) The receiving party's confidentiality obligation will be for a period of three (3) years after the date of disclosure. **IF CUSTOMER REQUIRES ITS CONFIDENTIAL INFORMATION TO BE PROTECTED BEYOND THIS PERIOD, CUSTOMER MUST NEGOTIATE FURTHER TERMS WITH VENDOR.**
- 4) The confidentiality obligations of the parties will not extend to



information that:

- a) was in the receiving party's possession before receipt from the disclosing party;
- b) is or becomes publicly known without breach by the receiving party;
- c) is rightfully received by the receiving party from a third party without a duty of confidentiality;
- d) is independently developed or learned by the receiving party;
- e) is disclosed by the receiving party with the disclosing party's prior written approval; or
- f) is required to be disclosed pursuant to the Texas Public Information Act and its trade secret exemptions.

**L. Section 5. Intellectual Property Matters, F. Injunctive Relief** is hereby replaced in its entirety as follows:

**F. Injunctive Relief**

The Contract is intended to protect both parties' proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the non-breaching party. Therefore, to the extent authorized by Texas Law and Constitution, both parties' acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by the non-breaching party, without requiring proof of irreparable injury as same should be presumed.

**M. Section 5. Intellectual Property Matters, G. Return of Materials Pertaining to Work Product** is hereby replaced in its entirety as follows:

**G. Return of Materials Pertaining to Work Product**

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor, including all materials embodying the Work Product, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete for which the Customer has paid all undisputed sums and any other documents or Confidential Information furnished by Customer to Vendor. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertains to the Work Product.



**Section 5. Intellectual Property Matters, I. Third-Party Underlying and Derivative Works** is hereby replaced in its entirety as follows:

**I. Third-Party Underlying and Derivative Works**

In all instances, in its' SOW or quote, and before contracting with a customer the Vendor will disclose the use or incorporation of any Third Party IP into the Work Product or Deliverables and a description of the ownership and use rights that will be provided to the Customer. At the time of delivery, the Vendor will provide in writing the name and use of any Third Party IP, including information regarding the Vendor's authorization to include and utilize such Third Party IP. The notice shall include a copy of any ownership agreement or license that authorizes the Vendor to use the Third Party IP, If Vendor procures any Third Party IP for the State, then Vendor must assign or otherwise transfer to the State, or afford the State the benefits of, any license rights, including the manufacturer's warranty, for the Third Party IP.

**N. Section 5. Intellectual Property Matters, J. Agreement with Subcontracts** is hereby replaced in its entirety as follows:

**J. Agreement with Subcontracts**

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request. Vendor may redact confidential information, but in any event must provide copies sufficient to ensure Vendor's compliance with this section.

**O. Section 5. Intellectual Property Matters, L. Vendor Development Rights** is hereby replaced in its entirety as follows:

**L. Vendor Development Rights**

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials.



**P. Section 7. Contract Fulfillment and Promotion, C. Product Warranty and Return Policies** is hereby replaced in its entirety as follows:

**C. Product Warranty and Return Policies**

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning Product warranties and returns. Product warranty and return policies for Customers will not be more restrictive than warranty and return policies for other similarly situated Customers for like products, or more costly consistent with section 8.C.3.

**Q. Section 7. Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information 1)** is hereby replaced in its entirety as follows:

**1) Vendor Website**

Within thirty (30) calendar 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 offered, product and service specifications, specific contract pricing expressed in dollars based upon Contract discounts off MSRP or List Price, 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 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.

**R. Section 7. Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information 3)** is hereby replaced in its entirety as follows:

**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 use commercially reasonable efforts to provide verifiable documentation that pricing listed upon this website is compliant with the pricing as stated in the Contract.

**S. Section 7. Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information 5)** is hereby replaced in its entirety as follows:

**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, which can be publicly accessed through the DIR site.

**T. Section 8. Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price, 3)** is hereby replaced in its entirety as follows:

3) During the Contract term, if pricing for products, specific product configurations, or services available under this Contract is provided by the Contractor at a lower price to: (i) an eligible Texas Customer who is not purchasing those products, specific product configurations, or services under this Contract or (ii) to any other entity or consortia authorized by Texas law to sell said products and services to eligible Texas Customers, under like terms and conditions provided for the State for those commodities and services under this Contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement only applies to products, specific product configurations, or services quoted by Contractor for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. To the extent that either party identifies and confirms that better pricing is offered by Contractor in accordance with this section, both parties will utilize best efforts to amend this Contract within ten (10) days to reflect the lower price. Any Contract price changes pursuant to this section shall be effective for all transactions between Contractor and DIR Customers entered into on or after the date that the transaction, including the lower price was entered into.

**U. Section 8. Pricing, Purchase Orders, Invoices, and Payments, H. Purchase Orders** is hereby replaced in its entirety as follows:

**H. Purchase Orders**

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Negotiated and agreed Statements of Work shall be considered incorporated into the Customer Purchase Orders, if applicable. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

**V. Section 8. Pricing, Purchase Orders, Invoices, and Payments, J. Payments** is hereby replaced in its entirety as follows:

**J. Payments**

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor or Order Fulfiller. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. Any applicable payment schedule, as negotiated by the parties, will be set forth in the Statement of Work, if applicable. Any Services provided on a time and expense basis will be



invoiced monthly, unless otherwise agreed in the Statement of Work or Support Material.

**W. Section 9. Contract Administration, A. Contract Managers, 2)** is hereby replaced in its entirety as follows:

**2) Vendor Contract Manager**

Vendor shall provide a dedicated Contract Manager whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between an Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of DIR, adequately serving the needs of the State. In such an event, Vendor requests thirty (30) calendar days' notice.

**X. Section 9. Contract Administration, B. Reporting and Administrative Fees, 5) Accurate and Time Submission of Reports, c)** is hereby replaced in its entirety as follows:

c) Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract.

**Y. Section 9. Contract Administration, C. Records and Audit, 1)** is hereby replaced in its entirety as follows:

The following requirement is subject to Chapter 321, Texas Government Code.

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.



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

**2) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. 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.

**AA. Section 10. Vendor Responsibilities, A. Indemnification, 3) Infringements, a)** 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, AND/OR ASSIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS, WHICH PERTAIN TO HPE BRANDED PRODUCTS AND SERVICES, INVOLVING 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 COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES, VENDOR-NEGOTIATED SETTLEMENT AMOUNTS, AND COURT-AWARDED DAMAGES. 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.



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

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement, or (vi) use of the product or service in combination with product or services not provided under the Contract.

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

d) Vendor will transfer to Customer any third party intellectual property infringement indemnification for non-HPE Branded Products, Software, and Services delivered under the Contract and transferable to Customer.

**DD. Section 10. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel** is hereby replaced in its entirety as follows:

**I. Security of Premises, Equipment, Data and Personnel**

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may terminate its Purchase Order and related Service Agreement subject to the terms of subsections 11.B.(4), (5), and (6) of Appendix A.

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

**K. Limitation of Liability**

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 or \$1,000,000, whichever is greater. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement.

In the event the Customer determines a need for additional insurance or liability caps, Customer shall indicate said additional need for inclusion in the Statement of Work or Vendor Purchase Order.

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

**N. Required Insurance Coverage**

As a condition of this Contract with DIR, Vendor shall provide 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 are A- rated by A.M. Best, licensed in the State of Texas, and authorized to provide the corresponding coverage. With the exception of Workers' Compensation/Employers' Liability, the Customer and DIR will be included 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. The minimum acceptable insurance provisions are as follows:

**1) Commercial General Liability**

Commercial General Liability must include a combined single limit of \$1,000,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate limit of \$2,000,000.00 [Medical Expense each person: \$5,000; Personal Injury and Advertising Liability: \$1,000,000; Products/Completed Operations Aggregate Limit: \$2,000,000; Damage to Premises Rented to You: \$50,000]. Agencies may require additional Umbrella/ Excess Liability insurance. 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 included as an additional insured; and
- d) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

**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 \$1,000,000 BODILY INJURY PER ACCIDENT, \$1,000,000 BODILY INJURY DISEASE POLICY LIMIT AND \$1,000,000 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; and
- b) Additional Insured.

**GG. Section 10. Vendor Responsibilities, P. Immigration,** is hereby replaced in its entirety as follows:

**P. Immigration**

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

**HH. Section 11. Contract Enforcement, B. Enforcement, 1) Termination for Non-Appropriation by Customer,** is hereby replaced in its entirety as follows:

**1) Termination for Non-Appropriation**



**a) Termination for Non-Appropriation by Customer**

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated:

- i) by the governing body on behalf of local governments; or
- ii) by the Texas legislature on behalf of state agencies; or
- iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code.

In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract (except for Products shipped and Support and Services performed to the extent funds are available for payment), nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

**b) Termination for Non-Appropriation by DIR**

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature, or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract (except for Products shipped and Support and Services performed to the extent funds are available for payment), nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

**II. Section 11. Contract Enforcement, B. Enforcement, 4) Termination for Cause, b) is hereby replaced in its entirety as follows:**

**b) Purchase Order**

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 11.B. of Appendix A, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from



receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

**JJ. Section 11. Contract Enforcement, B. Enforcement, 6)** is hereby replaced in its entirety as follows:

**6) Vendor or Order Fulfiller Rights Under Termination**

In the event a Purchase Order or corresponding Statement of Work (if applicable) expires or is terminated, a Customer shall pay: 1) all amounts due for Products or Services ordered prior to the effective termination date and ultimately accepted, 2) any applicable early termination fees agreed to in such Purchase Order or Statement of Work; and 3) any travel charges and expenses incurred by Vendor and agreed in a Purchase Order or Statement of Work prior to incurring the charges or expenses.

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

**C. Force Majeure**

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.

**LL. Section 14. Additional Terms** are hereby added in its entirety as follows:

**14. Additional Terms**

**A. Products**

**a) Title.** Risk of loss or damage and title for Hardware Products will pass upon delivery to Customer or its designee. Where permitted by law, Vendor retains a security interest in Products sold until full payment is received.

**b) Delivery.** Vendor will use all commercially reasonable efforts to deliver Products in a timely manner. Vendor may elect to deliver



Software and related product/license information by electronic transmission or via download.

**c) Installation.** If Vendor is providing installation with the Product purchase, Vendor's site guidelines (available upon request) will describe Customer requirements. Vendor will conduct its standard installation and test procedures to confirm completion and acceptance by customer.

**d) Product Performance.** All HPE Branded Hardware Products are covered by Vendor's limited warranty statements that are provided with the products or otherwise made available. Hardware warranties begin on the date of delivery or if applicable, upon completion of Vendor installation, or (where Customer delays Vendor installation) at the latest 30 days from the date of delivery. Non-Vendor branded products receive warranty coverage as provided by the relevant third party supplier.

**e) Product Warranty Claims.** When Vendor receives a valid warranty claim for a Vendor Hardware or Software Product, Vendor will either repair the relevant defect or replace the Product. If Vendor is unable to complete the repair or replace the Product within a reasonable time, Customer will be entitled to a full refund upon the prompt return of the product to Vendor (if Hardware) or upon written confirmation by Customer that the relevant Software product has been destroyed or permanently disabled. Vendor will pay for shipment of repaired or replaced Hardware or Software Products to Customer. If under warranty, shipment cost will be Vendor responsibility.

## **B. Services**

**a) Technical Services.** Vendor will deliver any ordered Technical, training or other Services as described in the applicable Supporting Material.

**b) Technical Services Acceptance.** The acceptance process (if any) will be described in the applicable Supporting Material, will apply only to the deliverables specified, and shall not apply to other Products or Services to be provided by Vendor.

**c) Services Performance.** Services are performed using generally recognized commercial practices and standards. Customer agrees to provide prompt notice of any such Service concerns and Vendor will re-perform any Service that fails to meet this standard.

**d) Services with Deliverables.** If Supporting Material for Services defines specific Deliverables, Vendor warrants those Deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies Vendor of such a non-conformity during the 30-day period, Vendor will promptly remedy the impacted Deliverables or refund to Customer the fees paid for those deliverables and Customer will return those Deliverables to Vendor via freight pre-paid and charged to Vendor.

**e) Dependencies.** Vendor's ability to deliver Services will depend on Customer's reasonable and timely cooperation and the accuracy and



completeness of any information from Customer needed to deliver the Services.

**f) Change Orders.** Vendor and Customer each agree to appoint a project representative to serve as the principal point of contact in managing the delivery of Services and in dealing with issues that may arise. Requests to change the scope of Services or Deliverables will require a change order signed by both parties.

### **C. Support Services**

HPE's support services will be described in the applicable Supporting Material, which will cover the description of HPE's offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported.

### **D. Eligibility**

HPE's service, support and warranty commitments do not cover claims resulting from:

- a) improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
- b) Modifications or improper system maintenance or calibration not performed by HPE or authorized by HPE;
- c) failure or functional limitations of any non-HPE software or product impacting systems receiving HPE support or service;
- d) malware (e.g. virus, worm, etc.) not introduced by HPE; or
- e) abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HPE's control.

### **E. Personal Information**

Each party shall comply with their respective obligations under applicable data protection legislation. HPE does not intend to have access to personally identifiable information ("PII") of Customer in providing services. To the extent HPE has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII at all times. HPE will use any PII to which it has access strictly for purposes of delivering the services ordered.

### **F. Compliance With Laws**

Each party shall, in the performance of all of its rights and obligations under this Contract, comply with all applicable laws.



#### **G. Remedies**

This Contract states all remedies for warranty claims. To the extent permitted by law, HPE disclaims all other warranties.

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

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**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of July 3, 2016.

**HEWLETT PACKARD ENTERPRISE COMPANY**

**Authorized By:** Signature on File

**Name:** June Eskridge

**Title:** Contracts Administrator

**Date:** June 14, 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:** June 20, 2016

**Office of General Counsel:** DB June 17, 2016  
**Date**



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

**AGENDA DATE:**

December 13, 2016

**SUBJECT:**

Authorize the City Manager to Execute a Contract with Trane U.S., Inc., for HVAC Preventative Maintenance and Service for the Allen Event Center Through the Texas Buyboard Local Government Purchasing Cooperative for an Amount of \$83,275 with Three (3) Optional One-Year Renewals.

**STAFF RESOURCE:**

Dave Angeles, Assistant Director of Parks and Recreation  
Brian Stovall, Assistant General Manager of the Allen Event Center

**ACTION PROPOSED:**

Authorize the City Manager to Execute a Contract with Trane U.S., Inc., for HVAC Preventative Maintenance and Service for the Allen Event Center Through the Texas Buyboard Local Government Purchasing Cooperative for an Amount of \$83,275 with Three (3) Optional One-Year Renewals.

**BACKGROUND**

The majority of the HVAC equipment utilized at the Allen Event Center is manufactured by Trane. Previously, the Preventative Maintenance Agreement has been with Atlantis. However, much of the preventative maintenance and repairs to the units can only be performed by Trane Technicians.

Over the last two (2) fiscal years, repair and maintenance for the HVAC system has been tracked, and the expenditures for Trane have continued to increase while the expenditures for Atlantis have decreased. This is largely the result of Atlantis not possessing the necessary training to provide proprietary service to the Trane Equipment. With Trane providing the preventative maintenance on the HVAC equipment at Allen Event Center, staff anticipates not only a reduction in repair expenditures, but the City will receive a reduced rate from Trane on any repairs not covered by the Preventative Maintenance Agreement.

Funds for this agreement are allocated as follows:

- The Preventative Maintenance Agreement for Year 1 - \$46,440
- Additional repairs identified and budgeted for Year 1 - \$36,835

**BUDGETARY IMPACT**

Funds are available in FY17 operating budget of the Allen Event Center.



### **STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to execute a contract with Trane U.S., Inc., for HVAC preventative maintenance and service for the Allen Event Center through the Texas Buy Board Local Government Purchasing Cooperative for an amount of \$83,275 with three (3) optional one-year renewals.

### **MOTION**

*I make a motion to authorize the City Manager to execute a contract with Trane U.S., Inc., for HVAC preventative maintenance and service for the Allen Event Center through the Texas Buy Board Local Government Purchasing Cooperative for an amount of \$83,275 with three (3) optional one-year renewals.*

### **ATTACHMENTS:**

Contract



STATE OF TEXAS                   §  
   §       **AGREEMENT FOR: TRANE HVAC AGREEMENT**  
COUNTY OF COLLIN           §

This agreement ("Agreement") is made by and between the City of Allen, Texas ("City") and Trane U.S. Inc. dba Trane ("Company") acting by and through their authorized representatives.

**Recitals:**

**WHEREAS**, the City desires to obtain HVAC Equipment, Supplies & Install of HVAC Equipment from Trane in accordance with the Texas Buyboard Local Government Purchasing Cooperative Contract hereto attached as Exhibit "A" and;

**WHEREAS**, the City is a member of the Texas Buyboard Local Government Purchasing Cooperative; and

**WHEREAS**, Trane has been awarded the contract # 458-14, effective through September 30, 2017 for HVAC Equipment, Supplies & Install of HVAC Equipment.

**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") and continue until the last day of December 2017, unless earlier terminated as provided herein (the "Initial Term").

City maintains the right to renew this Agreement for up to Three (3) additional renewal terms of one (1) year at the City's sole discretion, the first renewal term beginning on January 1, 2018. The City may exercise its right to renew this Agreement by providing Company 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;
- B. Trane Scheduled Service Agreement (Exhibit "A")



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

Company shall provide the Services specifically set forth in the Specifications, including those requirements in the sample contract to the extent they do not conflict with this Agreement, as contained in Exhibit "A," which is attached hereto and made a part of this Agreement for all purposes.

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

Company 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**

City shall compensate Company for the Services, including all labor, materials, equipment and supplies as provided in Exhibit "A." The total compensation to Company shall not exceed \$46,440 during the Initial Term or any renewal term under this Agreement. Company 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 Company 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.

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

Company 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 Company prior to Company's receipt of a written Notice to Proceed from City shall be entirely at Company's own risk. Work performed and expenses incurred after Company 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 Company if City determines in its sole discretion that Company has, or will fail to perform, in accordance with this Agreement. In such event, any payments due Company shall be suspended until Company has taken satisfactory corrective action.



## **Article VIII**

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

8.1 The Company 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 Company 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.

8.2 To the extent reasonably necessary for the Company to perform the services under this Agreement, the Company shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Company 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 Company.

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

8.4 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 Company 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 Company defaults or breaches any of the terms or conditions of this Agreement;
- (c) by either party, upon ninety (90) days prior to written notice. Should Company terminate this Agreement under this provision, Company shall further state the reason(s) for termination in its written notice;



- (d) by City, if Company 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 Company merging with an affiliate of Company) of Company’s existence as a going business, insolvency, appointment of receiver for any part of Company’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 Company and in the event such proceeding is not voluntarily commenced by the Company, 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**

11.1 Company 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 Company’s performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000 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 Company, its officers, agents, and employees, and used in the performance of this Agreement; and (3) statutory Worker’s Compensation Insurance covering all of Company’s employees involved in the provision of services under this Agreement.

11.2 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.

11.3 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**



12.1 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.

12.2 Assignment. Company may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by Company 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.

12.3 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.

12.4 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.

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

12.6 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.

12.7 Independent Company. It is understood and agreed by and between the parties that Company, 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 Company pursuant to this Agreement shall be in the capacity of an independent Company, and not as an agent or employee of City. Company 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.

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

If intended for City:

City of Allen, Texas  
Attn: Peter H. Vargas, City Manager  
Allen Civic Plaza  
305 Century Parkway  
Allen, Texas 75013  
Facsimile: 214-509-4118

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



If intended for Company:

Trane U.S. Inc. dba Trane  
Attn: Jeremy Clifford  
1400 Valwood Parkway, Suite 100  
Carrollton, Texas 75006  
Phone: 972- 406-6000

12.9 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.

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

12.11 Indemnification. Company 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 services provided by Company to the extent caused by the negligent act or omission or intentional wrongful act omission of Company, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Company is legally responsible (hereinafter "Claims"). Company 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 Company 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 Company's obligation to indemnify City pursuant to this Contract. Company 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 Company fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Company shall be liable for all costs incurred by City.

12.12 Audits and Records. Company 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 Company'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.

12.13 Conflicts of Interests. The Company represents that no official or employee of



City has any direct or indirect pecuniary interest in this Agreement.

12.14 Warranty. The Company 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.

[OPTIONAL CLAUSES FOR CONTRACTORS WORKING IN PUBLIC RIGHTS-OF-WAY]

12.15 Uniforms. Company 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. Company 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 Company working on right-of-ways or medians must utilize personal protective equipment such as safety vests to insure their visibility to drivers.

12.16 Warning Devices and Barricades. The Company shall furnish and maintain such warning devices, barricades, lights, signs, and other devices as may be necessary or appropriate or required by the City to protect persons or property in, near or adjacent to the jobsite. The Company shall comply with all applicable Federal, State, and Local Laws regarding occupational safety and health as well as providing protection of the environment. This shall include but not be limited to compliance with U.S. Department of Labor-Occupational Safety and Health Administration (OSHA), and U.S. Environmental Protection Agency (EPA) guidelines and regulations. No separate compensation shall be paid to the Company for such measures.

12.17 Protection of Utilities. The Company shall use best efforts to leave undisturbed and uninterrupted all irrigation systems, utilities, and utility services provided to the job site or which presently exist at, above, or beneath the location where the work is to be performed. In the event that any irrigation system, utility, or utility service is disturbed or damaged during the progress of the work, the Company shall forthwith repair, remedy or restore the utility at Company's sole expense. The Company is responsible for an inspection of the site prior to commencing work on site to ensure that no damage is existing or will not occur when maintenance begins. If damage is noted or if probable damage will occur then it is the Company's responsibility to notify the City of Allen representative so that the City of Allen can take action to correct and document the problem(s). The Company is responsible for the replacement of all irrigation heads that are damaged by mowing with like equipment approved by the City of Allen.

*(Signature page to follow)*



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

**CITY OF ALLEN**

By: \_\_\_\_\_  
PETER H. VARGAS, CITY MANAGER

Allen Civic Plaza  
305 Century Parkway  
Allen, Texas 75013

**ATTEST**

\_\_\_\_\_  
SHELLEY B. GEORGE, CITY SECRETARY

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

\_\_\_\_\_  
**COMPANY**

By: \_\_\_\_\_  
Signature of Authorized Officer

Name: \_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

[ADDRESS]



**EXHIBIT “A”**  
**SPECIFICATIONS AND RESPONSE**

1. Trane Scheduled Service Agreement





# Trane Scheduled Service Agreement

**SERVICE PROPOSAL FOR:**

**Allen City of**

305 Century Parkway  
Allen, Texas 75013 U.S.A.

**SITE ADDRESS:**

Allen Event Center  
200 East Stacy Road Building 1350  
Allen, Texas 75002  
United States

**LOCAL TRANE OFFICE:**

Trane U.S. Inc. dba Trane  
1400 Valwood Parkway, Suite 100  
Carrollton, Texas 75006-8336

**LOCAL TRANE REPRESENTATIVE:**

Jeremy Clifford  
Office: (918)770-1667

**PROPOSAL ID / AGREEMENT NUMBER:**

**2067176**

**DATE:**

Dec 1, 2016







**TRANE SCHEDULED SERVICE AGREEMENT**

## Equipment Coverage and Services



Trane will perform the following scheduled services on the described equipment located at:

## Allen Event Center

The following "Covered Equipment" will be serviced at Allen Event Center:

Equipment	Manufacturer	Model Number	Serial Number
Air-Cooled Chiller	Trane	RTAC5004UR	U09C03192
Air-Cooled Chiller	Trane	RTAC5004UR	U09C03193
Pump	Nema	NA	NA
Pump	Nema	NA	NA
Variable Freq Drives	Toshiba	NA	NA
Variable Freq Drives	Toshiba	NA	NA
Variable Freq Drives	Trane	NA	NA
Outside Air Handler	Concepts & Designs	MDH-168	010077-001-001
Condensing Unit	Trane	RAUCC604B113ABD0000	C09A11886
Air Handler	Trane	TSCB100	NA
Air Handler	Trane	TSCB100	NA
Air Handler	Trane	TSCB100	NA
Air Handler	Trane	TSCB100	NA
Make Up Air Handler	Reznor	RDCA	MAU-1



<b>Description</b>	<b>Quantity Per Term</b>
Chiller Annual	1
Chiller Quarterly Inspection	3
<b>Description</b>	<b>Quantity Per Term</b>
Pumps Annual	1
Pump Quarterly Inspection	
<b>Description</b>	<b>Quantity Per Term</b>
Drive inspection bi- annual	1
<b>Description</b>	<b>Quantity Per Term</b>
OAH Annual	1
OAH Quarterly Inspection	3
<b>Description</b>	<b>Quantity Per Term</b>
Condenser Annual	1
Condenser Quarterly Inspection	3
<b>Description</b>	<b>Quantity Per Term</b>
T Series Bowl bi- annual	2
<b>Description</b>	<b>Quantity Per Term</b>
Reznor Annual	1
Chiller Quarterly Inspection	3

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Split System Air Conditioners -	1	Trane	2TTA0036A	N/A	CU 3-1
Split System Air Conditioners -	1	Trane	2TTA0036A	N/A	CU 3-2
Split System Air Conditioners -	1	Trane	2TTA0036A	N/A	CU 3-3
Split System Air Conditioners -	1	Trane	2TTA0036A	N/A	CU 3-4
Split System Air Conditioners -	1	Trane	2TTA0042A	N/A	CU 2-2
Split System Air Conditioners -	1	Trane	2TTA0060A	N/A	CU 3-8
Split System Air Conditioners -	1	Trane	2TTA0060A	N/A	CU 3-11
Split System Air Conditioners -	1	Trane	2TTA0060A	N/A	CU 3-19
Split System Air Conditioners -	1	Trane	2TTA060A	N/A	CU 3-6

<b>Description</b>	<b>Quantity Per Term</b>
Cooling Pre-Season Annual Start Up	1
Inspection	1

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
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Split System Air Conditioners	1	Trane	TTA090A4	N/A	CU 3-12
Split System Air Conditioners	1	Trane	TTA090A4	N/A	CU 3-13
Split System Air Conditioners	1	Trane	TTA090A4	N/A	CU 3-16
Split System Air Conditioners	1	Trane	TTA120B4	N/A	CU 2-5
Split System Air Conditioners	1	Trane	TTA120B4	N/A	CU 3-5
Split System Air Conditioners	1	Trane	TTA120B4	N/A	CU 3-14
Split System Air Conditioners	1	Trane	TTA120B4	N/A	CU 3-17
Split System Air Conditioners	1	Trane	TTA120B4	N/A	CU 3-18
Split System Air Conditioners	1	Trane	TTA120B4	N/A	CU 3-10
Split System Air Conditioners	1	Trane	TTA180B4	N/A	CU 2-1
Split System Air Conditioners	1	Trane	TTA180B4	N/A	CU 2-4
Split System Air Conditioners	1	Trane	TTA180B4	N/A	CU 3-7
Split System Air Conditioners	1	Trane	TTA180B4	N/A	CU3-15
Split System Air Conditioners	1	Trane	TTA240B4	N/A	CU 3-9

#### Description

Cooling Pre-Season Annual Start Up  
Inspection

#### Quantity Per Term

1  
1

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Split System Air Conditioners -	1	Trane	TWE060A	N/A	AC 1-7
Split System Air Conditioners -	1	Trane	TWE060A	N/A	AC 2-6
Split System Air Conditioners -	1	Trane	TWE060A	N/A	AC 2-5
Split System Air Conditioners -	1	Trane	TWE060A	N/A	AC 2-10
Split System Air Conditioners -	1	Trane	TWE090A3	N/A	AC 1-10
Split System Air Conditioners -	1	Trane	TWE090A3	N/A	AC 1-11
Split System Air Conditioners -	1	Trane	TWE090A3	N/A	AC 1-12
Split System Air Conditioners -	1	Trane	TWE120B3	N/A	AC 1-4
Split System Air Conditioners -	1	Trane	TWE120B3	N/A	AC 1-5
Split System Air Conditioners -	1	Trane	TWE120B3	N/A	AC 1-9
Split System Air Conditioners -	1	Trane	TWE120B3	N/A	AC 1-13
Split System Air Conditioners -	1	Trane	TWE120B3	N/A	AC 2-7
Split System Air Conditioners -	1	Trane	TWE120B3	N/A	AC 2-9
Split System Air Conditioners -	1	Trane	TWE180B4	N/A	AC 1-1
Split System Air Conditioners -	1	Trane	TWE180B4	N/A	AC 1-3
Split System Air Conditioners -	1	Trane	TWE180B4	N/A	AC 2-4
Split System Air Conditioners -	1	Trane	TWE180B4	N/A	AC 2-8
Split System Air Conditioners -	1	Trane	TWE240B4	N/A	AC 1-8

#### Description

Cooling Pre-Season Annual Start Up (Service 8)  
Quarterly Inspection (Service 10)

#### Quantity Per Term

1  
1

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Split System Air Conditioners -	1	LG Electric Air Conditioning	C0971	N/A	MSCU 2-1
Split System Air Conditioners -	1	LG Electric Air Conditioning	C1872	N/A	MSCU 3-1
Split System Air Conditioners -	1	LG Electric Air Conditioning	C1872	N/A	MSCU3-5
Split System Air Conditioners -	1	LG Electric Air Conditioning	C2472	N/A	MSCU 3-2
Split System Air Conditioners -	1	LG Electric Air Conditioning	C2472	N/A	MSCU 3-6
Split System Air Conditioners -	1	LG Electric Air Conditioning	C3072R	N/A	MSCU 3-4



Split System Air Conditioners -	1	LG Electric Air Conditioning	KHS3072R	N/A	MS 1-3
Split System Air Conditioners -	1	LG Electric Air Conditioning	KS0971	N/A	MS 1-5
Split System Air Conditioners -	1	LG Electric Air Conditioning	KS1872	N/A	MS 2-2
Split System Air Conditioners -	1	LG Electric Air Conditioning	KS1872	N/A	MS 1-1
Split System Air Conditioners -	1	LG Electric Air Conditioning	KS2472	N/A	MS 1-2
Split System Air Conditioners -	1	LG Electric Air Conditioning	KS2472	N/A	MS 2-3

UNT/DX-110a Split System Annual Maintenance Inspection (Service 11)

1

UNT/DX-120 Mid-Season Running Inspection (Service 12)

1

Equipment	Qty	Manufacturer	Model Number	Serial Number	Asset Tag
Split System Air Conditioners -	1	Trane	2TEC3F36	N/A	AC 2-3
Split System Air Conditioners -	1	Trane	2TEC3F36	N/A	AC 2-2
Split System Air Conditioners -	1	Trane	2TEC3F36	N/A	AC 2-1
Split System Air Conditioners -	1	Trane	2TEC3F48	N/A	AC 1-2
Split System Air Conditioners -	1	Trane	2TECF36	N/A	AC 1-6
Rooftop Air Conditioners -	1	Trane	TSC090	N/A	RTU 2-1
Rooftop Air Conditioners -	1	Trane	YCD181	N/A	RTU 3-1
Rooftop Air Conditioners -	1	Trane	YCD211	N/A	RTU 2-2
27 1/2-50 Ton Packaged Commercial Rooftop	1	Trane	YCD480A4LZ	C09A11769	RTU 3-2
Fan Powered Boxes	7	Trane	NA	NA	Store, Meeting Room, Offices

#### Belts Included

Boiler	1	Lochinvar	CFN1261PM	D09H00218431	
Boiler	1	Lochinvar	CFN1261PM	A09H00216032	

#### Description

Trane RTU Cooling Pre-Season Annual Start Up Inspection

#### Quantity Per Term

1  
3

#### Description

Boiler Annual Start Up Inspection

#### Quantity Per Term

1

#### Quantity Per Term

#### Description

Fan Powered Box annual inspection

1

#### Description

Mini Split Annual bi annual inspection

#### Quantity Per Term

2

Exhaust Units	30	Greenheck	NA	N/A	MUA 2-1
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VAV Boxes	15	Trane	NA	NA	
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Unit Heaters	8	Trane	NA	NA	
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## TRANE SCHEDULED SERVICE AGREEMENT

# Pricing and Acceptance

Facilities  
Allen City of  
305 Century Parkway  
Allen, Texas 75013 U.S.A.

Site Address:  
Allen Event Center  
200 East Stacy Road Building 1350  
Allen, TX 75002  
United States  
BUY BOARD # 541.50

### Trane Service Agreement 11-2067176

This Service Agreement consists of the pages beginning with the title page entitled "The Agreement," the consecutively numbered pages immediately following such title page, and includes and ends with the Trane Terms and Conditions (Service) (collectively, the "Service Agreement" or "Agreement"). Trane agrees to inspect and maintain the Covered Equipment according to the terms of this Service Agreement, including the "Terms and Conditions," and "Scope of Services" sections. Trane agrees to give preferential service to Customer over non-contract customers.

### Service Fee

As the fee(s) (the "Service Fee(s)") for the inspection and maintenance services described in the Scope of Services section with respect to the Covered Equipment, Customer agrees to pay to Trane the following amounts, plus applicable tax, as and when due.

Contract Year	Annual Amount USD	Payment USD	Payment Term
Year 1 Total	\$ 41,860.00	\$10,465.00	Quarterly
Year 1 Building Automation	\$4,580.00	\$1,145.00	Quarterly

☐ A one-time 3.00 % discount is offered for full payment of 1 year(s) in advance of the commencement of the Service Agreement. Invoice would be issued at start of the Agreement and is due net 15 days from date of invoice.

### Term

The initial term of this Service Agreement is 1 year, beginning **January 1, 2017**. However, Trane's obligation under this Agreement will not begin until authorized representatives of Trane and Customer have both signed this Agreement in the spaces provided below. Following expiration of the initial term on **December 31, 2017**

**This Agreement is subject to Customer's acceptance of the attached Trane Terms and Conditions (Service).**

Submitted By: Jeremy Clifford		Office: (918)770-1667	
		Proposal Date: Dec 1, 2016	
CUSTOMER ACCEPTANCE		TRANE ACCEPTANCE	
		Trane U.S. Inc. dba Trane	
Authorized Representative		Authorized Representative	
Printed Name		Title	
Title		Signature Date	
Purchase Order			
Acceptance Date			

Regulated by the Texas Department of Licensing and Regulation  
PO Box 12157, Austin, TX 78711 Ph.800-803-9292; 512-463-6599  
LicenseTACLA019613C





# Terms and Conditions (Service)

**"Company"** shall mean Trane U.S. Inc. dba Trane for Company performance in the United States and Trane Canada ULC for Company performance in Canada.

**1. Acceptance.** These terms and conditions ("Terms") are an integral part of Company's offer and form the basis of any agreement (the "Agreement") resulting from Company's proposal (the "Proposal") for the following services as stated in the Proposal (collectively, the "Services"): inspection, maintenance and repair (the "Maintenance Services") on equipment (the "Covered Equipment"), specified Additional Work (if any), and, if included in the Proposal, Intelligent Services, Trane Energy Manager Monitoring and/or Diagnostic Services, and any other services using remote connectivity (collectively and individually referred to in these Terms as "Energy and Building Performance Services"). **COMPANY'S TERMS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.** The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent ("Customer") delivered to Company within 30 days from the date of the Proposal. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer's order shall be deemed acceptance of the Proposal subject to these Terms. If Customer's order is expressly conditioned upon Company's acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company's Terms attached or referenced serves as Company's notice of objection to Customer's terms and as Company's counter-offer to perform in accordance with the Proposal and Company Terms. If Customer does not reject or object in writing to Company within 10 days, Company's counter-offer will be deemed accepted. Customer's acceptance of performance by Company will in any event constitute an acceptance by Customer of Company's Terms. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or Terms with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer's obligation to pay for Services provided by Company to the date of cancellation.

**2. Fees .** Fees for the Services (the "Service Fees") are as set forth in the Proposal. Except as otherwise stated in the Proposal, Service Fees are based on performance during regular business hours. Charges for performance outside Company's normal business hours shall be billed separately according to then prevailing overtime or emergency labor/labour rates. In addition to the stated Service Fees,

**5. Payment.** Payment is due upon receipt of Company's invoice. Service Fees shall be paid no less frequently than quarterly and in advance of performance of the Services. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 1.5% of the principal amount due at the end of each month. Without liability to Customer, Company may discontinue performance whenever payment is overdue. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due or otherwise enforcing this Agreement.

**6. Customer Breach.** Each of the following constitutes a breach by Customer and shall give Company the right, without an election of remedies, to suspend performance or terminate this Agreement by delivery of written notice declaring termination. Upon termination, Customer shall be liable to the Company for all Services furnished to date and all damages sustained by Company (including lost profit and overhead): (a) Any failure by Customer to pay amounts when due; (b) any general assignment by Customer for the benefit of its creditors, Customer's bankruptcy, insolvency, or receivership; (c) Any representation or warranty furnished by Customer in connection with this Agreement is false or misleading in any material respect when made; or (d) Any failure by Customer to perform or comply with any material provision of this Agreement.

**7. Performance.** Company shall perform the Services in accordance with industry standards generally applicable in the area under similar circumstances when Company performs the Services. Company may refuse to perform where working conditions could endanger property or put people at risk. Unless otherwise agreed by Customer and Company, at Customer's expense and before the Services begin, Customer will provide any necessary access platforms, catwalks to safely perform the Services in compliance with OSHA or state industrial safety regulations. This Agreement presupposes that all major pieces of Covered Equipment are in proper operating condition as of the date hereof. Services furnished are premised on the Covered Equipment being in a maintainable condition. In no event shall Company have any obligation to replace Covered Equipment that is no longer maintainable. During the first 30 days of this Agreement, or upon initial inspection, and/or upon seasonal start-up (if included in the Services), if an inspection by Company of Covered Equipment indicates repairs or replacement is required, Company will provide a written quotation for such repairs or replacement. If Customer does not authorize such repairs or replacement, Company may remove the unacceptable equipment from the Covered Equipment and adjust the Service Fees accordingly. Customer authorizes Company to utilize Customer's telephone line or network infrastructure to connect to controls, systems and/or equipment provided or serviced by Company and to provide Services contracted for or otherwise requested by Customer, including remote diagnostic and repair service. Customer acknowledges that Company is not responsible for any adverse impact to Customer's communications and network infrastructure. Company may elect to install/attach to Customer equipment or provide portable devices (hardware and/or software) for execution of control or diagnostic procedures. Such devices shall remain the personal proprietary property of Company and in no event shall become a fixture of Customer locations. Customer shall not acquire any interest, title or equity in any hardware, software, processes, and other intellectual or proprietary rights to devices used in connection with the Services on Customer equipment. Company may remove such devices at its discretion.

**8. Customer Obligations.** Customer shall: (a) Provide Company reasonable and safe access to the Covered Equipment and areas where Company is to work; (b) Follow manufacturer recommendations concerning teardown and internal inspection, major overhaul, restoration or refurbishing of the Covered Equipment; unless expressly stated in the Scope of Services statement, Company is not performing any manufacturer recommended teardown and internal inspection, major overhaul, restoration or refurbishing of the Covered Equipment; (c) Reimburse Company for services, repairs, and/or replacements performed by Company beyond the Services or otherwise excluded under this Agreement and such reimbursement shall be at the then prevailing applicable regular, overtime, or holiday rates for labor/labour and prices for materials and may at Company's option be subject to a separate written agreement prior to its undertaking such work; and (d) Where applicable, unless water treatment is expressly included in the Services, provide professional cooling tower water treatment in accordance with any reasonable recommendations provided by Company.

**9. Exclusions.** Unless expressly included in the Covered Equipment or the Services, the Services do not include, and Company shall not be liable for, any of the following: (a) Any guarantee of room conditions or system performance; (b) Inspection, maintenance, repair, replacement of or services for: chilled water and condenser water pumps and piping; electrical disconnect switches or circuit breakers; motor starting equipment that is not factory mounted and interconnecting power wiring; recording or portable instruments, gauges or thermometers; non-moving parts or non-maintainable parts of the system, including, but not limited to, storage tanks; pressure vessels, shells, coils, tubes, housings, castings, casings, drain pans, panels, duct work; piping: hydraulic, hydronic, pneumatic, gas, or refrigerant; insulation; pipe covering; refractory material; fuses, unit cabinets; electrical wiring; ductwork or conduit; electrical distribution system; hydronic structural supports and similar items; the appearance of decorative casing or cabinets; damage sustained by other equipment or systems; and/or any failure, misadjustment or design deficiencies in other equipment or systems; (c) Damage, repairs or replacement of parts made necessary as a result of electrical power failure, low voltage, burned out main or branch fuses, low water pressure, vandalism, misuse or abuse, water damage, improper operation, unauthorized alteration of equipment, accident, acts or omissions of Customer or others, damage due to freezing weather, calamity, malicious act, or any Event of Force Majeure; (d) Any damage or malfunction resulting from vibration, electrolytic action, freezing, contamination, corrosion, erosion, or caused by scale or sludge on internal tubes except where water treatment protection services are provided by Company as part of this Agreement; (e) Furnishing any items of equipment, material, or labor/labour, or performing special tests recommended or required by insurance companies or federal, state, or local governments; (f) Failure or inadequacy of any structure or foundation supporting or surrounding the equipment to be worked on or any portion thereof; (g) Building access or alterations that might be necessary to repair or replace Customer's existing equipment; (h) The normal function of starting and stopping equipment or the opening and closing of valves, dampers or regulators normally installed to protect equipment against damage; (i) Valves that are not factory mounted: balance, stop, control, and other



valves external to the device unless specifically included in the Agreement; (j) Any responsibility for design or redesign of the system or of the Covered Equipment, obsolescence, safety tests, or removal or reinstallation of valve bodies and dampers; (k) Any services, claims, or damages arising out of Customer's failure to comply with its obligations under this Agreement; (l) Failure of Customer to follow manufacturer recommendations concerning teardown and internal inspection, overhaul and refurbishing of equipment; (m) Any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises before the effective date of this Agreement ("Pre-Existing Conditions"), including, without limitation, damages, losses, or expenses involving pre-existing building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or fungi; and (n) Replacement of refrigerant is excluded, unless replacement of refrigerant is expressly stated as included within the Services, in which case replacement shall in no event exceed the stated percentage of rated system charge per year expressly stated in the Services. Customer shall be responsible for: (i) The cost of any additional replacement refrigerant; (ii) Operation of any equipment; and (iii) Any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company.

**10. Limited Warranty.** Company warrants that: (a) the material manufactured by Company and furnished hereunder is free from defects in material and manufacture for a period of 12 months from the earlier of the date of equipment start-up or replacement; and (b) the labor/labour portion of the Maintenance Services and Additional Work has been properly performed for a period of 90 days from date of completion (the "Limited Warranty"). Company obligations of equipment start-up, if any are stated in the Proposal, are coterminous with the Limited Warranty period. Defects must be reported to Company within the Limited Warranty period. Company's obligation under the Limited Warranty is limited to repairing or replacing the defective part at its option and to correcting any labor/labour improperly performed by Company. No liability whatsoever shall attach to Company until the Maintenance Services and Additional Work have been paid for in full. Exclusions from this Warranty include damage or failure arising from: wear and tear; corrosion, erosion, deterioration; Customer's failure to follow the Company-provided maintenance plan; refrigerant not supplied by Trane; and modifications made by others to equipment. Company shall not be obligated to pay for the cost of lost refrigerant or lost product. Some components of equipment manufactured by Company may be warranted directly from the component supplier, in which case this Company Limited Warranty shall not apply to those components and any warranty of the components shall be the warranty given by such component supplier. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. Equipment, material and/or parts that are not manufactured by Company are not warranted by Company and have such warranties as may be extended by the respective manufacturer. **THE LIMITED WARRANTY AND LIABILITY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF, OF MOLD/MOULD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES. COMPANY SPECIFICALLY DISCLAIMS ANY LIABILITY IF THE SCOPE OF SERVICES OR ANY COMPONENT THEREOF IS USED TO PREVENT OR INHIBIT THE GROWTH OF SUCH MATERIALS. THE ENERGY AND BUILDING PERFORMANCE SERVICES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND.**

**11. Indemnity.** Company and Customer shall indemnify, defend and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or personal property, to the extent caused by the negligence or misconduct of the indemnifying party, and/or its respective employees or other authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses, or liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

**12. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE (INCLUDING WITHOUT LIMITATION REFRIGERANT LOSS, PRODUCT LOSS, LOST REVENUE OR PROFITS), OR PUNITIVE DAMAGES WHETHER CLAIMED UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY OR FACTS.** Should Company nevertheless be found liable for any damages they shall be limited to the compensation received by Company for the Services and Additional Work for one location over a 12 month term. **IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY DAMAGES (WHETHER DIRECT OR INDIRECT) RESULTING FROM MOLD/MOULD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR OTHER CONTAMINATES OR AIRBORNE BIOLOGICAL AGENTS. TO THE MAXIMUM EXTENT ALLOWED BY LAW, COMPANY SHALL NOT BE LIABLE FOR ANY OF THE FOLLOWING IN CONNECTION WITH PROVIDING THE ENERGY AND BUILDING PERFORMANCE SERVICES: ERRORS, INACCURACIES, OMISSIONS, OR OTHER DEFECTS IN THE ENERGY AND BUILDING PERFORMANCE SERVICES PROVIDED; INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION; CUSTOMER'S NETWORK SECURITY; COMPUTER VIRUS; COMMUNICATION FAILURE; THEFT OR DESTRUCTION OF DATA; GAPS IN DATA COLLECTED; AND UNAUTHORIZED ACCESS TO CUSTOMER'S DATA OR COMMUNICATIONS NETWORK.**

**13. Asbestos and Hazardous Materials.** The Services expressly exclude any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos polychlorinated biphenyl ("PCB"), or other hazardous materials (collectively, "Hazardous Materials"). Customer warrants and represents that there are no Hazardous Materials on the premises that will in any way affect Company's performance, except as set forth in a writing signed by Company disclosing the existence and location of any Hazardous Materials in all areas within which Company will be performing. Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and notify Customer. Customer will be responsible for correcting the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for and shall indemnify and hold harmless Company (including its employees, agents and subcontractors) from and against any loss, claim, liability, fees, penalties, injury (including death) or liability of any nature, and the payment thereof, arising out of or relating to any Hazardous Materials on or about the premises, not brought onto the premises by Company. Company shall be required to resume performance only in the absence of Hazardous Materials or when the affected area has been rendered harmless. In no event shall Company be obligated to transport or handle Hazardous Materials, provide any notices to any governmental agency, or examine the premises site for the presence of Hazardous Materials.

**14. Insurance.** Company agrees to maintain the following insurance during the term of this Agreement with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company waive rights of subrogation.

**15. Force Majeure.** Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company is unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon 10 days notice to Customer, in which event Customer shall pay Company for all parts of the Services furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; lightning; tornado; storm; fire; civil disobedience; pandemic; insurrections; riots; labor/labour disputes; labor/labour or material shortages from the usual sources of supply; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company; and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

**16. Maintenance Services Other Than Solely Scheduled Service.** If Company's Maintenance Services hereunder are not limited solely to Scheduled Service, the following provisions shall also apply: (a) Required restoration shall be performed by Customer at its cost prior to Company being obligated to perform hereunder; (b) any changes, adjustments, service or repairs made to the Equipment by any party other than Company, unless approved by Company in writing, may, at Company's option, terminate Company's obligation to render further service to the Equipment so affected; in such case no refund of any portion of the Service Fees shall be made; and (c) Customer shall (i) promptly notify Company of any unusual performance of Equipment; (ii) permit only Company personnel to repair or adjust Equipment and/or controls during the Term or a Renewal Term; and (iii) utilize qualified personnel to properly operate the Equipment in accordance with the applicable operating manuals and recommended procedures.

**17. Remote Connectivity.** Remote connectivity services refers services by Company provided, in whole or in part, using any method of connecting to Customer Building Automation System (BAS) to view, extract, or otherwise collect and retain data from the BAS via phone modem, internet or other agreed upon means. The Intelligent Services, including any reports Company provides, are intended to provide operational assessments and recommendations only and are intended to supplement, and do not replace, manual inspections of Customer's equipment and building systems. **Electronic Monitoring.** Any electronic monitoring Company performs is undertaken solely to enable Company to collect the data and perform any analysis included in Company's Services. Customer



agrees that Company is not liable for inability to perform and/or losses that may occur in cases of malfunction or nonfunctioning of communications equipment, HVAC and other equipment, the energy management system, failure to identify equipment or system performance issues, failure to recommend corrective action, or otherwise related to the monitoring of Customer's equipment and building systems. **Data Collected.** Customer hereby grants to Company the irrevocable, perpetual, nonexclusive, worldwide, royalty-free right and license to use, reproduce, display, distribute internally or externally and prepare derivative works based upon any such data Company collects from Customer. Company shall not use or publish such data in any way that identifies Customer as the source of that data without Customer's prior written consent. The data Company will collect from Customer will not include any personal or individual information. Upon Customer's written request, Company will endeavor to provide an electronic copy of data collected from Customer, subject to availability. Company will use commercially reasonable efforts to store Customer's data for up to 18 months. Company cannot guarantee the availability of the data. **Data Privacy and Security.** Company has implemented various security measures for the purpose of protecting Customer's data against accidental or unlawful access, unauthorized disclosure, loss, destruction, and alteration. Customer is responsible for maintaining the confidentiality of Customer's user name(s) and password(s). Customer is responsible for all uses of Customer's password(s), whether or not authorized by Customer. Customer must inform Company immediately of any unauthorized use of Customer's user name(s) or password(s). Transmission of data over the Internet by its nature entails the use of systems under the control of third parties, and as a result Company cannot ensure total control of the security of such systems. Company will take commercially reasonable efforts to ensure that data and other configuration parameters are not visible or accessed by other customers. Customer acknowledges that the very nature of communication via the Internet restricts Company from offering any guarantee of the privacy or confidentiality of information relating to Customer passing over the Internet. In gaining access via the Internet, Customer also acknowledges and accepts that electronic communication may not be free from interference by unauthorized persons and may not remain confidential. Customer therefore accepts that access and storage of data is at Customer's own risk. Company will notify Customer of any breach in security of which Company become aware. Any breach in privacy of which Customer become aware should be reported by Customer to Company immediately. Company does not disclose Customer's information to third parties for their marketing purposes, but Company does use third party software and services to assist Company with collecting and analyzing information. Company may also disclose Customer's information if required to do so by law, in which case, Company would inform Customer of such disclosure.

**18. General.** Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which Company performs the Services. Any dispute arising under or relating to this Agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Services are performed. To the extent the premises are owned and/or operated by any agency of the Federal Government, determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the Services. Except as provided for Service Fees adjustments, this Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other Terms of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, without the written consent of Company. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original.

**19. Equal Employment Opportunity/Affirmative Action Clause.** Company is a federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

**20. U.S. Government Services. The following provision applies only to direct sales by Company to the US Government.** The Parties acknowledge that all items or services ordered and delivered under this Agreement are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business. **The following provision applies only to indirect sales by Company to the US Government.** As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions: 52.219-8; 52.222-26; 52.222-35; 52.222-36; 52.222-39; 52.247-64. If the Services are in connection with a U.S. Government contract, Customer certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the Services that are the subject of the Proposal or this Agreement, other than the Proposal or this Agreement.

**21. Limited Waiver of Sovereign Immunity.** If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver or its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

1-26.130-7 (1213)

Supersedes 1-26.130-7 (0613)



# Appendix

**CONTENTS:**

Safety  
Customer Service Flows



# Customer Service Flows



The following Customer Service Flows provide additional service description detail for Covered Equipment.

**Note:** There may be differences per the agreement in the work being performed between sites and the equipment on those sites.

## Service 1: RTAC Annual (Water Coil Cleaning)

### Description

- Customer Notification
- Initial Site Inspection
- Review Diagnostics
- Lock Out Tag Out At Main Disconnect
- Electrical Inspection (RTA\*)
- Compressor Starter Inspection (Wye-Delta Closed Transition) Series R Air Cooled
- Flow/Differential Mechanical Switch Check
- Remove Lock Out Tag Out At Main Disconnect
- Condenser Fans Check RTA\* Per Circuit
- Visual Condenser Coil Check
- Oil Return Operation Check Per Circuit
- Oil Level Check Per Compressor
- Oil Analysis Per Compressor
- Low Temperature Sensor Calibration
- Control Panel Calibration Check
- Leak Test Inspection (Positive Pressure)
- Coil Cleaning Water (Applied)
- Start Unit
- Compressor Check (HeliRotor Compressors)
- Compressor And Oil Separator Heater Check
- TechView/KestrelView Connection
- Run Service Report From Kestrel View
- Techview/Kestrel View Disconnection
- Complete Required Paper Work

## Service 2: RTAC Operational Quarterly Inspections

### Description

- Customer Notification



- Initial Site Inspection
- Review Diagnostics
- Condenser Fans Check RTA\* Per Circuit
- Lock Out Tag Out (Standard)
- Visual Electrical Inspection
- Visual Condenser Coil Check
- Remove Lock Out Tag Out
- Start Unit
- Complete Required Paper Work
- TechView/KestrelView Connection
- Run Service Report From Kestrel View
- Techview/Kestrel View Disconnection

## CENTRAL STATION AIR HANDLING UNITS COMPREHENSIVE ANNUAL INSPECTION AHU-110

1. Report in with the Customer Representative.
2. Record and report abnormal conditions, measurements taken, etc.
3. Review customer logs with the customer for operational problems and trends.

### 1. General Assembly

- a. Inspect the unit for cleanliness.
- b. Inspect the fan wheel and shaft for wear and clearance.
- c. Check the sheaves and pulleys for wear and alignment.
- d. Check the belts for tension, wear, cracks, and glazing.
- e. Verify tight bolts, set screws, and locking collars.
- f. Check dampers for wear, security and linkage adjustment.
- g. Verify clean condensate pan.
- h. Verify proper operation of the condensate drain.
- i. Verify clean air filters.
- j. Verify clean coils.
- k. Verify proper operation of the spray pump, if applicable.
- l. Verify smooth fan operation.
- m. Log operating conditions after system has stabilized.
- n. Provide a written report of completed work, operating log, and indicate any uncorrected deficiencies detected.

### 2. Lubrication

\*LUB-110

- a. Lubricate the fan shaft bearings, if applicable.
- b. Lubricate the motor bearings, if applicable.

### 3. Controls and Safeties

\*PNL-170

- a. Test the operation of the low temperature safety device, if applicable.
- b. Test the operation of the high static pressure safety device, if applicable.
- c. Test the operation of the low static pressure safety device, if applicable.
- d. Check the thermal cutout on electric heaters, if applicable.
- e. Check the step controller, if applicable.
- f. Check and record supply air and control air pressure, if applicable.
- g. Verify the operation of the control system and dampers while the fan is operating.

### 4. Motor and Starter

\*MOT-110 \*MOT-120

- a. Clean the starter and cabinet.
- b. Inspect the wiring and connections for tightness and signs of overheating and discoloration. This includes wiring to the electric heat, if applicable.



- c. Check the condition of the contacts for wear and pitting.
- d. Check the contactors for free and smooth operation.
- e. Meg the motor and record readings.

## **SCHEDULED RUNNING INSPECTIONS**

### **AHU-130**

1. Check the general condition of the fan.
2. Verify smooth fan operation.
3. Check and record supply and control air pressure, if applicable.
4. Verify the operation of the control system.
5. Log the operating conditions after the system has stabilized.
6. Review operating procedures with operating personnel.
7. Provide a written report of completed work, operating log, and indicate any uncorrected deficiencies detected.

### **Service 1: AHU-110 Annual Inspection Maintenance Inspection**

#### **Description**

- Unitary Visual Equipment Inspection
- Electrical Inspection-Unitary
- Customer Notification
- Supply Fan and Motor Inspection (Air Handler)
- Log Unit (NTP Air Handler)
- Condensate Drip Pan Treatment
- Annual Inspection

### **Service 2: AHU-130 Mid-Season Running Inspection Maintenance Inspection**

#### **Description**

- Unitary Visual Equipment Inspection
- Electrical Inspection-Unitary
- Customer Notification
- Supply Fan and Motor Inspection (Air Handler)
- Log Unit (NTP Air Handler)
- Condensate Drip Pan Treatment
- Quarterly Inspection

### **Service 3: Air Cooled Condenser Annual Inspection**

#### **Description**

- Lock Out Tag Out Condenser
- Electrical Inspection-Unitary
- Leak Test Inspection (Positive Pressure)
- Condenser Coil Check
- Condenser Physical Fan Check
- Remove Lock Out Tag Out and Restore Power
- Manual Log

### **Service 4: Air Cooled Condenser Quarterly Inspection**

#### **Description**

- Lock Out Tag Out Condenser
- Condenser Coil Check
- Unitary Visual Equipment Inspection
- Remove Lock Out Tag Out and Restore Power

### **Service 5: Air Cooled Recip Condensing Unit Annual Maintenance**

#### **Description**

- Customer Notification
- Initial Site Inspection
- Lock Out Tag Out Condenser
- Electrical Inspection



- Control Panel Calibration Check
- Leak Test Inspection (Positive Pressure)
- Visual Condenser Coil Check
- Condenser Coil Cleaning wo/Backflush
- Mechanical Condenser Fan Inspection
- Remove Lock Out Tag Out and Restore Power
- Compressor Oil Level Check
- Start Unit
- Condenser Running Fan Check
- Acid Test
- Manual Log With Electronic Device

#### **Service 6: Air Cooled Recip Condensing Unit Quarterly Maintenance**

##### Description

- Customer Notification
- Initial Site Inspection
- Lock Out Tag Out Condenser
- Visual Condenser Coil Check
- Mechanical Condenser Fan Inspection
- Remove Lock Out Tag Out and Restore Power
- Manual Log With Electronic Device
- Compressor Oil Level Check
- Condenser Running Fan Check

#### **Service 7: Cooling Pre-Season Annual Start Up**

##### Description

- Unitary Visual Equipment Inspection
- Condenser Coil Cleaning (Light Commercial)
- Meg Supply Fan Without VFD
- Meg Compressor Motor
- Electrical Inspection
- Condenser Fan Check (Odyssey)
- Start Up Seasonal Cooling

#### **Service 8: Cooling Pre-Season Annual Start Up**

##### Description

- Unitary Visual Equipment Inspection
- Supply Fan Inspection Including LOTO
- Bearing Lubrication
- Condensate Drip Pan Treatment
- Meg Supply Fan Without VFD
- Meg Compressor Motor
- Electrical Inspection
- Condenser Fan Check (Odyssey)
- Start Up Seasonal Cooling

#### **Service 9: Odyssey Quarterly Inspection**

##### Description

- Unitary Visual Equipment Inspection
- Log Unit (Unitary)

#### **Service 10: Odyssey Quarterly Inspection**

##### Description

- Unitary Visual Equipment Inspection
- Supply Fan Inspection Including LOTO
- Log Unit (Unitary)

#### **Service 11: UNT/DX-110a Split System Annual Maintenance Inspection**



Description

- Annual Inspection

**Service 12: UNT/DX-120 Mid-Season Running Inspection**

Description

- Quarterly Cooling Inspection

**CENTRAL STATION AIR HANDLING UNITS  
COMPREHENSIVE ANNUAL INSPECTION  
AHU-110**

1. Report in with the Customer Representative.
2. Record and report abnormal conditions, measurements taken, etc.
3. Review customer logs with the customer for operational problems and trends.

**1. General Assembly**

- a. Inspect the unit for cleanliness.
- b. Inspect the fan wheel and shaft for wear and clearance.
- c. Check the sheaves and pulleys for wear and alignment.
- d. Check the belts for tension, wear, cracks, and glazing.
- e. Verify tight bolts, set screws, and locking collars.
- f. Check dampers for wear, security and linkage adjustment.
- g. Verify clean condensate pan.
- h. Verify proper operation of the condensate drain.
- i. Verify clean air filters.
- j. Verify clean coils.
- k. Verify proper operation of the spray pump, if applicable.
- l. Verify smooth fan operation.
- m. Log operating conditions after system has stabilized.
- n. Provide a written report of completed work, operating log, and indicate any uncorrected deficiencies detected.

**2. Lubrication**

\*LUB-110

- a. Lubricate the fan shaft bearings, if applicable.
- b. Lubricate the motor bearings, if applicable.

**3. Controls and Safeties**

\*PNL-170

- a. Test the operation of the low temperature safety device, if applicable.
- b. Test the operation of the high static pressure safety device, if applicable.
- c. Test the operation of the low static pressure safety device, if applicable.
- d. Check the thermal cutout on electric heaters, if applicable.
- e. Check the step controller, if applicable.
- f. Check and record supply air and control air pressure, if applicable.
- g. Verify the operation of the control system and dampers while the fan is operating.

**4. Motor and Starter**

\*MOT-110 \*MOT-120

- a. Clean the starter and cabinet.
- b. Inspect the wiring and connections for tightness and signs of overheating and discoloration. This includes wiring to the electric heat, if applicable.
- c. Check the condition of the contacts for wear and pitting.
- d. Check the contactors for free and smooth operation.
- e. Meg the motor and record readings.



## **SCHEDULED RUNNING INSPECTIONS**

### **AHU**

1. Check the general condition of the fan.
2. Verify smooth fan operation.
3. Check and record supply and control air pressure, if applicable.
4. Verify the operation of the control system.
5. Log the operating conditions after the system has stabilized.
6. Review operating procedures with operating personnel.
7. Provide a written report of completed work, operating log, and indicate any uncorrected deficiencies detected.

### **Condensing Unit**

#### **Maintenance Procedure UNT/DX-110**

- Report in with the Customer Representative.
- Record and report abnormal conditions, measurements taken, etc.
- Review customer logs with the customer for operational problems and trends.

#### **General Assembly**

- Inspect for leaks and report results.
- Repair minor leaks as required (e.g. valve packing, flare nuts).
- Visually inspect the condenser for cleanliness.
- Lubricate the fan motor(s), if applicable.
- Verify the operation of the crankcase oil heater, if applicable.
- Verify the operation of the switchover valve.
- Provide a written report of completed work, operating log, and indicate any uncorrected deficiencies detected.

#### **Controls and Safeties**

- Inspect the control panel for cleanliness.
- Inspect wiring and connections for tightness and signs of overheating and discoloration.
- Test the low evaporator pressure safety device. Calibrate and record setting.
- Test the high condenser pressure safety device. Calibrate and record setting.
- Verify proper operation of the frost control device.
- Verify proper operation of the temperature control device.

#### **Motor and Starter**

- Clean the starter and cabinet.
- Inspect wiring and connections for tightness and signs of overheating and discoloration.
- Check the condition of the contacts for wear and pitting.
- Check the contactors for free and smooth operation.
- Check the tightness of the motor terminal connections.
- Meg the motor(s) and record readings.

#### **Start-up / Checkout Procedure**

- Check the general condition of the unit.
- Verify the operation of the motor and starter.
- Verify the operation of the control circuit.
- Verify smooth operation of the unit.
- Review operating procedures with operating personnel.
- Provide a written report of completed work, operating log, and indicate any uncorrected deficiencies detected.

#### **Running Inspections UNT/DX-120**

- Check the general condition of the unit.
- Verify the operation of the motor and starter.
- Verify the operation of the control circuit.



- Verify smooth operation of the unit.
- Review operating procedures with operating personnel.
- Provide a written report of completed work, operating log, and indicate any uncorrected deficiencies detected.



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

**AGENDA DATE:**

December 13, 2016

**SUBJECT:**

Authorize the City Manager to Execute a One-Year Contract with AC Printing, LLC, Logan Graphics, and Marfield, Inc. for Printing Services for a Total Annual Amount of \$105,000 with Two (2) Optional One-Year Renewals.

**STAFF RESOURCE:**

Debra Morris, Purchasing Manager  
Rosanne Lemus, Buyer

**ACTION PROPOSED:**

Authorize the City Manager to Execute a One-Year Contract with AC Printing, LLC, Logan Graphics, and Marfield, Inc. for Printing Services for a Total Annual Amount of \$105,000 with Two (2) Optional One-Year Renewals.

**BACKGROUND**

The purpose of this bid is to provide discounted pricing for numerous City printed materials including but not limited to business cards, door hangers, water bill inserts, citation booklets and bound booklets as outlined in the attached bid tab.

The Purchasing Division has received five (5) responsive bids to this City of Allen Solicitation for Printing Services. Staff recommends award to three (3) vendors providing the lowest price and best value.

- AC Printing, LLC. - \$73,000
- Logan Graphics - \$19,000
- Marfield, Inc. - \$13,000

The contract will be for one-year with two (2) one-year optional renewals.

**BUDGETARY IMPACT**

Funding for annual printing services is included in the FY 2016-2017 approved budget.

**STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to execute a one-year contract with AC Printing, LLC., Logan Graphics, and Marfield Inc. for a total annual amount of \$105,000 with two (2) optional one-year renewals.



**MOTION**

*I make a motion to authorize the City Manager to execute a one-year contract with AC Printing, LLC, Logan Graphics, and Marfield Inc. for a total annual amount of \$105,000 with two (2) optional one-year renewals.*

**ATTACHMENTS:**

Bid Tab





**CITY OF ALLEN**  
#2016-4-143 Printing Services  
Solicitation #2016-4-143  
Bid Tabulation

				AC Printing			Alphagrahics 99			Logan Graphics			Marfield			The Print Station		
#	DESCRIPTION	ANNUAL EST QTY	UOM	Unit Price	Extended Price	Vendor Notes	Unit Price	Extended Price	Vendor Notes	Unit Price	Extended Price	Vendor Notes	Unit Price	Extended Price	Vendor Notes	Unit Price	Extended Price	Vendor Notes
1	PRINTING ON 2 PART CARBONLESS PAPER, ONE SIDE PRINT, BLACK INK WHITE, CANARY 8 1/2" X 11"	3000	EA	\$ 0.10	\$ 290.01		\$ 0.15	\$ 441.90		\$ 0.14	\$ 416.23		\$ 0.12	\$ 360.00		\$ 0.19	\$ 579.00	
2	PRINTING ON 2 PART CARBONLESS PAPER, ONE SIDE PRINT, BLACK INK WHITE, CANARY 8 1/2" X 11" PRE CUT	15000	EA	\$ 0.06	\$ 918.00		\$ 0.12	\$ 1,788.00		\$ 0.11	\$ 1,588.89		\$ 0.10	\$ 1,500.00		\$ 0.19	\$ 2,775.00	
3	PRINTING ON 2 PART CARBONLESS PAPER, ONE SIDE PRINT, BLACK INK, WHITE ,CANARY 9 1/4" x 4 1/4"	1000	EA	\$ 0.12	\$ 121.00		\$ 0.11	\$ 110.50		\$ 0.15	\$ 153.78		\$ 0.09	\$ 90.00		\$ 0.13	\$ 130.00	
4	PRINTING ON 2 PART CARBONLESS PAPER, ONE SIDE PRINT, BLACK INK, WHITE CANARY 5 1/2" x 4 1/4"	1000	EA	\$ 0.09	\$ 88.00		0.0822	\$ 82.20		\$ 0.13	\$ 125.54		\$ 0.08	\$ 80.00		\$ 0.12	\$ 120.00	
5	PRINTING ON 2 PART CARBONLESS PAPER, TWO SIDE PRINT, BLACK INK; WHITE, CANARY, 8 1/2" X 11'	2000	EA	\$ 0.11	\$ 221.00		\$ 0.17	\$ 335.00		\$ 0.18	\$ 366.17		\$ 0.17	\$ 340.00		\$ 0.27	\$ 540.00	
6	PRINTING ON 2 PART CARBONLESS PAPER, ONE SIDE PRINT, BLACK INK; WHITE, CANARY, 5 1/2" x 8 1/2"	2000	EA	\$ 0.07	\$ 140.00		\$ 0.10	\$ 206.80		\$ 0.10	\$ 208.71		\$ 0.09	\$ 180.00		\$ 0.12	\$ 240.00	
7	PRINTING 3 PART CARBONLESS PAPER ONE SIDE PRINT, NUMBERED, BLACK INK; WHITE, CANARY AND PINK, 8 1/2" x 3 1/2	1000	EA	\$ 0.14	\$ 142.00		\$ 0.21	\$ 206.50		\$ 0.25	\$ 254.63		\$ 0.35	\$ 350.00		\$ 0.42	\$ 420.00	
8	PRINTING ON 3 PART CARBONLESS PAPER, 1 SIDE PRINT, BLACK INK; 8 1/2" X 11"	600	EA	\$ 0.19	\$ 116.04		\$ 0.32	\$ 193.14		\$ 0.35	\$ 209.56		\$ 0.24	\$ 144.00		\$ 0.41	\$ 246.00	
9	PRINTING ON 3 PART CARBONLESS PAPER, 1 SIDE PRINT, BLACK INK; 6 1/2 X 5	500	EA	\$ 0.16	\$ 80.00		\$ 0.24	\$ 118.65		\$ 0.32	\$ 160.81		\$ 0.18	\$ 90.00		\$ 0.31	\$ 155.00	
10	PRINTING ON 4 PART CARBONLESS PAPER, 1 SIDE PRINT, BLACK INK; WHITE, CANARY, PINK/GOLD, 8 ½" x 11"	2600	EA	\$ 0.22	\$ 559.99		\$ 0.32	\$ 827.84		\$ 0.29	\$ 746.25		\$ 0.17	\$ 442.00		\$ 0.43	\$ 1,118.00	
11	PRINTING ON 4 PART CARBONLESS PAPER, TWO SIDE PRINT, BLACK INK; WHITE, CANARY, PINK AND GOLD 8 1/2" X 11"	3000	EA	\$ 0.21	\$ 621.00		\$ 0.35	\$ 1,044.30		\$ 0.29	\$ 862.82		\$ 0.27	\$ 810.00		\$ 0.55	\$ 1,650.00	
12	TICKET BOOKS (CITATIONS)- PRINTING ON 3 PART CARBONLESS, WHITE, GREEN, CANARY, 1 SIDE PRINT, INDIVIDUAL CITATION NUMBERED IN RED. BLACK INK, APPROX 4 1/2 x 10 1/2, 400 BOOKS IN A PACK WITH 25 TICKETS IN EACH BOOK	10000	EA	\$ 0.10	\$ 999.00		\$ 0.32	\$ 3,180.00		\$ -	\$ -		\$ 0.09	\$ 900.00		\$ -	\$ -	



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Bid Tabulation

				AC Printing			Alphagraphics 99			Logan Graphics			Marfield			The Print Station		
13	1 COLOR IMPRINT ON BUSINESS CARD SHELLS, 500 CARDS PER BOX; TWO COLOR 3 1/2" X 2"	500	BX	\$ 0.04	\$ 20.00		0.04418	\$ 22.09		\$ 37.75	\$ 18,875.00		\$ 0.05	\$ 25.00		\$ -	\$ -	
14	PRE PRINT OF BUSINESS CARDS SHELL # 80 WHITE, 1 SIDE PRINT, 2 COLOR LOGO, 3 1/2" x 2", 4 PER SHEET, 4000 SHEETS PER LOT (16,000 SHELLS)	500	BX	\$ 0.50	\$ 250.00		\$ 0.01	\$ 7.02		\$ 8.00	\$ 3,998.40		\$ 0.35	\$ 175.00		\$ -	\$ -	
15	2 X 3.5 STANDARD BUSINESS CARDS PRINTED 2/COLORS (PMS & 5773) LITHO W/BREEDS ON 80# CLASSIC BARONIAL IVORY SMOOTH COVER	500	BX	\$ 0.25	\$ 125.00		\$ 0.10	\$ 50.00		\$ 51.08	\$ 25,540.00		\$ 0.23	\$ 115.00		\$ -	\$ -	
16	2 X 3.5 PRINTED COLOR FRONT AND COLOR BACK W/BLEEDS ON 100# COUGAR DIGITAL SMOOTH WHITE COVER	500	BX	\$ 0.70	\$ 350.00		\$ 0.09	\$ 43.18		\$ 49.93	\$ 24,965.00		\$ 0.19	\$ 95.00		\$ -	\$ -	
17	SOLICITOR'S ID CARD, 3 1/2" x 2", # 80 GLACIER WHITE, 1 SIDE PRINT, NUMBERED, BLACK INK, 250 PER BOX	5	BX	\$ 40.00	\$ 200.00		\$ 23.62	\$ 118.10		\$ 66.08	\$ 330.40		\$ 9.80	\$ 49.00		\$ -	\$ -	
18	PRINTING OF LETTERHEAD ON #10 ENVELOPES, 24LBS/B&W LOGO WITH RETURN ADDRESS - 500 PER BOX	14	BX	\$ 37.00	\$ 518.00		\$ 31.63	\$ 442.82		\$ 19.86	\$ 278.01		\$ 28.75	\$ 402.50		\$ -	\$ -	
19	PRINTING OF LETTERHEAD #10 STRATHMORE ENVELOPES – TWO COLOR LOGO WITH BLUE INK RETURN ADDRESS - 500 PER BOX	25	BX	\$ 95.00	\$ 2,375.00		\$ 126.70	\$ 3,167.50		\$ 64.02	\$ 1,600.50		\$ 67.96	\$ 1,699.00		\$ -	\$ -	
20	PRINTING OF LETTERHEAD #10 WINDOW ENVELOPES 3 COLOR LOGO B/W LOGO WITH RETURN ADDRESS - 2500 PER BOX	2	BX	\$ 169.00	\$ 338.00		\$ 171.64	\$ 343.28		\$ 223.11	\$ 446.22		\$ 53.25	\$ 106.50		\$ -	\$ -	
21	PRINTING OF LETTERHEAD #10 WINDOW ENVELOPES, THREE COLOR LOGO WITH BLUE INK RETURN ADDRESS- 500 PER BOX	14	BX	\$ 65.00	\$ 910.00		\$ 36.33	\$ 508.62		\$ 31.34	\$ 438.76		\$ 46.82	\$ 655.48		\$ -	\$ -	
22	PRINTING OF LETTERHEAD #10 ENVELOPES PRINTED 2/COLOR (PMS 541 & PMS 5773) LITHO ON #24 CLASSIC CREST BRONIAL IVORY SMOOTH WRITING	500	EA	\$ 0.36	\$ 180.00		\$ 0.36	\$ 179.55		\$ 0.35	\$ 172.78		\$ 0.21	\$ 105.00		\$ -	\$ -	
23	A2 NOTE EVELOPES PRINTED 1/COLOR (PMS 541) BACK FLAP	250	BX	\$ 0.34	\$ 85.00		\$ 0.27	\$ 67.76		\$ 0.40	\$ 99.38		\$ 0.21	\$ 52.50		\$ -	\$ -	
24	PRINTING OF LETTERHEAD PAPER, TWO COLOR, # 24 STRATHMORE BONDED PAPER, 8 1/2" X 11", 250 SHEETS PER BOX	26	BX	\$ 22.50	\$ 585.00		\$ 46.14	\$ 1,199.64		\$ 22.23	\$ 577.90		\$ 35.80	\$ 930.80		\$ -	\$ -	
25	PRINTING OF STANDARD LETTERHEAD PRINTED 2/COLORS (PMS 541 & PMS 5773) LITHO ON #24 CLASSIC CREST BARONIAL IVORY SMOOTH WRITING.	500	EA	\$ 0.25	\$ 125.00		\$ 0.25	\$ 126.85		\$ 0.29	\$ 145.29		\$ 0.22	\$ 110.00		\$ -	\$ -	



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				AC Printing			Alphagraphics 99			Logan Graphics			Marfield			The Print Station		
26	PRINTING OF LETTERHEAD PAPER, THREE COLOR, # 24 STRATHMORE BONDED PAPER, 8 1/2' X 11" 250 SHEETS PER BOX	4	EA	\$ 63.00	\$ 252.00		\$ 56.19	\$ 224.76		\$ 68.39	\$ 273.55		\$ 40.00	\$ 160.00		\$ -	\$ -	
27	PLAIN # 24 STRATHMORE PAPER BONDED 8 1/2" X 11" 250 SHEETS PER BOX	24	EA	\$ 19.00	\$ 456.00		\$ 17.68	\$ 424.32		\$ 15.47	\$ 371.26		\$ 31.50	\$ 756.00		\$ -	\$ -	
28	A2 SIZE FOLDER NOTE CARD PRINTED 2/COLORS (PMS 541 & PMS 5773) LITHO SCORED TO FOLD TO 4.25 X 5.5"	250	EA	\$ 0.72	\$ 180.00		\$ 0.28	\$ 69.00		\$ 0.86	\$ 215.98		\$ 0.30	\$ 75.00		\$ -	\$ -	
29	LINEN PANEL NOTECARDS, 5 ½" x 4 ¼", WHEN FOLDED, TWO COLOR LOGO, WHITE. WITH RETURN ADDRESS ON BLACK FLAP	2750	EA	\$ 0.15	\$ 410.00		\$ -	\$ -		\$ 0.17	\$ 466.14		\$ 0.19	\$ 522.50		\$ -	\$ -	
30	LINEN NOTECARD ENVELOPES, 5 ¾" x 4 ½", WHITE WITH RETURN ADDRESS ON BACK FLAP	2750	EA	\$ 0.13	\$ 360.00		\$ -	\$ -		\$ 0.14	\$ 387.96		\$ 0.24	\$ 660.00		\$ -	\$ -	
31	LINEN PANEL NOTECARDS, 5 ½" x 4 ¼", WHEN FOLDED, THREE COLOR LOGO, WHITE WITH RETURN ADDRESS ON BACK FLAP	2250	EA	\$ 0.19	\$ 418.01		\$ -	\$ -		\$ 0.18	\$ 400.83		\$ 0.22	\$ 495.00		\$ -	\$ -	
32	A2 SIZE FOLDER NOTE CARD PRINTED 2/COLORS (PMS 541 & PMS 5773) LITHO SCORED TO FOLD TO 4.25 X 5.5"	500	EA	\$ 0.15	\$ 75.00		\$ 0.20	\$ 100.00		\$ 0.47	\$ 236.97		\$ 0.23	\$ 115.00		\$ 0.22	\$ 110.00	
33	RECEIPT BOOK –WIRE BOUND, ONE SIDE PRINT ON 3 PART CARBONLESS PAPER, BLACK INK, WHITE, CANARY, PINK 6 3/4' X 11' PERFORATED AND NUMBERED, 4 RECEIPTS PER PAGE, 65 PAGES PER BOOK (260 RECEIPTS TOTAL)	24	BK	\$ 42.10	\$ 1,010.40		\$ -	\$ -		\$ 28.27	\$ 678.59		\$ 14.61	\$ 350.64		\$ -	\$ -	
34	RECEIPT BOOK –WIRE BOUND, ONE SIDE PRINT ON 2 PART CARBONLESS PAPER, BLACK INK, WHITE ANDCANARY, 6 3/4' X 11' PERFORATED AND NUMBERED, 4 RECEIPTS PER PAGE, 65 PAGES PER BOOK (260 RECEIPTS TOTAL)	24	BK	\$ 29.96	\$ 719.04		\$ -	\$ -		\$ 22.94	\$ 550.47		\$ 14.61	\$ 350.64		\$ -	\$ -	
35	CASE FILE JACKETS, 12' X 9" TWO SIDED, BLACK INK, WHITE	10000	EA	no bid	no bid		\$ -	\$ -		\$ 0.40	\$ 3,992.67		\$ -	\$ -		\$ -	\$ -	
36	SELF STICK MAILING LABELS, 3 ¼" x 4¼", WHITE, TWO COLOR LOGO, RETURN ADDRESS, 6 LABELS PER SHEET, 100 SHEETS PER BOX	30	BX	\$ 50.00	\$ 1,500.00		\$ 54.64	\$ 1,639.20		\$ 32.43	\$ 972.83		\$ 26.83	\$ 804.90		\$ -	\$ -	
37	MEMO PADS 5½" x 8½", BLUE PAPER WITH B/W LOGO TOP CENTER AND RETURN ADDRESS, PHONE NUMBER AND WEBSITE ADDRESS ON BOTTOM PAGE; 50 PGS PER PAD, 10 PADS PER PACK	50	PK	\$ 7.90	\$ 395.00		\$ 13.86	\$ 693.00		\$ 7.70	\$ 385.10		\$ 12.10	\$ 605.00		\$ 4.92	\$ 246.00	



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				AC Printing			Alphagraphics 99			Logan Graphics			Marfield			The Print Station		
38	MEMO PADS, APPROX. 4¼" x 5½", YELLOW PAPER WITH B/W LOGO TOP CENTER AND RETURN ADDRESS, PHONE AND WEBSITE ADDRESS ON BOTTOM OF PAGE. 50 PAGES PER PAD, 20 PADS PER PACK	100	PK	\$ 8.80	\$ 880.00		\$ 14.56	\$ 1,456.00		\$ 7.32	\$ 732.08		\$ 9.00	\$ 900.00		\$ 2.85	\$ 285.00	
39	DOOR HANGERS 65 LB ASTRO BRIGHT HUE COVER STOCK 3 5/8" X 8 1/2", BLACK INK	4000	EA	\$ 0.06	\$ 232.00		\$ 0.09	\$ 376.52		\$ 0.05	\$ 214.22		\$ 0.12	\$ 480.00		\$ -	\$ -	
40	DOOR HANGERS, BRIGHT BLUE COVER STOCK, 4 1/4' X 11", 2 SIDED PRINT, BLACK INK	4000	EA	\$ 0.08	\$ 326.00		\$ 0.12	\$ 485.20		\$ 0.07	\$ 290.28		\$ 0.15	\$ 600.00		\$ -	\$ -	
41	DOOR HANGERS, BRIGHT YELLOW COVER STOCK, 4 1/4' X 11", 2 SIDED PRINT, BLACK INK	4000	EA	\$ 0.08	\$ 326.00		\$ 0.12	\$ 485.20		\$ 0.07	\$ 290.28		\$ 0.15	\$ 600.00		\$ -	\$ -	
42	DOOR HANGERS, BRIGHT GREEN COVER STOCK, 4 1/4' X 11", 2 SIDED PRINT, BLACK INK	4000	EA	\$ 0.08	\$ 326.00		\$ 0.12	\$ 485.20		\$ 0.07	\$ 290.28		\$ 0.15	\$ 600.00		\$ -	\$ -	
43	DOOR HANGERS, FLORESCENT PINK COVER STOCK, 4 1/4' X 11", 2 SIDED PRINT, BLACK INK	4000	EA	\$ 0.08	\$ 326.00		\$ 0.12	\$ 485.20		\$ 0.07	\$ 290.28		\$ 0.15	\$ 600.00		\$ -	\$ -	
44	DOOR HANGERS, RED CARDSTOCK, 4 1/4' x 11", TWO SIDED PRINT, BLACK INK, TEAR OFF SECTION APPROX 2" ON BOTTOM	4000	EA	\$ 0.09	\$ 350.00		\$ 0.12	\$ 485.20		\$ 0.08	\$ 308.28		\$ 0.14	\$ 560.00		\$ -	\$ -	
45	ARREST NOTICE CARD, 65LB BRIGHT YELLOW CARDSTOCK, 4 ¼" x 5 ½" ONE SIDE PRINT, BLACK INK.	500	EA	\$ 0.09	\$ 43.00		\$ 0.10	\$ 48.09		\$ 0.10	\$ 49.68		\$ 0.18	\$ 90.00		\$ -	\$ -	
46	PATIENT REPORT, 60LB WHITE OFFSET, 11" x 17" FOLDED AND PRINTED ON FOUR SIDES, BLACK INK	2000	EA	\$ 0.01	\$ 20.60		\$ 0.14	\$ 279.80		\$ 0.11	\$ 212.92		\$ 0.11	\$ 220.00		\$ 0.17	\$ 340.00	
47	WATER BILL INSERT,1 SIDE PRINT, TRI-FOLD, 60LB WHITE PAPER, BLACK INK, 8 ½" x 11"	120000	EA	0.01684	\$ 2,020.80		\$ 0.04	\$ 4,468.03		0.0226075	\$ 2,712.90		\$ 0.08	\$ 9,600.00		\$ -	\$ -	
48	WATER BILL INSERT, 2 SIDE PRINT, TRI-FOLD, 60LB OFFSET WHITE PAPER, BLACK INK, 8 ½" x 11"	120000	EA	0.01743	\$ 2,091.60		\$ 0.04	\$ 5,183.50		0.0231066	\$ 2,772.79		\$ 0.05	\$ 6,000.00		\$ -	\$ -	
49	WATER BILL INSERT,1 SIDE PRINT, TRI-FOLD, 60LB COLOR RECYCLABLE PAPER, BLACK INK, 8 ½" x 11"	120000	EA	0.0221	\$ 2,652.00		0.0415416	\$ 4,984.99		0.02550033	\$ 3,060.04		\$ 0.05	\$ 6,000.00		\$ -	\$ -	
50	WATER BILL INSERT, 2 SIDE PRINT, TRI-FOLD, 60LB COLOR PAPER, BLACK INK, 8 ½" x 11"	120000	EA	\$ 0.02	\$ 2,652.00		\$ 0.05	\$ 5,707.99		\$ 0.03	\$ 3,060.04		\$ 0.09	\$ 10,800.00		\$ -	\$ -	



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Bid Tabulation

				AC Printing			Alphagraphics 99			Logan Graphics			Marfield			The Print Station		
51	WATER BILL INSERT, TWO SIDE PRINT, TRI-FOLD, 60LB WHITE, 3 COLOR, 8 ½" x 11"	120000	EA	\$ 0.02	\$ 2,221.20		\$ 0.06	\$ 6,765.33		\$ 0.03	\$ 4,085.98		\$ 0.06	\$ 7,200.00		\$ -	\$ -	
52	SPEAKER CARDS, 67LB VELUM BRISTOL BLUE STOCK 8 1/2" x 11" PRINTED ON BOTH SIDES PERFORATED IN MIDDLE, BLACK INK	2500	EA	\$ 0.09	\$ 221.00		\$ 0.16	\$ 398.93		\$ 0.08	\$ 199.22		\$ 0.14	\$ 350.00		\$ -	\$ -	
53	SPEAKER CARDS, 67LB VELUM BRISTOL TAN STOCK 8 1/2" x 11" PRINTED ON BOTH SIDES PERFORATED IN MIDDLE	2500	EA	\$ 0.88	\$ 2,210.00		\$ 0.16	\$ 398.93		0.079688	\$ 199.22		\$ 0.14	\$ 350.00		\$ -	\$ -	
54	WATER QUALITY REPORT, 11" X 25.5 FOLDED TO 8 1/2 x 11", FINAL FOLD SIZE 8 1/2" x 3 2/3", 60LB WHITE OFFSET GLOSS 4 COLOR 2 SIDE PRINT (NO BLEED)	29500	EA	\$ 0.10	\$ 2,952.07		\$ -	\$ -		\$ 0.13	\$ 3,888.80		\$ 0.15	\$ 4,425.00		\$ -	\$ -	
55	TEEN COURT BROCHURE, 14 X 8 ½", FOLDS TO 8 ½" X 3 ½", #80 GLOSS WHITE PAPER, TWO SIDE PRINT, TWO COLORS, RED AND BLUE INK, QUAD FOLD	500	EA	\$ 0.40	\$ 200.00		\$ 0.39	\$ 193.35		\$ 0.45	\$ 223.76		\$ 0.89	\$ 445.00		\$ -	\$ -	
56	WELCOME TO CITY OF ALLEN BROCHURE, 14" X 8 ½", 20 LB BOND, #80 GLOSS WHITE, TWO SIDED PRINT, TWO COLORS, RED/BLUE TRIFOLD	1500	EA	\$ 0.17	\$ 252.00		\$ 0.21	\$ 319.55		\$ 0.18	\$ 276.31		\$ 0.16	\$ 240.00		\$ -	\$ -	
57	FACTS AND FIGURES BOOKLET, STAPLED AND TRIMMED 10 3/4" x 8 1/2", #80 GLOSS WHITE PAPER, 16 PAGES, TWO SIDED PRINT (32 PAGES FINISHED) W/ GRAPHICS, MAPS, MULTI COLOR PRINT.	2000	EA	\$ 1.48	\$ 2,952.00		\$ -	\$ -		\$ 1.91	\$ 3,825.00		\$ 1.09	\$ 2,180.00		\$ -	\$ -	
58	GUIDE FOR ALLEN PUBLIC OFFICIALS BOOKLET, CARDSTOCK COVER WITH ONE SIDE PRINT, TWO COLOR LOGO, BLACK INK, INSIDE 16 PAGES WITH 15 PAGES TWO SIDED PRINT, BLACK INK, FOLDED, STAPLED AND TRIMMED TO 5 1/2" x 8 1/2"	500	EA	\$ 0.90	\$ 452.00		\$ -	\$ -		\$ 1.13	\$ 562.56		\$ 1.05	\$ 525.00		\$ -	\$ -	
59	CITY CHARTER BOOKLET, CARDSTOCK COVER WITH 2 COLOR LOGO, BLUE INK, 14 PAGE, TWO SIDE PRINT, BLACK INK, FOLDED, STAPLED AND TRIMMED TO 5 1/2" x 8 1/2".	500	EA	\$ 0.90	\$ 452.00		\$ -	\$ -		\$ 1.06	\$ 528.21		\$ 1.05	\$ 525.00		\$ -	\$ -	
60	CITY COUNCIL RULES OF ORDER AND PROCEDURE BOOKLET, CARDSTOCK COVER WITH 2 COLOR LOGO, 7 PAGE, TWO SIDED PRINT, BLACK INK, FOLDED, STAPLED AND TRIMMED TO 5 1/2" x 8 1/2"	500	EA	\$ 0.72	\$ 360.00		\$ -	\$ -		\$ 0.85	\$ 422.65		\$ 0.82	\$ 410.00		\$ -	\$ -	
61	TAN CARD STOCK - 8 1/2" x 5 1/2", 2 SIDE PRINT, BLACK INK	500	EA	\$ 0.12	\$ 60.00		\$ 0.10	\$ 48.80		\$ 0.09	\$ 46.36		\$ 0.21	\$ 105.00		\$ 0.22	\$ 110.00	
62	10 X 13 BOOKLET ENVELOPES PRINTED 2/COLORS (pms 541 & pms 5773) LITHO ON 28# WHITE OWVE ECONOMY BOND BOOKLET ENVS	500	BX	\$ 0.35	\$ 175.00		\$ 0.37	\$ 185.40		\$ 188.18	\$ 94,090.00		\$ 0.27	\$ 135.00		\$ -	\$ -	



Solicitation #2016-4-143  
Bid Tabulation

				AC Printing			Alphagraphics 99			Logan Graphics			Marfield			The Print Station		
63	CITY OF ALLEN CONVENTION & VISITORS BUREAU 9x12 BOOKLET BACK PLAIN – NO PRINT ON 80# CLASSIC LAID PEPPERED MOSS COVER	1000	EA	no bid	no bid		\$ -	\$ -		\$ 0.43	\$ 430.10		\$ 0.45	\$ 450.00		\$ -	\$ -	
64	CITY OF ALLEN CONVENTION & VISITORS BUREU 9x12 BOOKLET BACK PLANI-NO PRINT ON 80# FRENCH SPECKLESTONE OLIVE COVER	1000	EA	no bid	no bid		\$ -	\$ -		\$ 0.58	\$ 579.96		\$ 0.31	\$ 310.00		\$ -	\$ -	
65	9x12 DUAL POCKET FOLDER 4' INSIDE POCKETS W/BC SLITS IN POCKET BLIND EMBOSSED LOGO ON FRONT COVER ON 80# CLASSIC LAID PEPPERED MOSS COVER	1000	EA	no bid	no bid		\$ -	\$ -		\$ 1.74	\$ 1,738.80		\$ 1.57	\$ 1,570.00		\$ -	\$ -	
66	9x12 DUAL POCKET FOLDER 4" INSIDE POCKETS W/BC SLITS IN POCKET BLIND EMBOSSED LOGO ON FRONT COVER ON 80# FRENCH SPECKLESTONE OLIVE COVER	1000	EA	no bid	no bid		\$ -	\$ -		\$ 2.07	\$ 2,065.78		\$ 1.58	\$ 1,580.00		\$ -	\$ -	
67	ALLEN VISITOR GUIDE – 100# GLASS TEXT, 20 PAGE SELF-COVER FLAT SIZE OF 10 7/8 x 16 ¼ - 4CP/4CP WITH BLEEDS, SADDLES STICHD TO FINAL SIZE OF 8 3/8/ X 10 7/8	20,000	EA	0.3976	\$ 7,952.00		\$ -	\$ -		\$ 0.45	\$ 8,915.21		\$ 0.48	\$ 9,600.00		\$ 0.69	\$ 13,800.00	
68	ALLEN ANNUAL REPORT 4 sheets, 11-X 17 printed full color front to back (with bleeds), folded and stapled. Finish size 8.5 X 11. 8 pages. Paper: 80 lb gloss text; finished piece must weigh less than 3.3. Oz. **if applicable, please provide your cost on mail prep and bulk mailing** Prepare mailing to be dropped off at Allen TX post office/overruns drop off at Allen City Hall, 305 Century Parkway, 1st Floor reception desk) File: Press ready – can be uploaded to printer via ftp site as a press quality pdf OR packaged INDesign file mail prep and drop off: (Sort for bulk mail/EDDM mailing program and drop off at post office) It must mail as a flat (no letter, do not fold finish size for mailing). We are using USPS program called Every Door Direct Mail (EDDM) which provides the mailing tool and all information required for printer/mail house to prepare the mailing for the best flat rate. The online tool will generate the documentation for PS Form 3602, postage statement and the carrier route labels for "local postal customer" mailing. Cost per piece is 14.2 cents and the mailing will be approx.. 35,000 pieces based on 75002 and 75013 postal routes (city/rural/highway contract, and PO Boxes/residential only).	35,000	EA	\$ 0.25	\$ 8,786.05		\$ -	\$ -		\$ 0.46	\$ 15,940.00		\$ 0.41	\$ 14,350.00		\$ -	\$ -	



Solicitation #2016-4-143  
Bid Tabulation

Solicitation #2016-4-143 Bid Tabulation				AC Printing			Alphagrahics 99			Logan Graphics			Marfield			The Print Station		
69	HR Benefit Booklet, STAPLED AND TRIMMED, 10 3/4 " x 8 1/2 , 80# GLOSS WHITE PAPER, TWO SIDED PRINT (25 PAGES FINISHED), INCLUDING MULTICOLOR TEXT	750	EA	\$ 2.60	\$ 1,952.00		\$ -	\$ -		\$ 2.11	\$ 1,585.98		\$ 1.56	\$ 1,170.00		\$ -	\$ -	
Additional Items				Response			Response			Response			Response			Response		
70	What is your initial set-up/art fee?		EA	\$30/hr. Min. \$15.00			\$80 Per Hour			\$65.00 per hour with \$20.00 minimum			No charge			\$45.00 (if needed)		
71	Percent Discount on additional items not listed to be offered for the City of Allen.		EA	10%			25%			All future quotes will be competitively priced and discounted on a job by job basis.			15%			10%		



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

**AGENDA DATE:** December 13, 2016

**SUBJECT:** Authorize the City Manager to Purchase Three (3) HD Cameras from Daktronics Through the Texas Buyboard Local Government Purchasing Cooperative for the Allen Event Center for an Amount of \$112,264.81.

**STAFF RESOURCE:** Dave Angeles, Assistant Director of Parks and Recreation Department  
Brian Stovall, Assistant General Manager of Allen Event Center

**ACTION PROPOSED:** Authorize the City Manager to Purchase Three (3) HD Cameras from Daktronics Through the Texas Buyboard Local Government Purchasing Cooperative for the Allen Event Center for an Amount of \$112,264.81.

**BACKGROUND**

To remain competitive in the market and meet the league requirements of existing tenants, the Allen Event Center is upgrading the audio visual equipment in the Arena. The existing cameras at the Allen Event Center are standard definition and are currently obsolete and in disrepair. As the cameras are obsolete, repair parts are unavailable.

**BUDGETARY IMPACT**

Funding for this expenditure has been approved and granted from the Allen Community Development Corporation in the FY2017 CDC budget.

**STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to purchase three (3) HD Cameras from Daktronics through the Texas Buyboard Local Government Purchasing Cooperative for the Allen Event Center for an amount of \$112,264.81.

**MOTION**

*I make a motion to authorize the City Manager to purchase three (3) HD Cameras from Daktronics through the Texas Buyboard Local Government Purchasing Cooperative for the Allen Event Center for an amount of \$112,264.81.*



**ATTACHMENTS:**

Daktronics Contract



**STATE OF TEXAS                   §**  
**§       AGREEMENT FOR: DAKTRONICS HD CAMERAS**  
**COUNTY OF COLLIN           §**

This agreement (“Agreement”) is made by and between the City of Allen, Texas (“City”) and Daktronics, Inc. (“Company”) acting by and through their authorized representatives.

**Recitals:**

**WHEREAS**, the City desires to obtain HD Camera Equipment from Daktronics in accordance with the Texas Buyboard Local Government Purchasing Cooperative Contract hereto attached as Exhibit “A” and;

**WHEREAS**, the City is a member of the Texas Buyboard Local Government Purchasing Cooperative; and

**WHEREAS**, Daktronics has been awarded the contract # 502-16, effective through March 31, 2019 for Athletic, P.E.& Gymnasium Supplies and Equipment.

**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”) and continue until the last day of agreement, unless earlier terminated as provided herein (the “Initial Term”).

**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;
- B. Daktronics Quote
- C. Buy Board Contract Information Page



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

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

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

Company agrees to Provide 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**

City shall compensate Company for the Services, including all labor, materials, equipment and supplies as provided in Exhibit "A." The total compensation to Company shall not exceed \$112,264.81 during the Initial Term or any renewal term under this Agreement. Company shall provide the City with written invoices describing the work and Services performed as provided in Exhibit "A." Upon approval, City shall compensate Company 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.

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

Company 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 Company prior to Company's receipt of a written Notice to Proceed from City shall be entirely at Company's own risk. Work performed and expenses incurred after Company 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 Company if City determines in its sole discretion that Company has, or will fail to perform, in accordance with this Agreement. In such event, any payments due Company shall be suspended until Company has taken satisfactory corrective action.

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



8.1 The Company 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 Company 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.

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

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

8.4 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 Company 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 Company 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 Company terminate this Agreement under this provision, Company shall further state the reason(s) for termination in its written notice;
- (d) by City, if Company 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 Company merging with an



affiliate of Company) of Company's existence as a going business, insolvency, appointment of receiver for any part of Company'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 Company and in the event such proceeding is not voluntarily commenced by the Company, 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**

11.1 Company 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 Company's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000 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 Company, its officers, agents, and employees, and used in the performance of this Agreement; and (3) statutory Worker's Compensation Insurance covering all of Company's employees involved in the provision of services under this Agreement.

11.2 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.

11.3 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**

12.1 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.



12.2 Assignment. Company may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by Company 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.

12.3 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.

12.4 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.

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

12.6 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.

12.7 Independent Company. It is understood and agreed by and between the parties that Company, 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 Company pursuant to this Agreement shall be in the capacity of an independent Company, and not as an agent or employee of City. Company 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.

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

If intended for City:

City of Allen, Texas  
Attn: Peter H. Vargas, City Manager  
Allen Civic Plaza  
305 Century Parkway  
Allen, Texas 75013  
Facsimile: 214-509-4118

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

If intended for Company:



Daktronics, Inc.  
Attn: Blayne Olson, Project  
Manager  
201 Daktronics Dr.  
Brookings, South Dakota 57006  
Telephone: 605-641-3672

12.9 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.

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

12.11 Indemnification. Company 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 services provided by Company to the extent caused by the negligent act or omission or intentional wrongful act omission of Company, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Company is legally responsible (hereinafter "Claims"). Company 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 Company 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 Company's obligation to indemnify City pursuant to this Contract. Company 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 Company fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Company shall be liable for all costs incurred by City.

12.12 Audits and Records. Company 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 Company'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.

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



12.14 Warranty. The Company 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.

*(Signature page to follow)*



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

**CITY OF ALLEN**

By: \_\_\_\_\_  
PETER H. VARGAS, CITY MANAGER

Allen Civic Plaza  
305 Century Parkway  
Allen, Texas 75013

**ATTEST**

\_\_\_\_\_  
SHELLEY B. GEORGE, CITY SECRETARY

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

\_\_\_\_\_  
**COMPANY**

By: \_\_\_\_\_  
Signature of Authorized Officer

Name: \_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

201 Daktronics Dr.  
Brookings, South Dakota 57006



**EXHIBIT “A”**  
**SPECIFICATIONS AND RESPONSE**

1. This Agreement
2. Daktronics Quote
3. Buy Board Contract Information Page



# DAKTRONICS QUOTE

Allen Event Center  
200 E Stacy Rd  
Allen, TX, 75002

Quote #558816-1 REV 07  
20-Oct-2016  
Quote Valid for 90 Days

RE: Allen Event Center - HD Upgrade

Dear Mason Krenzien:

Daktronics, Inc. appreciates the opportunity to provide a formal Quote to Allen Event Center ("Customer"). The following delineated equipment and services per the following Sections A-E will be the basis of our Quote.

## A. EQUIPMENT

### Phase 1 (See Attachment A)

Three (3) Hard Wired Cameras.....\$112,264.81

Phase 1 of this project includes only the hard-wired cameras and associated equipment. There is no additional gear for signal transmission or any installation labor included. The Allen Event Center is responsible for all camera connectivity for events until Phase 2 of the project is completed.

## B. PAYMENT

Purchase price shall also include any additions or deletions pursuant to any duly authorized change orders.

Payment schedule is contingent upon approved credit\*. One or more of the following may be requested for approved credit:

- a) Independent credit agency report.
- b) A bank reference from your primary commercial bank.
- c) Trade references from two suppliers who have extended credit within the past year.
- d) Last 3 years' audited financial statements.

\* If credit is not acceptable, Customer may have to provide a form of guarantee to secure open account.

The Payment schedule is as follows:

- To Be Determined

Estimated Delivery: Determined by order date

Estimated Date of Substantial Completion: Determined by order date

All notices required herein shall be given to Customer at the address indicated on this Agreement unless otherwise specified below:

Notice/Communication Address:



## C. SERVICES AND TRAINING

### PROJECT MANAGEMENT

- Engineering Design Assistance
  - Provide engineering to determine and finalize design.
  - Provide structural design.
  - Complete shop drawings.
  - Provide electrical drawings detailing electrical specifications.
  - Provide engineering stamped drawings (used for permitting).
- Technical Contracting
  - Assign a project manager from Daktronics.
  - Define specific scopes of work with project details for Customer and Daktronics.
  - Establish project installation timelines and detail issues.
  - Coordinate preliminary and/or final project shop drawings as per scope of work prior to contracting or bid award.
- Construction Management
  - Daktronics project manager finalizes project installation Gantt chart for Customer review.
  - Coordinate project details for shop drawing and project approval elements.
  - Coordinate all aspects of equipment manufacturing and delivery to site.
  - Coordinate with subcontractors and Customer on completing site work and installation of equipment.
  - Coordinate Daktronics on-site project team for any required specific duties which may include equipment installation supervision, signal hook-ups, control room set-up, system testing and on-site training.
  - Coordinate and finalize project completion punch list and project acceptance.
- Installation Management
  - Daktronics representative, who will be familiar in advance with the project, system construction, assembly, and equipment, will be the installation supervisor on site.
  - General duties involved with installation management include resolving structural, mechanical, electrical, signal, and operational issues that arise during installation.

### CUSTOMER SERVICE

- Maintenance Training
  - During installation, Daktronics on-site technician will provide Customer personnel on-site basic maintenance training. This training will cover component overview and replacement and system startup and shutdown. Customer is responsible for identifying the personnel that need to receive training.
  - Operational and maintenance manuals will be provided through electronic media (ie. computer disk) for this system and used as the guideline for training.
  - Riser diagrams will also be provided to customer and local technician, if one is identified through electronic media (i.e. computer disk).
- Spare Parts Package
  - Daktronics offers adequate spare parts to support Daktronics-manufactured products with every contract; well-trained engineers and project managers assess the custom display and recommend the quantities of each component for spare parts packages.
- Parts Exchange Program
  - Daktronics carries an inventory of standard system-critical Daktronics manufactured parts to reduce the down-time of customers' equipment. Upon request, Daktronics ships the replacement part to the appropriate location. After the repairs have been made, the failed part will be shipped to Daktronics.
- Customer Service Support
  - Service Coordination and Technical Support are available 24/7/365 via 1-866-343-6018.



## D. INSTALLATION RESPONSIBILITIES

Daktronics and Customer will mutually agree, in writing, on any changes to the equipment or services provided or project payment schedule. Daktronics will not honor any back charges unless approved in advance in writing by a Daktronics Company Manager.

All change order work performed by Daktronics or a subcontractor of Daktronics, will be performed at cost plus 20% overhead and profit.

## E. STANDARD WARRANTY SERVICE AND EXTENDED SERVICES

### A. First Year of Service:

One Year Standard Parts and Labor Warranty (DD1425981 - <http://www.daktronics.com/standardpartsandlabor>) concurrent with One Year Standard Warranty and Limitation of Liability

### B. Additional Years of Service:

None.

**C. Exclusions:** Third party systems, hoist systems, and any ancillary equipment is expressly excluded from any applicable Standard Service or Extended Service referenced above. Third party systems and ancillary equipment includes, but is not limited to, front end video control systems, audio systems, video processors and players, HVAC equipment, LCD screens, static advertising panels and displays. Daktronics will pass along any manufacturer's warranty. For a list of products commonly excluded from the Standard Service and Extended Service scope and to view the manufacturer's warranty, go to <http://www.daktronics.com/exclusions>.

### DELIVERY:

Equipment is quoted FOB Destination via independent or common carrier. Ship Date will be determined after contract is signed, down payment received, and shop drawings approved.

### TAXES:

No taxes have been included in the price. Customer will be assessed all taxes and other governmental charges in connection with the sale, purchase, transportation, delivery, or use, of any of the goods provided, with the exception of taxes based upon Daktronics' net income. If Customer is tax-exempt or purchasing for resale, a copy of Customer's tax-exempt certificate shall be required at time of order.

### CHANGE ORDERS:

Without voiding the contract, the parties may agree to change the scope, timing, or other aspect of the deliverables. Such changes shall be referred to as a change order. All change orders shall be in writing and shall set forth the change in scope, price, schedule and payment terms and shall be executed by a proper authority for each party. Neither party shall have an obligation to perform any changes unless a written change order is executed by both parties prior to commencement of the work that is the subject of the change order.



## DAKTRONICS QUOTE

Thank you for allowing Daktronics to submit a quotation on this project. We appreciate your consideration and are excited about the possibility of working with you on this project. If you have any questions regarding this quote please contact the following:



Matt Braegelmann                      or  
Regional Sales  
443-545-4342  
Matt.Braegelmann@daktronics.com



Blayne Olson  
Project Manager  
605-641-3672  
Blayne.Olson@daktronics.com

The Terms and Conditions, which apply to this quotation, are available on request.

[SL-02375 Standard Terms and Conditions of Sale](http://www.daktronics.com/terms_conditions/SL-02375.pdf) ([http://www.daktronics.com/terms\\_conditions/SL-02375.pdf](http://www.daktronics.com/terms_conditions/SL-02375.pdf))

[SL-02374 Standard Warranty and Limitation of Liability](http://www.daktronics.com/terms_conditions/SL-02374.pdf) ([http://www.daktronics.com/terms\\_conditions/SL-02374.pdf](http://www.daktronics.com/terms_conditions/SL-02374.pdf))

[SL-07862 Software License Agreement](http://www.daktronics.com/terms_conditions/SL-07862.pdf) ([http://www.daktronics.com/terms\\_conditions/SL-07862.pdf](http://www.daktronics.com/terms_conditions/SL-07862.pdf))

The documents referred to in this Quote are integral parts of this Quotation. The parties hereby acknowledge and agree that the terms and conditions contained within this Quote along with the terms and conditions of the Daktronics [Standard Terms and Conditions \(SL-02375\)](#), the [Standard Warranty and Limitation of Liability \(SL-02374\)](#) and the [Software License \(SL-07862\)](#) (together the "Terms and Conditions") constitute the full and final understanding between both parties. By receiving this Quotation, Customer acknowledges that it has had an opportunity and means to review the Terms and Conditions as provided in the website addresses above. In the alternative, hard copy of these Terms and Conditions will be provided upon request. Further it is acknowledged and agreed that the price of the equipment and/or the provision of services contained within this quotation are expressly conditioned upon Customer's acceptance of the Terms and Conditions without change. Any modification of the Terms and Conditions may require a corresponding change in the price. The parties agree that due to the volatile market for raw materials, including but not limited to structural steel, aluminum, copper wire, and conduit, Daktronics reserves the right to adjust bid pricing at time of contract award. Any increase in the price of these raw materials shall be reflected in the contract price.

DAKTRONICS shall provide and perform only such copy or customization as described on this attachment or as provided for in the approved shop drawings. DAKTRONICS and CUSTOMER will mutually agree, in writing, on any changes to the equipment or services provided or project payment schedule. DAKTRONICS will not honor any back charges unless approved, in advance, in writing by a DAKTRONICS Company Manager.

The term "Software" means the original computer software program and all whole or partial copies of this software program in whatever form or media provided. The Software consists of, but is not limited to, machine-readable instructions, its components, manuals and other such documentation, data, audio-visual content, (such as images, text, recordings, or pictures), and all other related materials provided pursuant to the terms and conditions of this Agreement. The Software is licensed to CUSTOMER per [SL-07862](#).



# DAKTRONICS QUOTE

## ACCEPTANCE

The Undersigned has actual authority to execute this document and Daktronics, Inc. is relying upon such authority.

Customer hereby agrees to purchase the equipment as defined in Section A "Equipment", and the parties hereby acknowledge and agree that the terms and conditions contained within this Quote along with 1) Standard Terms and Conditions, 2) Software License Agreement, 3) Standard Warranty and Limitation of Liability, 4) Service Plan as indicated below and 5) Sections A - E (collectively, the "Contract Documents") constitute the full and final understanding of the parties regarding the sale of equipment and/or the provision of services and entirely replace and supersede any previous understanding or agreement between the parties. By executing this agreement, Customer acknowledges that it has had opportunity and means to review the Contract Documents as provided. Further it is acknowledged and agreed that the price of the equipment and/or the provision of services contained within this agreement are expressly conditioned upon Customer's acceptance of the Contract Documents without change. Any modification of the Contract Documents may require a corresponding change in price. The parties acknowledge and agree that Daktronics design and installation services meet the requirements of the building code in effect for the installation site as of the date of this quote, and is priced accordingly. In the event Daktronics is required at any time to conform its design or installation to a code with requirements greater than those required as of the date of this quote, the parties acknowledge and agree that Purchaser shall be fully responsible for all costs associated with such increased code requirements. Accordingly, the Customer acknowledges and agrees to the Contract Documents as evidenced by its attestation below.

Unless specifically outlined in any Attachments or Agreement, this order does *not* include the following:

- Physical installation
- Electrical installation
- Installation supervision
- Preventative maintenance
- Cable or conduit including labor
- Freight or insurance costs
- Any applicable taxes
- Any additional site related costs
- Appropriate structure, footings and engineering
- Bonding

Customer hereby confirms that the Equipment is to be delivered to, and may be installed by Customer or Daktronics (as indicated elsewhere herein) at the address specified below:

Product Delivery Address:

Customer: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Province/Country: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Contact: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Installation/End User Address:

Customer: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Province/Country: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Contact: \_\_\_\_\_  
E-mail: \_\_\_\_\_

In witness hereof, the parties hereto have executed this agreement and through their duly authorized officers.

### CUSTOMER:

By: \_\_\_\_\_ Name/Title: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature Print or Type

### DAKTRONICS, INC:

By: \_\_\_\_\_ Name/Title: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature Print or Type

By: \_\_\_\_\_ Name/Title: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature Print or Type



## Attachment A

Phase 1 - Camera System				
Sony PXWX400 - Studio HD - FiberLink				
REF #	MANUFACTURER	MODEL	DESCRIPTION	QTY
1	Sony	PXWX400	2/3" HD CMOS Camera Body only	3
2	Marshall	V-LCD90MD-3G	9" LCD Camera Studio Viewfinder Monitor with SDI input	3
3	Marshall	M-SM03	1/4" Hot shoe mount	3
4	Marshall	V-H90MD	Hood for V-LCD90MD monittor	3
5	Anton Bauer	Power Tap-28	28" PowerTap to Female 4-pin XLR	3
6	Sony	VCTU14	Tripod Adapter	3
7	Fujinon	XA20sx8.5 BERM	2/3" HD Lens 20x8.5 w/ 2x extender	3
8	Fujinon	MS-01	Rear Zoom and Focus Lens Control Kit	3
9	Libec	RS-450RM	Tripod System 2 Stage, Head w/Pan Handle, Mid Level Spreader, and Soft Carrying Case 26.5 lbs. payload	3
10	Libec	PH-6B	Second Pan Handle; Fixed for RS Series Tripods	3
11	Anton Bauer	QR-SDH	Gold Mount	3
12	Anton Bauer	LP2	Gold Mount Simultaneous Two Position Battery Charger	3
13	Anton Bauer	Digital G90	Gold Mount Lithium Ion Digital Battery	6
14	Anton Bauer	PSM-160	60W Power Supply	3
15	Connectronics	XLM4-XLF4-10	Power Cable XLR 4-Pin Male to Female Sony KD Equivalent 10Ft	3
16	Pelican	BPL-1650	Hard Camera Case	3





Phone: 800-695-2919

Fax: 800-211-5454

Email: info@buyboard.com

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## Vendor Contract Information

[Back](#)

Search:

- ☒ All  
☐ Vendor Discounts Only  
☐ Catalog Pricing Only

### Refine Your Search:

#### Vendors

Daktronics, Inc.[X]

#### Price Range

Show all prices

#### Category

None Selected

#### Contract

None selected

**Vendor Name:** Daktronics, Inc.**Address:** 201 Daktronics, Dr.

Brookings, SD 57006

**Phone Number:** (605) 697-4494**Extension:** 56669**Email:** lauren.cloud@daktronics.com**Website:** <http://www.daktronics.com>**Federal ID:** 46-0306862**Contact:** Lauren Cloud**Accepts RFQs:** Yes**Minority Owned:** No**Women Owned:** No**Service-Disabled Veteran Owned:** No**EDGAR:** Yes**Contract Name:** Athletic, P.E. & Gymnasium Supplies, Equip., Heavy Duty Exercise Equip. & Acc.

**Contract Description:** Athletic clothing, shoes, equipment; football helmets; PE supplies & equipment; fitness equipment; gym spectator seating; gym dividers, wall pads, floor mats & covers, netting; volleyball systems; indoor scoreboards; service/repair & installation

**Contract#:** 502-16**Effective Date:** 04/01/2016**Expiration Date:** 03/31/2019**Payment Terms:** Net 30 days**Delivery Days:** 60**Shipping Terms:** Pre-paid and added to invoice**Freight Terms:** FOB Destination**Ship Via:** Common Carrier**Region Served:** All Texas Regions**States Served:** All States**Contract Exceptions:** Custom items are excluded from discount

**Additional Info:** EDGAR Compliance documents (2 CFR Part 200 & Appendix II) can be found under the EDGAR (Vendor EDGAR Documents) link at the bottom of the page.

**Quote Reference Number:** 502-16**Return Policy:** Case-by-case with 20% restocking fee**Additional Dealers:** Daktronics, Inc. locations in: San Antonio TX, Houston TX

### Contract Documents

**EDGAR Notice:** [Click to view EDGAR Notice](#)**Proposal Documents:** [Click to view BuyBoard Proposal Documents](#)**Regulatory Notice:** [Click to view Bonding Regulatory Notice](#)**Proposal Files:** [Click to view Vendor Proposal Files Documents](#)**EDGAR:** [Click to view Vendor EDGAR Documents](#)

Contact us 800-695-2919



## **CITY COUNCIL AGENDA COMMUNICATION**

**AGENDA DATE:**

December 13, 2016

**SUBJECT:**

Authorize the City Manager to Amend the Purchase of Law Enforcement Uniforms and Equipment with Red the Uniform Tailor to an Amount of \$110,000, and Award the Purchase of Fire Department Uniforms with Red the Uniform Tailor in the Amount of \$30,000 for a Total Amount of \$140,000.

**STAFF RESOURCE:**

Debra Morris, Purchasing Manager  
Ken Myers, Deputy Chief of Police  
Rosanne Lemus, Buyer

**ACTION PROPOSED:**

Authorize the City Manager to Amend the Purchase of Law Enforcement Uniforms and Equipment with Red the Uniform Tailor to an Amount of \$110,000, and Award the Purchase of Fire Department Uniforms with Red the Uniform Tailor in the Amount of \$30,000 for a Total Amount of \$140,000.

### **BACKGROUND**

Chapter 271.102 authorizes a local government to participate in a cooperative purchasing program with another local government or a local cooperative organization. The Texas Local Government Code permits cooperative agreements between local governments for the purchase of goods and services and satisfies the requirement of local governments to seek competitive bids for purchase of such goods and services through Supplier Contracts.

To meet the specific needs of the Police Department for Law Enforcement Uniforms, the City of Allen has participated in a joint bid with the City of Frisco. In August 2013, Allen City Council awarded the purchase of uniforms and equipment to Red the Uniform Tailor for an amount of \$73,000. Due to an increased need, we are requesting an amendment to increase the purchase amount to \$110,000.

To meet the needs of the Fire Department for Daily Shirts, Emergency Response Jackets and Class Uniforms, the Purchasing Division has facilitated an Invitation for Bid. On October 13, 2016, two bids were received. Staff recommends to award the purchase of Fire Department Uniforms to Red the Uniform Tailor as the most responsive bidder in the amount of \$30,000.

### **BUDGETARY IMPACT**

Funding for this purchase has been budgeted in the FY 2017 Police Department Operating Budget and Fire Department Operating Budget.



### **STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to amend the purchase of Law Enforcement Uniforms and Equipment with Red the Uniform Tailor to an amount of \$110,000, and award the purchase of Fire Department Uniforms with Red the Uniform Tailor in the amount of \$30,000 for a total purchase amount of \$140,000.

### **MOTION**

*I make a motion to authorize the City Manager to amend the purchase of law enforcement uniforms and equipment with Red the Uniform Tailor to an amount of \$110,000, and award the purchase of Fire Department uniforms with Red the Uniform Tailor in the amount of \$30,000 for a total purchase amount of \$140,000.*

### **ATTACHMENTS:**

Vendor Response - Fire Uniforms





GENERAL INFORMATION

CITY OF ALLEN, TEXAS  
BIDS WILL BE ACCEPTED IN THE OFFICE OF THE PURCHASING MANAGER

**INVITATION FOR BID  
SOLICITATION #2016-9-193  
DAILY UNIFORM SHIRTS, EMERGENCY RESPONSE JACKETS AND CLASS UNIFORMS  
FOR ALLEN FIRE DEPARTMENT**

BID PACKAGES ARE DUE TO THE  
PURCHASING DIVISION PRIOR TO:

**OCTOBER 13, 2016 AT 2:00 PM C.S.T.**

NO LATE BIDS WILL BE ACCEPTED  
FACSIMILE OR E-MAILED BIDS WILL NOT BE ACCEPTED  
E-BID (ELECTRONIC BID) SUBMITTAL IS HIGHLY PREFERRED

**SUBMIT ORIGINAL BID AND ONE COPIES  
ALONG WITH CURRENT INSURANCE CERTIFICATE**

**BID RESPONSE PACKAGES  
MAY BE DELIVERED OR MAILED TO:**

<p><b>CITY OF ALLEN PURCHASING DIVISION 305 CENTURY PARKWAY ALLEN, TX 75013</b></p>
---

FOR ADDITIONAL INFORMATION CONCERNING THIS PROPOSAL PLEASE CONTACT:

Rosanne Lemus, CPPB, Buyer 214-509-4633



**COVER SHEET**

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- 10. 1295 FORM**



**SECTION I  
NOTICE TO OFFERORS**

**1.1 INTRODUCTION**

Section I provides general information to potential proposers on subjects such as where to submit proposals, number of copies, amendments, proprietary information designation, and other similar administrative elements.

**1.2 SUBMISSION OF PROPOSAL**

The preferred method for bid submittal is electronic via the City of Allen E-bid System. If you have not yet registered, please visit the **City of Allen Website** at [cityofallen.org](http://cityofallen.org) and select *Business*. Under *Vendor Resources*, select *eBid System*. Now select *Supplier Registration* to complete the registration process for electronic bid submittals. All bids/proposals will be sealed and received by the City of Allen Purchasing Office. If mailing or delivering, all bids/proposals shall be in one sealed envelope clearly marked with the: Bid Number, Project Title, and Bid Opening Date on the outside of the envelope containing the bid.

**INVITATION FOR BID # 2016-9-193  
DAILY UNIFORM SHIRTS, EMERGENCY RESPONSE JACKETS AND CLASS UNIFORMS  
FOR ALLEN FIRE DEPARTMENT**

Sealed offers are to be submitted to:

City of Allen  
Purchasing Department  
305 Century Parkway  
Allen, TX 75013

**NO LATE OFFERS WILL BE ACCEPTED  
FACSIMILE OR EMAILED BIDS WILL NOT BE ACCEPTED**

**Bid Opening October 13, 2016 at 2:00 PM C.S.T.**

Promptly thereafter, all Bids that have been duly received will be publicly opened and read aloud in the Council Conference Room, City Hall.

**1.3 NUMBER OF COPIES**

If submitting by paper, proposer shall submit one original set and **one (1)** copy of bid response documents. Electronic submission via our E-bid system is preferred) This will greatly facilitate the evaluation process. The proposal shall remain the property of the City of Allen. The original copy shall be unbound and clearly marked "Original".

**1.4 PROPOSAL INFORMATION**

All questions regarding proposal preparation, the selection process, specifications and interpretations of the terms and conditions of the bid shall be submitted in writing. Any addenda will be issued no later than three (3) calendar days prior to the deadline for submission of offers.

**1.5 DISCLOSURE OF RESPONSE**

All information submitted in an accepted response must be retained by the City of Allen for the period specified in the City of Allen's record retention schedule created under Government Code Section 441.180, et sequitur. The information will not be returned to the respondent. The Public Information Act (PIA), Government Code Chapter 552, allows the public to have access to information in the possession of a governmental body through an open records request. Therefore, the respondent shall clearly identify in the response any confidential or proprietary information. Proprietary information identified by the respondent in the response, will be kept confidential by the City of Allen to the extent permitted by state law. The City of Allen merely raises the exception on behalf of the vendor. The City of Allen takes no legal position on disclosure. The City of Allen will use best efforts to give the respondent or the awarded vendor an opportunity to present to the Office of the Attorney General its arguments for non-disclosure of its identified confidential or proprietary information.

**1.6 ADDENDUMS/AMENDMENTS**

Any interpretations, corrections and/or changes to a bid solicitation or extensions to the opening date will be made by addenda to the respective document when necessary. An addendum will be published and distributed by email to all that are known to have received a copy of the bid and related specifications. However, it shall be the sole responsibility of the bidder to verify issuance/non-issuance of addenda and to check all avenues of document availability prior to opening date and time to insure bidder's receipt of any addenda issued. No addenda will be



issued 3 days prior to bid opening. The last day for questions will be **on Friday, Friday October 7, 2016. The last day for addenda will be on Monday, 10, 2016 at 2:00 PM.** Any addenda issued within 3 working days of the bid opening will automatically delay the bid opening by one week. Bidders will be notified of the new bid opening time and date as determined by the City of Allen Purchasing Department. The offeror is required to acknowledge receipt of any amendments by submitting a signed copy of each amendment issued. Signed copies must be submitted as part of the signed proposal submittal.

#### **1.7 BID SUBMITTALS**

Bids shall be submitted on the forms provided to insure complete uniformity of wording of all bids. Bids may be rejected if they show any omissions, alterations in wording, conditional clauses, or irregularities of any kind.

*If an emergency or unanticipated event interrupts normal City processes so as to cause postponement of the scheduled bid opening, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal City processes resume or to such other date and time as may be provided by the Procurement Services Office in a written notice to bidders."*

#### **1.8 ACCEPTANCE**

Any offer received shall be considered an offer, which may be accepted by the City of Allen based on initial submission without discussions or negotiations. By submitting an offer in response to this solicitation the proposer agrees that any offer it submits may be accepted by the City of Allen at any time within 90 days from the close date.

The City of Allen reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received, and/or to accept any portion of the offer if deemed in the best interest of the City of Allen. Failure of the proposer to provide in its offer any information requested in the bid may result in rejection for non-responsiveness.

#### **1.9 AWARD**

The City of Allen intends to make an award using the evaluation criteria and other factors as indicated in this bid/proposal. The award shall be based on the lowest responsible and best-qualified bidder whose evaluation by the City of Allen indicates to be in the best interest of the City and taxpayers.

Bid will be awarded on the basis of "best value". The award to the successful bidder will be determined by best value to the City of Allen as allowed by Chapter 252 of the Local Government Code. The following criteria will be considered when selecting the successful bidder:

- the purchase price
- the reputation of the bidder and the bidder's services;
- the quality of the bidder's service;
- the extent to which the bidder's services meet the City's needs;
- the bidder's past business relationship with the City;
- the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and non-profit organizations employing persons with disabilities;
- the total long-term cost to the City to acquire the bidder's goods or services; and
- any relevant criteria specifically listed in the request for bids or proposals.

#### **1.10 BID TABULATIONS**

Bid tabulations can be accessed through the electronic bidding system. Please allow at least one week after opening date for bids to be tabulated.

#### **1.11 CONTRACT ADMINISTRATION**

The City of Allen Fire Department together with the Purchasing Department shall be responsible for administration of this purchase for compliance with the interpretation of scope, schedule, billings, requirements, and budget.

#### **1.12 SUBSTANTIVE PROPOSALS**

The respondent shall certify (a) that his bid submittal is genuine and is not made in the interest of, or on behalf of, any undisclosed person, firm, or corporation; (b) that he has not directly or indirectly induced or solicited any other respondent to put in a false or sham bid; (c) that he has not solicited or induced any other person, firm, or corporation from proposing; and (d) that he has not sought by collusion to obtain for himself any advantage over any other respondents or over the City of Allen.



Minimum standard for responsible prospective bidders are as follows:

- Have adequate financial resources, or the ability to obtain such resources
- Be able to comply with the required or proposed schedules and project requirements
- Competitive pricing
- Have a satisfactory record of performance for contracts of similar scope (complete attached reference sheet)
- Have a satisfactory record of integrity and ethics
- Completeness and thoroughness of bid submittal

The City of Allen may make such investigations as it deems necessary to determine the ability of the bidder to provide satisfactory performance in accordance with bid requirements, and the respondent shall furnish to the City all such information and data for this purpose.

### **1.13 DEFINITIONS**

- Bidder refers to submitter.
- Vendor refers to Successful Bidder or Contractor.
- Submittal refers to those documents required to be submitted to the City of Allen, by a bidder.

### **1.14 INQUIRIES**

Questions about this bid shall be in writing and directed to Rosanne Lemus at the following address. Questions resulting in changes to this solicitation will be provided in the form of an amendment to the solicitation.

Rosanne Lemus, Buyer  
305 Century Parkway  
Allen, TX 75013  
[rlemus@cityofallen.org](mailto:rlemus@cityofallen.org)  
214-509-4633

Richard Vaughn, Fire Division Chief  
310 Century Parkway  
Allen, TX 75013  
[rvaughn@cityofallen.org](mailto:rvaughn@cityofallen.org)  
214-509-4405

### **1.15 SCHEDULE OF EVENTS**

The upcoming schedule of events is tentative scheduled as follows:

Advertise Requirement  
Issue Invitation For Bid  
Deadline for Addenda  
Bid Due Date

September 29 & October 6, 2016  
September 29, 2016  
October 10, 2016 @ 2:00 PM C.S.T.  
October 13, 2016 @ 2:00 PM C.S.T.



IFB Solicitation #2016-9-193

Daily Shirts, Emergency Response Jackets and Class Uniforms for Allen Fire Department

Electronic Bid Form and Pricing Submittal Form

This form is required and must be submitted with your bid response.

\*Please complete this form (fill in unit price electronically) and upload with bid required

Item #	Description	Annual Estimated Quantity	Unit Price (Regular Size)	Total Price	XXL Pricing	Vendor Notes
<b>CLASS "A" UNIFORMS</b>						
1	Class "A" Uniform Black Jacket - 55/45 poly-wool or equal	500	\$ 315.00	\$ 157,500.00	Add \$__ for XXL Add \$__ for XXXL Add \$__ for XXXXL	
2	Class "A" White Long Sleeve-Blauer #8431 cotton poly or equal	500	\$ 41.59	\$ 20,795.00	Add \$__ for XXL Add \$__ for XXXL Add \$__ for XXXXL	20.5" add \$12.50
3	Class "A" Black Matching Pants- 55/45 poly-wool or equal	500	\$ 94.50	\$ 47,250.00	Add \$__ for XXL Add \$__ for XXXL Add \$__ for XXXXL	
4	Black Formal Tie (all sizes)	Each	\$ 4.39	\$ 4.39		14"-18" \$4.39, 20"-22" \$4.79 24" \$7.09
5	White Formal Gloves (all sizes)	Pair	\$ 4.50	\$ 4.50		
6	Black Leather Belt (all sizes)	Each	\$ 18.09	\$ 18.09		up to 44" 46"-52" \$21.57, 54"-60" \$23.19
<b>CLASS "B" UNIFORMS</b>						
7	Class "B" Uniform <b>Short</b> Sleeve Shirt - Tru-Spec #1367 Battlerip Fabric 65/35 poly cotton or equal. Color Navy	500	\$ 30.75	\$ 15,375.00	Add \$__ for XXL Add \$__ for XXXL Add \$__ for XXXXL	2x-4x add \$4.00
8	Class "B" Uniform <b>Long</b> Sleeve Shirt - Tru-Spec #1001 Battlerip Fabric 65/35 poly cotton or equal. Color Navy	500	\$ 27.75	\$ 13,875.00	Add \$__ for XXL Add \$__ for XXXL Add \$__ for XXXXL	2x-4x add \$3.00
9	Class "B" Tactical Matching Pants or equal	500	\$ 31.00	\$ 15,500.00	Add \$__ for XXL Add \$__ for XXXL Add \$__ for XXXXL	s-xl reg m-xl long add \$2.00



10	Black Belt – 5.11 style # 59405. (all sizes)	each	\$ 33.91	\$ 33.91		2x-4x add \$5.08
11	3-in-1 Emergency Response Outer Jacket. Blauer# 9845 or equal. Color Navy or Black	each	\$ 252.51	\$ 252.51	Add \$ __ for XXL Add \$ __ for XXXL Add \$ __ for XXXXL	4x add \$75.75
12	3-in-1 Emergency Response Inner Jacket. Blauer# 4650 or equal. Color Navy or Black	each	\$ 61.45	\$ 61.45	Add \$ __ for XXL Add \$ __ for XXXL Add \$ __ for XXXXL	4x add \$17.44
13	3-in-1 Emergency Response Jacket combination of both. Blauer# 4845-50 or equal. Color Navy or Black	each	\$ 352.05	\$ 352.05	Add \$ __ for XXL Add \$ __ for XXXL Add \$ __ for XXXXL	4x add \$99.34
Total lines 1-13			\$ 1,267.49	\$ 271,021.90		

Miscellaneous Items		Price or Discount	Vendor Notes
14	Cost on Name Tapes/Tags (tape must match uniform material)	see attached alterations sheet	
15	Custom Embroidery	see attached alterations sheet	
16	Sew on Patch	see attached alterations sheet	
17	Alterations (shirts, pants and jackets)	see attached alterations sheet	
18	Cost on patches (embroidery included)	see attached alterations sheet	
19	Provide catalog pricing discount (percentage) on items not specified on bid form	Blauer 15% 511 13% Altanco 30%	



**ALLEN FIRE DEPARTMENT**

**Bid# 2016-8-193**

**DAILY UNIFORM SHIRTS, EMERGENCY RESPONSE JACKETS AND CLASS UNIFORMS**

ITEM #	DESCRIPTION	QTY	MFG./VENDOR	Part #	SIZE	UNIT PRICE	TOTAL PRICE	NOTES
<b>CLASS A UNIFORMS</b>								
1	Class A Uniform Black Jacket - 55/45 Poly-Wool	500	RED's MTM			\$ 315.00	\$ 157,500.00	Cost is for item only. See alterations sheet for embellishments
2	Class A Uniform White Long Sleeve	500	Blauer	8431	14.5-19.5	\$ 41.59	\$ 20,795.00	
					20.5	\$ 54.09		
3	Class A Uniform Black Matching Pants - 55/45 Poly-Wool	500	RED's MTM			\$ 94.50	\$ 47,250.00	
4	Black Formal Tie, each		Wolfmark	001180	14"-18"	\$ 4.39		
					20"-22"	\$ 4.79		
					24"	\$ 7.09		
5	White Formal Gloves, each		Premier	7000-7006		\$ 4.50		
6	Black Leather Belt, each		Dutyman	1511	up to 44"	\$ 18.09		
					46"-52"	\$ 21.57		
					54"-60"	\$ 23.19		
<b>CLASS B UNIFORMS</b>								
7	Class B Uniform Short Sleeve Shirt, Battlerip Fabric, 65/35 Poly-Cotton	500	Tru-Spec	1367	S-XL	\$ 30.75	\$ 15,375.00	Cost is for item only. See alterations sheet for embellishments
					2X-4X	\$ 34.75		Cost is for item only. See alterations sheet for embellishments
8	Class B Uniform Long Sleeve Shirt, Battlerip Fabric, 65/35 Poly-Cotton	500	Tru-Spec	1001	S-XL	\$ 27.75	\$ 13,875.00	Cost is for item only. See alterations sheet for embellishments
					2X-4X	\$ 30.75		Cost is for item only. See alterations sheet for embellishments
9	Class B Tactical Matching Pant		Tru-Spec	1996	S-XL/R	\$ 31.00		
					M-XL/L	\$ 33.00		
10	Black Belt, each		5.11	59405	S-XL	\$ 33.91		
					2X-4X	\$ 38.99		
11	3-in-1 Emergency Response Outer Jacket	500	Blauer	9845	S-3X	\$ 252.51	\$ 126,255.00	
					4X	\$ 328.26		
12	3-in-1 Emergency response Inner Jacket	500	Blauer	4650	S-3X	\$ 61.45	\$ 30,725.00	
					4X	\$ 78.89		
13	3-in-1 Emergency Response Jacket, Combination of Both, each		Blauer	9845-50	S-3X	\$ 352.05		
					4X	\$ 451.39		
<b>MISCELLANEOUS ITEMS</b>								
14	Cost on Name Tapes							See Attached Alterations Sheet
15	Custom Embroidery							See Attached Alterations Sheet
16	Sew on Patch							See Attached Alterations Sheet
17	Alterations (Shirts, Pants and Jacket)							See Attached Alterations Sheet
18	Cost on Patches (embroidery included)							Varies dependant on quantity
19	Provide Catalog Pricing Discount (percentage) on items not specified on bid form.	Blauer - 15% 5.11 - 13% Atlenco - 30%						



# Red The Uniform Tailor Alterations - CONTRACT

CODE	SERVICE PROVIDED	PRICE	CODE	SERVICE PROVIDED	PRICE
Pants			Shirts		
ALT-TBL	Belt Loops, Change	\$20.00	ALT-SB	Badge Tab, Add/Remove	\$4.00
ALT-TBLRS	Belt Loops, Re-Sew (each)	\$2.00	ALT-STA	Body, Hem (shorten tail)	\$8.00
ALT-TBRAID	Braid/Cordege/Piping, Add (Not Stripe)	\$14.00	ALT-ST	Body, Taper (form fit)	\$12.00
ALT-CRB	Creases, Front & Back, Add	\$14.00	ALT-SC	Creases, Military, Sew-In (ea)	\$10.00
ALT-CR	Creases, Front, Add	\$7.00	ALT-SEPBRAID	Epaulet, Add Braid (pr)	\$8.00
ALT-TWSC	Crotch/Seat/Waist, Adjust	\$21.00	ALT-SWE	Epaulet, Add Working	\$6.50
ALT-TH	Hem (unlined)	\$7.00	ALT-SE	Epaulet, Change-Out (pr)	\$12.00
ALT-TH	Hem Pants to Short	\$7.00	ALT-SEPMH/L	Epaulet, Create Multi (hook/loop) (pr)	\$11.00
ALT-TRCUFFS	Hem w/Cuff	\$10.00	ALT-SEPMSN	Epaulet, Create Multi (sewn) (pr)	\$10.00
ALT-TE	Hem, Add Elastic	\$12.00	ALT-SEPSHL	Epaulet, Create Solid (hook/loop) (pr)	\$9.00
ALT-BP	Knife/Flashlight Pocket (billy), Add	\$7.00	ALT-SEPSSN	Epaulet, Create Solid (sewn) (pr)	\$8.00
ALT-TTR	Leg, Taper	\$12.00	ALT-TAILS	Material to Tail, Add	\$20.00
ALT-TTR	Leg, Taper, Lined	\$18.00	ALT-MIC	Mic Tab, Add	\$4.00
ALT-TST	Material Stripe to Pant, Add (not braid)	\$14.00	ALT-NP	Name Plate (Reinforcement)	\$4.00
ALT-TMATERN	Material, Maternity, Add	\$25.00	ALT-SF	Pocket Flap, Change (pr)	\$12.00
ALT-TMOHAIR	Mohair, Add	\$14.00	ALT-SPKTSHT	Pockets, Sew Shut (per shirt price)	\$2.00
ALT-TPKEMSIX	Pocket, EMS Nomex, Add (ea)	\$19.00	ALT-SREFL1	Sew-on 1" Reflective to Sleeve	\$8.00
ALT-SEPKTS	Pockets, Sew Shut (per pant price)	\$4.00	ALT-SS	Sleeve, Hem Long to Short	\$6.00
ALT-TSEAMRPR	Seam Repair	\$4.00	ALT-LSTOS/S	Sleeve, Hem Long to Short Cuff	\$8.00
ALT-TS	Seat (only), Adjust	\$10.00	ALT-SST	Sleeve, Taper (each)	\$6.00
ALT-BDUST	Stripe to BDU, Add	\$30.00	ALT-SBOTTOMS	Square off Bottom	\$15.00
ALT-TW	Waist (in/out)	\$10.00	ALT-ZIP	Zipper, Add	\$8.50
ALT-TR.ZIP	Zipper, Replace	\$6.00	ALT-SZR	Zipper, Remove	\$10.00
ALT-TWSC	Crotch/Seat, Adjust	\$15.00	ALT-SPR/R	Patch Remove/Replace	\$3.00
Motorpant			Buttons		
	Make Custom (choose from below)	\$179.00	ALT-BUTHOLE	Add Single Button Hole	\$2.00
	8560-75 Poly/25 Wool		ALT-SB2	Metal, Added	\$3.00
	8650-100% Polyester		ALT-SB4	Metal, Added	\$6.00
	8950-65 Poly/35 Rayon		ALT-SB9	Metal, Added	\$13.50
	8567-75 Poly/25 Wool 6 pkt		ALT-SB13	Metal, Added	\$19.50
	8657-100% Polyester		ALT-SBNONMTL	New (non-metal)	\$2.00
	Cust supplied pant		ALT-SBHAND	Re-sew, Jacket (hand)	\$2.00
ALT-MISC	Alter Motorpant	varies	ALT-BUTRPR	Re-sew/Repair, Button/Snap Shirt	\$1.00
ALT-TSTIRUPS	Add Stirrups	\$10.00	Patches (sew-on)		
			ALT-ADDV	Add Hook to Patch - 1 Side	\$3.00
			ALT-ADDL	Add Loop to Patch - 1 Side	\$3.00
Dress Blouse			ALT-PATONBAG	Add to Duty Bag	\$5.00
			ALT-RPAT	Patch, Remove	\$3.00
ALT-ST1	Add Stripe to Sleeve - 1	\$15.00	Name Tape / Embroidery		
ALT-ST2	Add Stripe to Sleeve - 2	\$20.00			
ALT-ST3	Add Stripe to Sleeve - 3	\$25.00	RTUT-DEMB1	Direct Embroider Name - 1 Line	\$7.00
ALT-ST4	Add Stripe to Sleeve - 4	\$30.00	ALT-DEMB2	Direct Embroider Name - 2 Lines	\$8.00
ALT-ST5	Add Stripe to Sleeve - 5	\$35.00	ALT-DEMB3	Direct Embroider Name - 3 Lines	\$9.00
MISC	Add Star/Maltese Cross	\$3.00	RTUT-NS	Name Strip - 1 Line	\$8.00
MISC	Add Christian Cross	\$3.00	RTUT-NS2	Name Strip - 2 Lines	\$10.00
Jackets/Sweaters			RTUT-NS3	Name Strip - 3 Lines	\$10.00
			RTUT-VNS	Name Strip w/hook - 1 Line	\$9.00
ALT-ELASBTM	Add Elastic to Bottom	\$10.00	RTUT-VNS2	Name Strip w/hook - 2 Lines	\$11.00
ALT-MIC	Add Mic Tab	\$4.00	RTUT-VNS3	Name Strip w/hook - 3 Lines	\$11.00
ALT-JKPENPKT	Add Pen Pocket Jacket/Sweater	\$6.50	Heat Transfers		
ALT-SIDESPLT	Add Side Split, Lined	\$25.00			
ALT-JKTHEM	Hem Bottom	\$18.00	RTUT-SPOLICE	Reflective Police, Silver 3.5"	\$9.00
ALT-JKTHEMLD	Hem Bottom, Lined	\$22.00	RTUT-REFSIL2	Reflective, Silver, 2 Lines	\$11.00
ALT-RPATJ	Patch, Remove	\$3.00	ALT-REFB/O1	Reflective, Black or White, 1 Line	\$12.60
ALT-PATS	Patch, Sewn On Sweater/Sweatshirt	\$5.00	ALT-BASIC1	Non-Reflective, Basic Colors, 1 Line	\$7.00
ALT-JKTSEAM	Side Seam Take-in	\$30.00	ALT-BASIC2	Non-Reflective, Basic Colors, 2 Lines	\$9.00
ALT-JKTSEAML	Side Seam Take-in, Lined	\$35.00	ALT-HTMATL	Heat Transfer On Added Material	\$14.00
ALT-JKTSVLN	Sleeve, Alter Short/Lengthen, Lined	\$14.00			
ALT-JKTSLV	Sleeve, Alter Short/Lengthen	\$14.00			



**Please answer the following questions. Additional pages may be included if necessary.**

Will a dedicated representative be assigned to this contract?

Do you make local deliveries?

Set up charges if any \$ 0.00 . Delivery will be made 20 days after receipt of order.

Please state minimum re-order quantities for ordering shirts/jackets in the event that a department wishes to order additional shirts for a design that has already been printed: \_\_\_\_\_

Please state usual lead-time for placing orders: 3 days

Please state usual delivery time for placing orders: 20 days

Please list your locations where agencies can pick up at store:

3200 Commander Drive, Suite 114, Carrollton, TX, 75006  
\_\_\_\_\_  
\_\_\_\_\_

Please state any additional charges that are not specified above:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## BID ENDORSEMENT

The undersigned, in submitting this bid proposal and their endorsement of same, represents that they are authorized to obligate their firm, that they have read this entire bid proposal package, is aware of the covenants contained herein and will abide by and adhere to the expressed requirements.

Submittals will be considered as being responsive only if entire Bid Package plus any/all attachments is returned with all blanks filled in.

SUBMITTED BY:

Red the Uniform Tailor  
(OFFICIAL Firm Name)

By: Patricia Klein  
(Original Signature) **Must be signed to be considered responsive**

Patricia Klein  
(Typed or Printed Name)

Chief Operating Officer 10/13/2016  
(Title) (Date)

### Remittance

Address: 475 Oberlin Avenue S  
Lakewood, NJ, 08701  
(Zip Code)

Phone #: (800) 272-7337

Fax #: (800) 701-5021

E-Mail Address: mark.downing@rtut.com

local:  
3200 Commander Drive, Suite 114  
Carrollton, TX 75006  
972-246-3633  
972-246-3643 fax

If an addendum is issued for this bid, please acknowledge receipt.

<b>ADDENDUMS/AMENDMENTS:</b>	1) <u>n/a</u>	date acknowledged
	2) _____	date acknowledged
	3) _____	date acknowledged



<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:** December 13, 2016

**SUBJECT:** Authorize the City Manager to Execute a Professional Services Agreement with Lee Engineering, Inc., for Design of the 2017 Median Improvement Project in the Amount of \$150,060.

**STAFF RESOURCE:** Chris Flanigan, Director of Engineering

**ACTION PROPOSED:** Authorize the City Manager to Execute a Professional Services Agreement with Lee Engineering, Inc., for Design of the 2017 Median Improvement Project in the Amount of \$150,060.

**BACKGROUND**

The current Allen Land Development Code requires a developer of vacant property, adjacent to a median-divided roadway, to construct median improvements (landscaping, irrigation, and lighting) with the development of their property. Given the segmented nature of land development, the practice has been for the developer to instead escrow funds with the City for future installation of median landscaping, irrigation, and street lighting as a City-managed capital improvement project. City Staff has identified locations below regarding proposed lighting and/or landscape median improvements.

**Median Locations (Landscape, Irrigation, and Lighting)**

Junction Drive (Watters Road to Raintree Circle)  
Raintree Circle (Watters Road to Exchange Parkway)  
Bossy Boots Drive (Watters Road to Exchange Parkway)

**Median Locations (Lighting Only)**

Allen Heights Drive (Bethany Drive to Bolin Road)  
Montgomery Boulevard (Watters Creek Bridge to US 75 SBFR)  
Chaparral Road (Greenville Avenue to Rosewood Lane)  
Ridgeview Drive (Alma Drive to Old York Lane)

**Median Locations (Landscape and Irrigation Only)**

Country Brook Lane (Two Islands between Goodman Drive to Turnberry Lane)

To improve the energy efficiency of the streetlight system, the Engineering Department will be recommending fixtures the use of Light Emitting Diodes (LED's), with the exception of Montgomery Boulevard. For the sake of continuity, the lighting on Montgomery Boulevard will be the same as already installed (High Pressure Sodium - HPS). Until recently, LED streetlights have been either cost prohibitive or inferior to the typical street lamp in longevity and light output. Recent proven reliability, reduced capital cost, and better light distribution have given confidence in the use of LED light fixtures for equal or better applications than the traditional roadway light from HPS.



The landscaping design will have the same look to the recently completed Bray Central median improvements and current Alma Drive landscape improvements at Exchange Parkway. As a general rule, we will not irrigate and landscape medians that have not achieved build-out condition. Future construction on roadways that will experience lane expansion will dramatically impact proposed plantings, which explains why some are landscaped (and others are not) in the list above.

### **BUDGETARY IMPACT**

Funding for the design will be expended from Median Improvement Fees paid by the development community over time. The total project cost is estimated to potentially cost \$3.4 million. Funds for installation and construction will be identified when precise costs are known during the bidding process at the time of award by the City Council. Future 2017 GO Bonds have been identified for use on median improvement and beautification to supplement the Median Improvement Fee Fund.

### **STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to execute a Professional Services Agreement with Lee Engineering, Inc., for design of the 2017 Median Improvement Project in the amount of \$150,060.

### **MOTION**

***I make a motion to authorize the City Manager to execute a Professional Services Agreement with Lee Engineering, Inc., for design of the 2017 Median Improvement Project in the amount of \$150,060.***

### **ATTACHMENTS:**

Agreement for Professional Services  
Location Map



STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

**AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement for Professional Services ("Agreement") is made by and between the City of Allen, Texas ("City") and LEE Engineering, Inc., a Civil Engineering Design 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 2017 Median Improvement Project (the "Project"); and

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

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

**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 or materials 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 outlined in Exhibit "A."



2.2 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 professional standard of care applicable by law to the services performed hereunder.

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

The Professional agrees to complete the required services in accordance with the Project Schedule outlined in the following projected schedule.

	Chelsea Blvd./ Allen Commerce Pkwy. Intersection Improvements
Notice to Proceed	December 14, 2016
Submit Preliminary Plans to City for Review	April 14, 2017
Receive Review Comments from City	April 28, 2017
Submit 90% Plans to City for Review	June 2, 2017
Receive Review Comments from City	June 16, 2017
Complete Final Plans	July 21, 2017
Advertise Project	TBD
Receive Bid	TBD
Award Contract	TBD
Notice to Proceed	TBD
Construction	TBD

The City requires that the Design Phase of the Scope of Service outlined above be completed within [210] calendar days of the signing of the contract. Three weeks for each review is included in the overall completion time. Construction Administration Services will continue for the duration of the Construction Contracts.

### **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 and outlined below, not to exceed a total amount of **One Hundred Fifty-Five Thousand Three Hundred Eighty** Dollars (**\$150,060**).



A. BASIC SERVICES:

1. PHOTOMETRIC ANALYSIS AND PREPARATION OF ILLUMINATION ..... \$ 95,500  
DESIGN PS&E
2. MEDIAN LANDSCAPING DESIGN..... \$ 37,760
3. BID ADVERTISEMENT AND CONSTRUCTION ENGINEERING ASSISTANCE ..... \$ 15,000

A. ADDITIONAL SERVICES:

1. DIRECT EXPENSES.....\$ 1,800

TOTAL SERVICES: ..... \$ 150,060

4.2 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 charged 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.

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

**Article V**  
**Notice to Proceed**

Professional 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 Professional prior to Professional's receipt of a written Notice to Proceed from City shall be entirely at Professional's own risk. Work performed and expenses incurred after Professional 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 VI**  
**Suspension of Work**

City shall have the right to immediately suspend work by Professional if City determines in its sole discretion that Professional has, or will fail to perform, in accordance with this



Agreement. In such event, any payments due Professional shall be suspended until Contractor has taken satisfactory corrective action.

## **Article VII**

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

7.1 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.

7.2 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 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 provided differently herein.

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

7.4 The Professional shall submit monthly progress reports and attend progress meetings 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 VIII**

### **Miscellaneous**

8.1 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.

8.2 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.



8.3 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.

8.4 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.

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

8.6 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.

8.7 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.

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

8.9 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:

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

With a copy to:

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



If intended for Professional:

Attn: LEE Engineering, Inc.  
Dharmesh M. Shag, P.E., PTOE  
3030 LBJ Freeway  
Suite 1660  
Dallas, Texas 75234

8.9 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$2,000,000.00 per claim and \$2,000,000.00 in the aggregate.
- (b) All policies of insurance shall be endorsed and contain 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; and (2) provide for at least thirty (30) days prior written notice to the City for cancellation 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, except for Professional Liability Insurance. The Professional shall provide written notice to the City of any material change of or to the insurance required herein.
- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.



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

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

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

8.12 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**

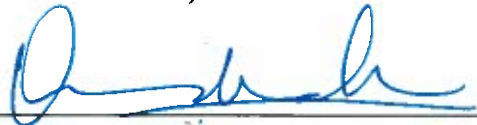
By: \_\_\_\_\_  
Peter H. Vargas, City Manager

**ATTEST:**

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

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

**LEE ENGINEERING, INC.**

By:  \_\_\_\_\_  
Name: Dharmesh M. Shag, P.E., PTOE  
Title: Vice President



**EXHIBIT "A"**  
**Scope of Services**

**(to be attached)**



## **EXHIBIT A SCOPE OF SERVICE**

The Consultant will perform lighting analysis, lighting design, and median landscaping design services for the City of Allen. The services outlined below include photometric analysis and the preparation of design plans, specifications, and cost estimate data for installation of roadway lighting along the following roadway segments:

<b>Roadway</b>	<b>Segment</b>	<b>Illumination</b>	<b>Landscape</b>	<b>Length (ft)</b>
Junction Drive	Watters to Raintree	YES	YES	3,700
Raintree Circle	Watters to Exchange	YES	YES	3,270
Allen Heights	Bethany to Bolin	YES	No	1,330
Montgomery Boulevard	Bridge to US 75 FR	YES	No	700
Chaparral Road	Greenville to Rosewood	YES	No	6,700
Bossy Boots Drive	Watters to Exchange	YES	YES	2,020
Ridgeview Drive	Alma to Old York	YES	No	8550
Country Brook Lane	Two islands (Goodman to Turnberry)	No	YES	N/A

### **Task 1 – Illumination Analysis**

#### **1.1 – LED Fixture Review**

Based on initial discussions with the City of Allen, there are two types of shoebox style LED fixtures being considered for this project. Consultant will obtain budgetary cost information for each shoe box style fixture. Lee Engineering will discuss pros and cons of each fixture with the City of Allen. The consultant will provide one photometric analysis. The consultant will evaluate 2 LED lights ensuring they meet the required photometric criteria set in this contract.

#### **1.2 – Photometric Analysis**

It is our understanding that LED lighting will be installed along all project segments except for Montgomery Boulevard. High pressure sodium lighting will be installed along Montgomery Boulevard segment to match the existing lighting west of the project segment.

Consultant shall perform photometric analysis for each project segment based on the following assumptions:

- Photometric analysis will be performed for one of the two LED fixtures that the City is considering.
- Consultant shall discuss AASHOT and IESNA (Illumination Engineering Society of North America) light level guidelines with the City of Allen and come to an agreement on light level requirements for each project segment.
- Consultant will prepare a concept design technical memorandum identifying project requirements related to illumination. This report will include the following:
  - AASHTO and IESNA light level guidelines based on functional class and potential pedestrian activity for each project segment



- Potential electrical service location and any specific concerns regarding electrical service for each project segment
  - Specific design related issues for each segment. For example, narrow median width may require house side installation instead of median lighting installation.
- Consultant will perform photometric analysis and prepare photometric layouts for each project segment using Visual Roadway Lighting Analysis software.
  - Consultant will provide photometric layouts on 11" x 17" sheets with light level statistics (uniformity ratio, average light levels, minimum light level, and maximum light level) for each project segment.
  - Consultant will meet with the City of Allen to review and discuss photometric layouts.
  - Based on review comments provided by the City of Allen, Consultant will update the photometric analysis and submit final photometric layouts.

## **Task 2 – Illumination PS&E**

- Consultant will obtain as-built plans in CAD format, if available, for each segment from the City of Allen. Any segments for which as-built plans are not available in CAD format, the City of Allen will provide the most current aerial photography with planimetrics, ROW, and city owned utility information. Based on this information, we will prepare illumination base maps.
- Consultant will conduct a field visit to photograph key features and to identify any possible utility conflicts associated with illumination pole locations for each project segment.
- Consultant will also conduct a field meeting with the City of Allen and power companies (Coserv and/or Oncor) to identify electrical service locations, types, requirements, and standards.
- Consultant will review clearance requirements to assess the need for guard rails as needed and will review applicable National Electric Code provisions and requirements.
- Consultant will perform the following calculations and design checks:
  - Voltage drop calculations to determine electrical conductor size and grounding conductors for each proposed circuit.
  - Conduit fill check and design conduit size.
  - Design electrical services including electrical service data, breaker size, and service entrance conductors.
- Consultant will prepare preliminary illumination plans (65%) for review by the City. The illumination plans will show pole foundation locations, conduits, ground boxes, electrical service data sheet, power source locations, circuit design, and conductor charts. Plans shall anticipate any future lane improvements, median breaks, turn lanes, etc.
- Upon approval of the preliminary layouts, Consultant will prepare final plan sheets for illumination. The plans will conform with and will utilize City of Allen design standards. These plan sheets will include illumination layout sheets, electrical service data sheet, electrical conductor summary sheet, and applicable City of Allen specifications and standard sheets. Upon review of the 65% plans, we will incorporate necessary changes and produce DRAFT FINAL (100%) plan sheets. We will incorporate City's review comments on the DRAFT FINAL plans and produce signed and sealed plan sheets. Our plan set will also include technical specifications and engineer's estimate of construction cost.



### **Task 3 – Median Landscaping Design**

The Consultant will retain the services of David C. Baldwin Inc. (the Landscape Architect) for median landscaping design for the project segments indicated in table on page 1. Median landscaping design will not be performed for the Ridgeview Drive segment. Median landscaping design services shall consist of Schematic Design, Construction Documents, Limited Bidding Services, and Limited Construction Services. It should be noted

#### **3.1 Schematic Design**

The Landscape Architect shall visit the site to verify and inventory existing conditions, taking special note of the following:

- Relationship to adjacent properties
- Existing vehicular circulation
- Potential sight visibility issues

Based on the aerial photography base plans obtained from the City of Allen, the Landscape Architect shall prepare concept plans and sketches specifically addressing:

- New trees and other landscaping
- Irrigation limits (for Opinion of Cost only)

The Engineer will prepare intersection sight triangles (VAM -Visibility, Access, and Maintenance diagram) on the base plans provided to the Landscape Architect. The Landscape Architect shall prepare a detailed Opinion of Probable Cost based on current area or unit costs and submit along with the concept plans.

#### **3.2 Final Plans and Specifications**

Based on the approved Schematic Design Documents, the Landscape Architect shall prepare Final Plans including:

- Detailed layout and specifications for all trees and landscaping showing species, locations, sizes and quantities
- Detailed layout and specifications for the landscape irrigation system

### **Task 4 – Preparation of Bid Documents**

Consultant will utilize the City of Allen's standard contract documents in assembling the required contract documents for the bidding and letting of the project. Consultant shall prepare up to two (2) bid packages for this project. The City of Allen will determine which project roadway segments will be included in each bid package.

- The contract documents will include all applicable standard documents from the City, bid sheets, and technical specifications related the project. A draft of each bid set (plan sheets and contract documents) will be submitted for review by the City. Upon approval, the Consultant will submit signed and sealed bound set of the bid documents.
- Each roadway segment indicated on the table on page 1 shall have a separate itemized schedule

### **Task 5 - Bid Advertisement, and Construction Engineering Assistance**

- The Consultant will prepare copies of the final plan sets and contract documents. The Consultant will distribute them to the potential contractors. Two complete sets will be provided to the City of Allen during bidding.



- If plan amendments are needed after bid advertisement, the Consultant will prepare and distribute them to potential contractors.
- The Consultant including Landscape Architect shall consult with the City concerning the acceptability of substitute materials and equipment proposed by Contractors when substitution prior to the award to contracts is allowed by the bidding documents.
- After the bid opening, the Consultant will review and tabulate all bids. The Consultant will also prepare six copies of the contract documents for the bidder selected by the City. These contract documents will include signed forms and bid submitted by the bidder selected by the City.
- The Consultant will attend the pre-construction meeting to answer questions and discuss the construction plan.
- The Consultant will be available to review any field changes that may occur during construction.
- After the construction is complete Lee Engineering will prepare record drawings based on redlines provided by the contractor and submit the final record drawings in pdf format and mylar sheets.

### Schedule and Fee

Our proposed schedule is provided below:

65% Plans Submittal-	120 calendar days from the Notice to Proceed
DRAFT Final Plans-	30 business days after receiving comments of 65% plans
Signed and Sealed Bid Documents-	30 business days after receiving comment on DRAFT Final Bid Documents

Lee Engineering's fee breakdown is shown below:

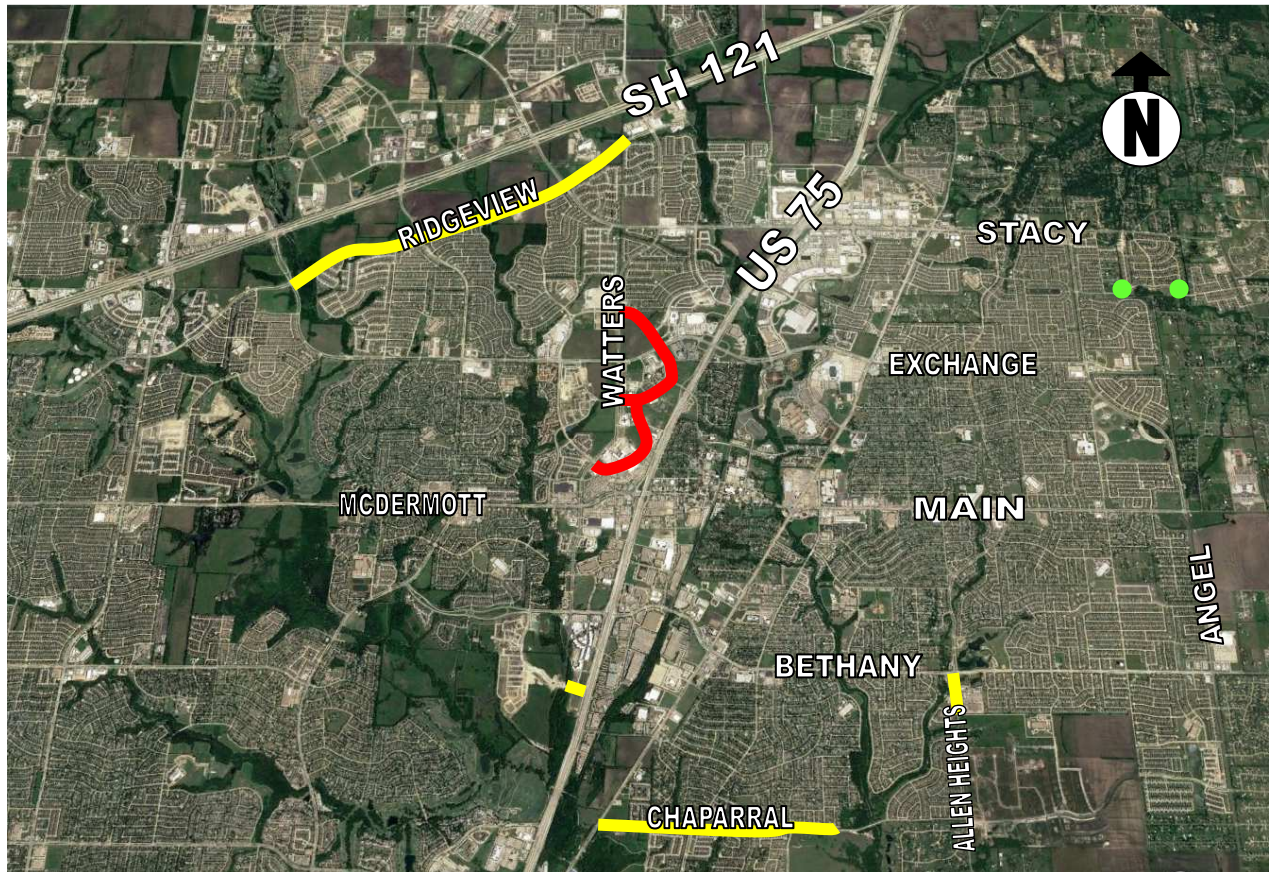
BASIC SERVICES		
Task 1, 2 & 4	Photometric Analysis and Preparation of Illumination Design PS&E	\$95,500 Lump Sum
Task 3	Median Landscaping Design	\$37,760 Lump Sum
Task 5	Bid Advertisement, and Construction Engineering Assistance	\$15,000 total/on an hourly basis
ADDITIONAL SERVICES		
	Direct Expenses (not to exceed) (mileage, copies, binding)	\$1,800
	<b>Total Services Fee</b>	<b>\$150,060</b>




The total fee for Tasks 1 through 4 will be \$133,260 and will be billed as a lump sum. The Consultant's total fee for Task 5 and any other additional services will be billed on an hourly basis according to the attached terms and conditions and will not exceed a total of \$15,000 without authorization from the City.



## LOCATION MAP

2017 Median Improvements  
(December 13, 2016)



-  Illumination
-  Landscape & Irrigation
-  Illumination, Landscape, & Irrigation



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

December 13, 2016

**SUBJECT:**

Award Bid and Authorize the City Manager to Execute an Annual Contract for Concrete Mix with Lattimore Materials Corporation For an Annual Amount Not To Exceed \$200,000 with Two (2) Optional One-Year Renewals.

**STAFF RESOURCE:**

Jimmy Knipp, Assistant Director of Community Services Department  
Debra Morris, Purchasing Manager

**ACTION PROPOSED:**

Award Bid and Authorize the City Manager to Execute an Annual Contract for Concrete Mix with Lattimore Materials Corporation For an Annual Amount Not To Exceed \$200,000 with Two (2) Optional One-Year Renewals.

**BACKGROUND**

Given the recent increase in concrete costs, city staff have explored opportunities to mitigate the impact of those increases. The purpose of this contract is to provide for the direct purchase of Redi-Mix concrete both picked up in the Community Services Concrete Truck and/or delivered by the vendor on an as-needed basis. The contract will allow the city to better manage its resources and control costs.

The Purchasing Division advertised and solicited one-hundred (100) vendors to provide concrete mix. We received one (1) response on October 14, 2016.

**BUDGETARY IMPACT**

The annual contract consists of providing Redi-Mix Concrete on an as-needed basis, both picked-up and delivered. This contract will be utilized by Streets, Drainage, Water and Sewer, and Parks and Recreation, all with expenditures from the respective operating budgets.

**STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to execute an annual contract for concrete mix with Lattimore Materials Corporation for an annual amount not to exceed \$200,000 with two (2) optional one-year renewals.

**MOTION**

*I make a motion to authorize the City Manager to execute an annual contract for concrete mix with*



***Lattimore Materials Corporation for an annual amount not to exceed \$200,000 with two (2) optional one-year renewals.***

**ATTACHMENTS:**

Bid Tabulation





## BID TABULATION

FOR BID NO. 2016-9-197 FOR CONCRETE MIX

Opened: 10/14/16

			Total	LATTIMORE MATERIALS CORP.	
Line	Material	UOM	Qty	Price per yd	Extended Price
1	3000 PSI Concrete/ picked up	CY	300	\$ 105.00	\$ 31,500.00
2	3000 PSI Concrete/ delivered	CY	50	\$ 115.00	\$ 5,750.00
3	3000 PSI 1% Calcium/ delivered	CY	50	\$ 122.00	\$ 6,100.00
4	3600 PSI Concrete/ picked up	CY	700	\$ 108.00	\$ 75,600.00
5	3600 PSI Concrete/ delivered	CY	100	\$ 118.00	\$ 11,800.00
6	3600 PSI / 72 hours concrete/ delivered	CY	100	\$ 134.00	\$ 13,400.00
7	4200 PSI Concrete/ picked up	CY	100	\$ 114.00	\$ 11,400.00
8	4200 PSI Concrete/ delivered	CY	100	\$ 124.00	\$ 12,400.00
9	2000 # Flowable Fill/ delivered	CY	50	\$ 97.00	\$ 4,850.00
				TOTAL	\$ 172,800.00



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

**AGENDA DATE:** December 13, 2016

**SUBJECT:** Award Bid and Authorize the City Manager to Execute a One-Year Contract with LawnStar Landscape and Blade Turners Maintenance for Mowing Services for Various City Properties for a Total Annual Amount of \$570,272 with Three (3) Optional One-Year Renewals.

**STAFF RESOURCE:** Tim Dentler, Director of Parks and Recreation  
Debra Morris, Purchasing Manager

**ACTION PROPOSED:** Award Bid and Authorize the City Manager to Execute a One-Year Contract with LawnStar Landscape and Blade Turners Maintenance for Mowing Services for Various City Properties for a Total Annual Amount of \$570,272 with Three (3) Optional One-Year Renewals.

**BACKGROUND**

The Purchasing Division advertised for and solicited 150 vendors and received four (4) responses on November 10, 2016, to provide mowing services at Parks and Recreation Department facilities and properties as well as properties managed by the Park Operations Division for other City Departments.

LawnStar Landscape will provide mowing services for city-wide regional, community and neighborhood parks, special use parks, municipal buildings, fire stations, pump stations and water towers.

BladeTurners will provide mowing services for pocket parks and undeveloped properties.

We request to award to LawnStar Landscape and BladeTurners Maintenance for a total annual cost of \$570,272.

Two categories were not awarded - greenbelts and right of ways/medians/easements for budgetary reasons and will be re-bid those at a later time. The bid shall start on January 1, 2017, once the current contract expires.

**BUDGETARY IMPACT**

<b>VENDOR</b>	<b>AMOUNT</b>
LawnStar Landscape	\$ 507,560
Blade Turners Maintenance	\$ 62,712
<b>TOTAL</b>	<b>\$ 570,272</b>

These funds will be expended from the the general fund operational budgets of various departments.



### **STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to execute a one-year contract with LawnStar Landscape and Blade Turners Maintenance for mowing services for various city properties for a total annual amount of \$570,272 with three (3) optional one-year renewals.

### **MOTION**

*I make a motion to authorize the City Manager to execute a one-year contract with LawnStar Landscape and Blade Turners Maintenance for mowing services for various city properties for a total annual amount of \$570,272 with three (3) optional one-year renewals.*

### **ATTACHMENTS:**

Bid Tabulation





**BID TABULATION**  
**BID #2017-10-6 FOR MOWING SERVICES**  
**OPENED: NOVEMBER 10, 2016 AT 2:00 P.M.**

Description	# of visits	Lawnstar Landscape		Infinity Lawn & Landscape LLC (Withdrew Bid)		Dyna-mist Construction Company		Bladeturners Maintenance	
City Wide/Regional Parks		Unit Price	Ext. Price	Unit Price	Ext. Price	Unit Price	Ext. Price	Unit Price	Ext. Price
Allen Station Park									
1. Allen Historic Dam Greenbelt base bid (single visit)	35	\$100.00	\$3,500.00	\$276.00	\$9,660.00	\$341.00	\$11,935.00	\$70.00	\$2,450.00
2. Don Rodenbaugh Natatorium base bid (single visit)	35	\$190.00	\$6,650.00	\$184.00	\$6,440.00	\$299.00	\$10,465.00	\$229.00	\$8,015.00
3. Allen Youth Park "The Edge" base bid (single visit)	35	\$330.00	\$11,550.00	\$552.00	\$19,320.00	\$599.00	\$20,965.00	\$475.00	\$16,625.00
4. Allen Senior Center base bid (single visit)	35	\$120.00	\$4,200.00	\$276.00	\$9,660.00	\$200.00	\$7,000.00	\$189.00	\$6,615.00
5. a) Allen Station Park -A. West side of Cedar Drive base bid (single visit)	35	\$275.00	\$9,625.00	\$184.00	\$6,440.00	\$513.00	\$17,955.00	\$275.00	\$9,625.00
5. b) Allen Station Park -A. East side of Cedar Drive base bid (single visit)	35	\$275.00	\$9,625.00	\$276.00	\$9,660.00	\$513.00	\$17,955.00	\$275.00	\$9,625.00
<b>Total Allen Station Park base bid (single visit)</b>			\$45,150.00		\$61,180.00		\$86,275.00		\$52,955.00
Allen Station Park Ball fields Perimeter base bid (single visit)	35	\$350.00	\$12,250.00	\$368.00	\$12,880.00	\$1,024.00	\$35,840.00	\$450.00	\$15,750.00
<b>TOTAL CITY WIDE/REGIONAL PARKS base bid (single visit)</b>			<b>\$57,400.00</b>		\$74,060.00		\$122,115.00		\$68,705.00
Community Parks		Unit Price	Ext. Price	Unit Price	Ext. Price	Unit Price	Ext. Price	Unit Price	Ext. Price
Bethany Lakes Park, Base Bid (single visit)	35	\$675.00	\$23,625.00	\$1,104.00	\$38,640.00	\$1,537.00	\$53,795.00	\$700.00	\$24,500.00
Bethany Creek, Base Bid (single visit)	35	\$100.00	\$3,500.00	\$230.00	\$8,050.00	\$342.00	\$11,970.00	\$100.00	\$3,500.00
Joe Farmer Recreation Center Base Bid (single visit)	35	\$75.00	\$2,625.00	\$276.00	\$9,660.00	\$342.00	\$11,970.00	\$69.00	\$2,415.00
<b>Total Bethany Lakes Park, Bethany Creek &amp; Joe Farmer Recreation Center Base bid (single visit)</b>			\$29,750.00		\$56,350.00		\$77,735.00	\$869.00	\$30,415.00
Celebration Park Perimeter Base Bid (single visit)	35	\$1,000.00	\$35,000.00	\$1,380.00	\$48,300.00	\$2,050.00	\$71,750.00	\$990.00	\$34,650.00
Ford Park East Perimeter Areas Base Bid (single visit)	35	\$275.00	\$9,625.00	\$552.00	\$19,320.00	\$1,367.00	\$47,845.00	\$255.00	\$8,925.00
Ford Park West, Ford Pook, and Open Space Base Bid (single visit)	35	\$400.00	\$14,000.00	\$690.00	\$24,150.00	\$1,708.00	\$59,780.00	\$420.00	\$14,700.00
<b>TOTAL COMMUNITY PARKS BASE BID (single visit)</b>			<b>\$88,375.00</b>		\$148,120.00		\$257,110.00		\$88,690.00
Neighborhood Parks		Unit Price	Ext. Price	Unit Price	Ext. Price	Unit Price	Ext. Price	Unit Price	Ext. Price



Description	# of visits	Lawnstar Landscape		Infinity Lawn & Landscape LLC (Withdrew Bid)		Dyna-mist Construction Company		Bladeturners Maintenance	
Allenwood Park Base Bid (single visit)	35	\$90.00	\$3,150.00	\$230.00	\$8,050.00	\$200.00	\$7,000.00	\$133.00	\$4,655.00
Bethany Ridge Park Base Bid (single visit)	35	\$155.00	\$5,425.00	\$437.00	\$15,295.00	\$683.00	\$23,905.00	\$171.00	\$5,985.00
Bradford Crossing Park Base Bid (single visit)	35	\$90.00	\$3,150.00	\$230.00	\$8,050.00	\$342.00	\$11,970.00	\$132.00	\$4,620.00
Country Meadows Park Base Bid (single visit)	35	\$165.00	\$5,775.00	\$414.00	\$14,490.00	\$513.00	\$17,955.00	\$225.00	\$7,875.00
Cottonwood Bend Park Base Bid (single visit)	35	\$90.00	\$3,150.00	\$230.00	\$8,050.00	\$199.00	\$6,965.00	\$127.00	\$4,445.00
Day Spring Nature Preserve Base Bid (single visit)	35	\$45.00	\$1,575.00	\$115.00	\$4,025.00	\$299.00	\$10,465.00	\$75.00	\$2,625.00
Day Spring Nature Preserve - "Baptist Encampment" Base Bid (single visit)	35	\$130.00	\$4,550.00	\$345.00	\$12,075.00	\$199.00	\$6,965.00	\$215.00	\$7,525.00
Fox Hollow Base Bid (single visit)	35	\$130.00	\$4,550.00	\$345.00	\$12,075.00	\$250.00	\$8,750.00	\$220.00	\$7,700.00
Glendover Park Base Bid (single visit)	35	\$200.00	\$7,000.00	\$460.00	\$16,100.00	\$499.00	\$17,465.00	\$225.00	\$7,875.00
Green Park Base Bid (single visit)	35	\$110.00	\$3,850.00	\$322.00	\$11,270.00	\$250.00	\$8,750.00	\$147.00	\$5,145.00
Lost Creek Park Base Bid (single visit)	35	\$110.00	\$3,850.00	\$322.00	\$11,270.00	\$250.00	\$8,750.00	\$147.00	\$5,145.00
Morgan Crossing Park Base Bid (single visit)	35	\$110.00	\$3,850.00	\$253.00	\$8,855.00	\$300.00	\$10,500.00	\$159.00	\$5,565.00
Orchards Park	35	\$110.00	\$3,850.00	\$207.00	\$7,245.00	\$199.00	\$6,965.00	\$130.00	\$4,550.00
Quail Run Park Base Bid (single visit)	35	\$110.00	\$3,850.00	\$345.00	\$12,075.00	\$250.00	\$8,750.00	\$171.00	\$5,985.00
Reed Park Bse Bid (single visit)	35	\$200.00	\$7,000.00	\$460.00	\$16,100.00	\$499.00	\$17,465.00	\$220.00	\$7,700.00
Spring Meadow Park Base Bid (single visit)	35	\$130.00	\$4,550.00	\$345.00	\$12,075.00	\$299.00	\$10,465.00	\$180.00	\$6,300.00
Stacy Ridge Park Base Bid (single visit)	35	\$220.00	\$7,700.00	\$506.00	\$17,710.00	\$399.00	\$13,965.00	\$250.00	\$8,750.00
Story Park Base Bid (single visit)	35	\$200.00	\$7,000.00	\$460.00	\$16,100.00	\$450.00	\$15,750.00	\$225.00	\$7,875.00
Suncreek Park Base Bid (single visit)	35	\$310.00	\$10,850.00	\$552.00	\$19,320.00	\$450.00	\$15,750.00	\$275.00	\$9,625.00
Twin Creeks Park Base Bid (single visit)	35	\$200.00	\$7,000.00	\$460.00	\$16,100.00	\$399.00	\$13,965.00	\$219.00	\$7,665.00
Waterford Park Base Bid (single visit)	35	\$55.00	\$1,925.00	\$207.00	\$7,245.00	\$199.00	\$6,965.00	\$99.00	\$3,465.00
Watters Crossing Park Base Bid (single visit)	35	\$200.00	\$7,000.00	\$460.00	\$16,100.00	\$399.00	\$13,965.00	\$222.00	\$7,770.00
<b>TOTAL NEIGHBORHOOD PARKS (Base Bid) (single visit)</b>			<b>\$110,600.00</b>		\$269,675.00		\$263,445.00		\$138,845.00
<b>Special Use Parks</b>		<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>
Allen Cemetery Base Bid (single visit)	31	\$250.00	\$7,750.00	\$368.00	\$11,408.00	\$698.00	\$21,638.00	\$245.00	\$7,595.00
1. Allen Cemetery -Leaf Mulching Base Bid (single visit)	4	\$350.00	\$1,400.00	\$368.00	\$1,472.00	\$698.00	\$2,792.00	\$225.00	\$900.00
<b>Total Allen Cemetery Base Bid (single visit)</b>			\$9,150.00		\$12,880.00		\$24,430.00	\$470.00	\$8,495.00
Allen Heritage Village Base Bid (single visit)	35	\$150.00	\$5,250.00	\$207.00	\$7,245.00	\$199.00	\$6,965.00	\$95.00	\$3,325.00
Bolin Park Perimeter Areas Base Bid (single visit)	35	\$150.00	\$5,250.00	\$207.00	\$7,245.00	\$299.00	\$10,465.00	\$220.00	\$7,700.00
Courses at Watters Creek/Bi-weekly areas Base Bid (single visit)	19	\$4,000.00	\$76,000.00	\$2,500.00	\$47,500.00	\$6,053.00	\$115,007.00	NO BID	NO BID
Courses at Watters Creek/Weekly areas Base Bid (single visit)	44	\$700.00	\$30,800.00	\$400.00	\$17,600.00	\$2,721.00	\$119,724.00	NO BID	NO BID



Description	# of visits	Lawnstar Landscape		Infinity Lawn & Landscape LLC (Withdrew Bid)		Dyna-mist Construction Company		Bladeturners Maintenance	
Courses at Watters Creek/Weekly Mowing Overseeded areas Base bid after leaf mulching is no longer needed	8	\$150.00	\$1,200.00	\$400.00	\$3,200.00	\$584.00	\$4,672.00	NO BID	NO BID
Courses at Watters Creek/Weekly areas Leaf Mulching Base Bid (single visit)	4	\$1,200.00	\$4,800.00	\$400.00	\$1,600.00	\$584.00	\$2,336.00	NO BID	NO BID
Courses at Watters Creek Cart Path Cleanup	1	\$600.00	\$600.00	\$4,000.00	\$4,000.00	\$941.00	\$941.00	NO BID	NO BID
<b>Total The Courses at Watters Creek Golf Course Base Bid (single visit)</b>			\$113,400.00		\$73,900.00		\$242,680.00		
Hillside Wellness Park Base Bid(single visit)	35	\$75.00	\$2,625.00	\$460.00	\$16,100.00	\$171.00	\$5,985.00	\$60.00	\$2,100.00
Jupiter Ballfields Perimeter - Base Bid (single visit)	35	\$175.00	\$6,125.00	\$184.00	\$6,440.00	\$299.00	\$10,465.00	\$149.00	\$5,215.00
Liberty Garden Base Bid (single visit)	35	\$25.00	\$875.00	\$46.00	\$1,610.00	\$57.00	\$1,995.00	\$24.00	\$840.00
<b>TOTAL SPECIAL USE PARKS Base Bid (single visit)</b>			<b>\$142,675.00</b>		<b>\$125,420.00</b>		\$302,985.00		\$27,675.00
				*Withdrew Bid					
<b>Pocket Parks</b>		<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>
Hillside Play Area Base Bid (single visit)	35	\$30.00	\$1,050.00	\$46.00	\$1,610.00	NO BID	NO BID	\$30.00	\$1,050.00
Rolling Hills Park Base Bid (single visit)	35	\$30.00	\$1,050.00	\$46.00	\$1,610.00	NO BID	NO BID	\$30.00	\$1,050.00
Walden Park Base Bid (single visit)	35	\$30.00	\$1,050.00	\$46.00	\$1,610.00	NO BID	NO BID	\$30.00	\$1,050.00
<b>TOTAL POCKET PARKS Base Bid (single visit)</b>			\$3,150.00		\$4,830.00				<b>\$3,150.00</b>
<b>Enhanced Greenbelts</b>		<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>
Bridge Water Crossing Greenbelt Base Bid (single visit)	35	\$300.00	\$10,500.00	\$600.00	\$21,000.00	NO BID	NO BID	NO BID	NO BID
Collin Square Greenbelt Base Bid (single visit)	18	\$225.00	\$4,050.00	\$500.00	\$9,000.00	NO BID	NO BID	NO BID	NO BID
Cumberland Crossing Park Base Bid (single visit)	35	\$110.00	\$3,850.00	\$300.00	\$10,500.00	NO BID	NO BID	NO BID	NO BID
Custer Meadows Greenbelt Base Bid (single visit)	35	\$55.00	\$1,925.00	\$200.00	\$7,000.00	NO BID	NO BID	NO BID	NO BID
Greenville Heights Park Base Bid (single visit)	35	\$55.00	\$1,925.00	\$200.00	\$7,000.00	NO BID	NO BID	NO BID	NO BID
Heritage Park Base Bid (single visit)	35	\$55.00	\$1,925.00	\$200.00	\$7,000.00	NO BID	NO BID	NO BID	NO BID
Shadow Lakes Park Base Bid (single visit)	35	\$140.00	\$4,900.00	\$425.00	\$14,875.00	NO BID	NO BID	NO BID	NO BID
"The Bluffs" At Lost Creek Greenbelt Base Bid (single visit)	35	\$125.00	\$4,375.00	\$400.00	\$14,000.00	NO BID	NO BID	NO BID	NO BID
Trails at the Woods Base Bid (single visit)	18	\$25.00	\$450.00	\$125.00	\$2,250.00	NO BID	NO BID	NO BID	NO BID
<b>TOTAL ENHANCED GREENBELTS</b>			<b>\$33,900.00</b>		\$92,625.00				
<b>Municipal Buildings</b>		<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>
Allen Heritage Center Base Bid (single visit)	35	\$40.00	\$1,400.00	\$46.00	\$1,610.00	\$114.00	\$3,990.00	NO BID	NO BID



Description	# of visits	Lawnstar Landscape		Infinity Lawn & Landscape LLC (Withdrew Bid)		Dyna-mist Construction Company		Bladeturners Maintenance	
City Hall, Parks, Police Base Bid (single visit)	31	\$350.00	\$10,850.00	\$920.00	\$28,520.00	\$399.00	\$12,369.00	NO BID	NO BID
1. Leaf Mulching Base Bid (single visit)	4	\$400.00	\$1,600.00	\$920.00	\$3,680.00	\$399.00	\$1,596.00	NO BID	NO BID
Total City Hall, Parks, Police Base Bid (single visit)			\$13,850.00		\$33,810.00		\$17,955.00		NO BID
Library Base Bid (single visit)	31	\$185.00	\$5,735.00	\$414.00	\$12,834.00	\$399.00	\$12,369.00	NO BID	NO BID
1. Leaf Mulching Base Bid (single visit)	4	\$300.00	\$1,200.00	\$414.00	\$1,656.00	\$798.00	\$3,192.00	NO BID	NO BID
Total Library Base Bid (single visit)			\$6,935.00		\$14,490.00		\$15,561.00		NO BID
Recreation Hall and Allen Arts Alliance Base Bid (single visit)	31	\$75.00	\$2,325.00	\$161.00	\$4,991.00	\$285.00	\$8,835.00	NO BID	NO BID
1. Leaf Mulching Base Bid (single visit)	4	\$150.00	\$600.00	\$161.00	\$644.00	\$399.00	\$1,596.00	NO BID	NO BID
Total Recreation Hall and Allen Arts Alliance Base Bid (single visit)			\$2,925.00		\$5,635.00		\$10,431.00		NO BID
<b>TOTAL MUNICIPAL BUILDINGS Base Bids (single visit)</b>			<b>\$23,710.00</b>		\$53,935.00		\$43,947.00		
<b>Fire Stations</b>		<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>
Central Fire Station Base Bid (single visit)	35	\$90.00	\$3,150.00	\$184.00	\$6,440.00	NO BID	NO BID	\$99.00	\$3,465.00
Fire Station #2 Base Bid (single visit)	35	\$40.00	\$1,400.00	\$92.00	\$3,220.00	NO BID	NO BID	\$42.00	\$1,470.00
Fire Station #3 Base Bid (single visit)	35	\$40.00	\$1,400.00	\$92.00	\$3,220.00	NO BID	NO BID	\$53.00	\$1,855.00
Fire Station #4 Base Bid (single visit)	35	\$40.00	\$1,400.00	\$92.00	\$3,220.00	NO BID	NO BID	\$53.00	\$1,855.00
Fire Station #6 Base Bid (single visit)	35	\$40.00	\$1,400.00	\$92.00	\$3,220.00	NO BID	NO BID	\$52.00	\$1,820.00
<b>TOTAL FIRE STATIONS Base Bid (single visit)</b>			<b>\$8,750.00</b>		\$19,320.00				\$10,465.00
<b>Pump Station and Water Towers</b>		<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>
***Note - All pump station and water tower properties include landscape bed maintenance a part of the base bid									
Custer Rd. Pump Station Base Bid (single visit)	35	\$105.00	\$3,675.00	\$138.00	\$4,830.00	NO BID	NO BID	\$140.00	\$4,900.00
Custer Rd. Water Tower Base Bid (single visit)	35	\$105.00	\$3,675.00	\$138.00	\$4,830.00	NO BID	NO BID	\$140.00	\$4,900.00
Hillside Water Tower Base Bid (single visit)	35	\$65.00	\$2,275.00	\$92.00	\$3,220.00	NO BID	NO BID	\$140.00	\$4,900.00
Lucas Pump Station Base Bid (single visit)	35	\$65.00	\$2,275.00	\$92.00	\$3,220.00	NO BID	NO BID	\$140.00	\$4,900.00
Malone Rd. Water Tower Base Bid (single visit)	35	\$145.00	\$5,075.00	\$184.00	\$6,440.00	NO BID	NO BID	\$140.00	\$4,900.00
Maxwell Creek Lift Station Base Bid (single visit)	35	\$65.00	\$2,275.00	\$46.00	\$1,610.00	NO BID	NO BID	\$140.00	\$4,900.00
Rowlett Water Tower Base Bid (single visit)	35	\$65.00	\$2,275.00	\$92.00	\$3,220.00	NO BID	NO BID	\$140.00	\$4,900.00
Stacy Road Pump Station Base Bid (single visit)	35	\$125.00	\$4,375.00	\$92.00	\$3,220.00	NO BID	NO BID	\$140.00	\$4,900.00
Prestige Water Tower Base Bid (single visit)	35	\$145.00	\$5,075.00	\$138.00	\$4,830.00	NO BID	NO BID	\$140.00	\$4,900.00
<b>TOTAL PUMP STATIONS &amp; WATER TOWERS Base Bid (single visit)</b>			<b>\$30,975.00</b>		\$35,420.00				\$44,100.00
<b>Undeveloped Properties</b>		<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>



Description	# of visits	Lawnstar Landscape		Infinity Lawn & Landscape LLC (Withdrew Bid)		Dyna-mist Construction Company		Bladeturners Maintenance	
Allen Economic Development Properties (AED) 401 Century Pkwy Base Bid (single visit)-No Award	18	NO BID	NO BID	\$200.00	\$3,600.00	NO BID	NO BID	\$109.00	\$1,962.00
AED 400 Century Pkwy Base Bid (single visit)	18	NO BID	NO BID	\$575.00	\$10,350.00	NO BID	NO BID	\$439.00	\$7,902.00
AED Millennium Property Base Bid (single visit)	18	NO BID	NO BID	\$950.00	\$17,100.00	NO BID	NO BID	\$445.00	\$8,010.00
CBD Base Bid (single visit)	18	NO BID	NO BID	\$300.00	\$5,400.00	NO BID	NO BID	\$269.00	\$4,842.00
Estevie Property Base Bid (single visit)	9	NO BID	NO BID	\$2,400.00	\$21,600.00	NO BID	NO BID	\$1,300.00	\$11,700.00
Molson Farm Base Bid (single visit)	18	NO BID	NO BID	\$1,300.00	\$23,400.00	NO BID	NO BID	\$749.00	\$13,482.00
Raintree park Base Bid (single visit)	18	NO BID	NO BID	\$100.00	\$1,800.00	NO BID	NO BID	\$59.00	\$1,062.00
Star Creek Commercial Base Bid (single visit)	18	NO BID	NO BID	\$200.00	\$3,600.00	NO BID	NO BID	\$399.00	\$7,182.00
Watters Branch Property Base Bid (single visit)	18	NO BID	NO BID	\$2,750.00	\$49,500.00	NO BID	NO BID	\$250.00	\$4,500.00
Windridge Property Base Bid (single visit)	18	NO BID	NO BID	\$100.00	\$1,800.00	NO BID	NO BID	\$49.00	\$882.00
<b>TOTAL UNDEVELOPED PROPERTIES Base Bid (single visit)</b>					\$138,150.00				<b>\$59,562.00</b>
<b>Alternates</b>		<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>	<b>Unit Price</b>	<b>Ext. Price</b>
<b>MOWING SERVICES</b>									
Allen Station Park Ballfields Trim-reel mowed areas (single visit)	35	\$75.00	\$2,625.00	\$368.00	\$12,880.00	\$342.00	\$11,970.00	\$145.00	\$5,075.00
Celebration Park Trim-reel mowed areas (single visit)	35	\$75.00	\$2,625.00	\$460.00	\$16,100.00	\$684.00	\$23,940.00	\$250.00	\$8,750.00
Ford Park East Trim-reel mowed areas (single visit)	35	\$75.00	\$2,625.00	\$368.00	\$12,880.00	\$342.00	\$11,970.00	\$90.00	\$3,150.00
Jupiter Ballfields Trim-reel mowed areas (single visit)	35	\$75.00	\$2,625.00	\$23.00	\$805.00	\$100.00	\$3,500.00	\$30.00	\$1,050.00
Kennedy Property (single visit)	9	\$75.00	\$675.00	\$550.00	\$4,950.00	\$0.00	\$0.00	\$275.00	\$2,475.00
<b>TOTAL ALTERNATE MOWING SERVICES (single visit)</b>			<b>\$11,175.00</b>		\$47,615.00		\$51,380.00		\$20,500.00
<b>GRAND TOTAL FOR ALL SERVICES/PROPERTIES:</b>			\$476,135.00		\$1,858,945.00		\$1,040,982.00		\$441,192.00
<b>TOTAL AWARD/LOW BIDS:</b>			<b>\$507,560.00</b>		\$125,420.00				<b>\$62,712.00</b>
<b>GRAND TOTAL FOR ALL AWARDS: \$570,272</b>									



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

**AGENDA DATE:** December 13, 2016

**SUBJECT:** Conduct a Public Hearing and Adopt an Ordinance to Amend the Development Regulations and Adopt a Concept Plan and Building Elevations for Lot 1, Block A, Allen Station Business Park #3; Generally Located North of Exchange Parkway and East of Andrews Parkway. [WatchGuard Video - Light Industrial]

**STAFF RESOURCE:** Madhuri Mohan, AICP, Senior Planner

**PREVIOUS COUNCIL ACTION:** PD-58 Adopted - March, 1996  
PD-58 Amended - August, 1998  
PD-58 Amended - February, 2001  
PD-58 Amended - December, 2007  
Final Plat Approved - February, 2010  
Amended Plat Approved - September, 2011

**BOARD COMMISSION ACTION:** On November 15, 2016, the Planning and Zoning Commission voted five (Commissioners Cocking, Platt Jr., Hollingsworth, Ogrizovich, and Orr) in favor and zero opposed to recommend approval of this request.

**ACTION PROPOSED:** Conduct a Public Hearing and Adopt an Ordinance to Amend the Development Regulations and Adopt a Concept Plan and Building Elevations for Lot 1, Block A, Allen Station Business Park #3; Generally Located North of Exchange Parkway and East of Andrews Parkway. [WatchGuard Video - Light Industrial]

**BACKGROUND**

The property is generally located north of Exchange Parkway and east of Andrews Parkway (and commonly known as 420 E. Exchange Parkway). The properties to the north and west (across Andrews Parkway) are zoned Planned Development PD No. 58 Light Industrial LI. The property to the south (across Exchange Parkway) is zoned Planned Development PD No. 58 Community Facilities CF. The property the east is zoned Planned Development PD No. 58 Multi-Family MF.

The property is currently zoned Planned Development PD No. 58 Light Industrial LI. The applicant is proposing to develop the 12.139± acre lot for a WatchGuard Video facility, and amend the Development Regulations, adopt a Concept Plan, and Building Elevations for the property.

The site will be developed in two phases. Phase I will include the 140,000 square foot proposed building. The building will be two (2) stories with a maximum height of 42.5 feet. Phase II will add an additional 60,000



square feet to the site. This Phase II building will either be an expansion to the Phase I building or constructed as a separate building.

The total parking provided (for the build out of both phases) exceeds the Allen Land Development Code (ALDC) parking requirement. Additionally, two loading areas (with three docks) are proposed for the building on Phase I. These loading areas are located on the northern side of the building, and meet the required number of loading areas per the ALDC.

There are two points of access into the development; one (1) on Exchange Parkway and one (1) on Andrews Parkway. The developer will also be installing deceleration lanes on Exchange Parkway and Andrews Parkway. A 5' sidewalk will also be constructed along Andrews Parkway.

The building elevations show concrete, aluminum, and glass storefront as the primary exterior building materials.

The development regulations include language regarding setbacks, street improvements, driveways, and flood study.

On November 15, 2016, the Planning and Zoning Commission recommended approval of the request.

#### **LEGAL NOTICES:**

Property Owner Notices - Mailed November 4, 2016

Sign Installed - Installed November 4, 2016

Newspaper Notice - Published November 24, 2016

#### **STAFF RECOMMENDATION**

Staff recommends approval of the request.

#### **MOTION**

*I make a motion to adopt Ordinance No. \_\_\_\_\_ amending the development regulations and adopt a concept plan and building elevations for WatchGuard Video.*

#### **ATTACHMENTS:**

Ordinance

Property Notification Map

Draft Minutes from the November 15, 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, ADOPTING A CONCEPT PLAN, AND ADOPTING BUILDING ELEVATIONS FOR LOT 1, BLOCK A, ALLEN STATION BUSINESS PARK #3 (COMMONLY KNOWN AS 420 E. EXCHANGE PARKWAY), WHICH PROPERTY IS LOCATED IN AND SUBJECT TO THE REGULATIONS OF PLANNED DEVELOPMENT NO. 58 FOR LIGHT INDUSTRIAL “LI”; 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 the development regulations of Planned Development No. 58 for Light Industrial “LI” and adopting a Concept Plan and Building Elevations for property described as Lot 1, Block A, Allen Station Business Park #3, an addition to the City of Allen, Collin County, Texas, according to the plat thereof recorded in Volume 2011, Page 260, Plat Records, Collin County, Texas (commonly known as 420 E. Exchange Parkway) (“the Property”).

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

- A. BASE ZONING DISTRICT:** The Property shall be developed and used only in accordance with the Light Industrial “LI” District except as otherwise provided in this Ordinance.
- B. CONCEPT PLAN:** The Property shall be developed in substantial 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.
- C. BUILDING ELEVATIONS:** Buildings to be constructed on the Property shall be developed in substantial conformance with the height, materials, and architectural style set forth on the Building Elevations attached hereto as Exhibit “B,” and incorporated herein by reference.



**D. SETBACKS:**

- (1) The minimum front yard setback adjacent to Andrews Parkway shall be eighty-five feet (85.0').
- (2) The minimum parking setback adjacent to Andrews Parkway shall be fifteen feet (15.0').
- (3) The minimum parking setback adjacent to Exchange Parkway shall be twenty-five feet (25.0').

**E. STREET IMPROVEMENTS:** The Developer shall construct all improvements necessary to install the deceleration lanes on Exchange Parkway and Andrews Parkway in general conformance with the Concept Plan attached hereto as Exhibit "A." No Certificate of Occupancy for any structure located on the Property shall be issued until completion of construction and acceptance by the City Engineer of such deceleration lanes.

**F. DRIVEWAYS:** Driveway throat lengths and spacing shall be constructed as shown on the Concept Plan, unless approved otherwise by the Director of Engineering.

**G. FLOOD STUDY:** City authorization for construction of any improvements on any area of the Property located within the regulatory flood plain is subject to approval of a flood plain study by the City of Allen Engineering Department and require approval by the Federal Emergency Management Agency ("FEMA") through a Conditional Letter of Map Revision ("CLOMR") and Letter of Map Revision ("LOMR"). The CLOMR shall be approved by FEMA prior to issuance of any grading or development permit that impacts the regulatory floodplain. A LOMR shall be approved by FEMA prior to any issuance by the City of a Certificate of Occupancy of any building or final acceptance of any ancillary improvement, (such as parking) that encroaches upon the regulatory floodplain. An environmental study shall be prepared and submitted to the City of Allen Engineering Department and all applicable permits from the U.S. Army Corps of Engineers must be obtained prior to any disturbance of wetland or treed areas.

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

**SECTION 4.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Ordinance, or 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 10<sup>TH</sup> DAY OF DECEMBER 2016.**

**APPROVED:**

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

**APPROVED AS TO FORM:**

**ATTEST:**

\_\_\_\_\_  
**Peter G. Smith, CITY ATTORNEY**  
(kbl:11/29/16:81860)

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



**EXHIBIT “A”**  
**CONCEPT PLAN**

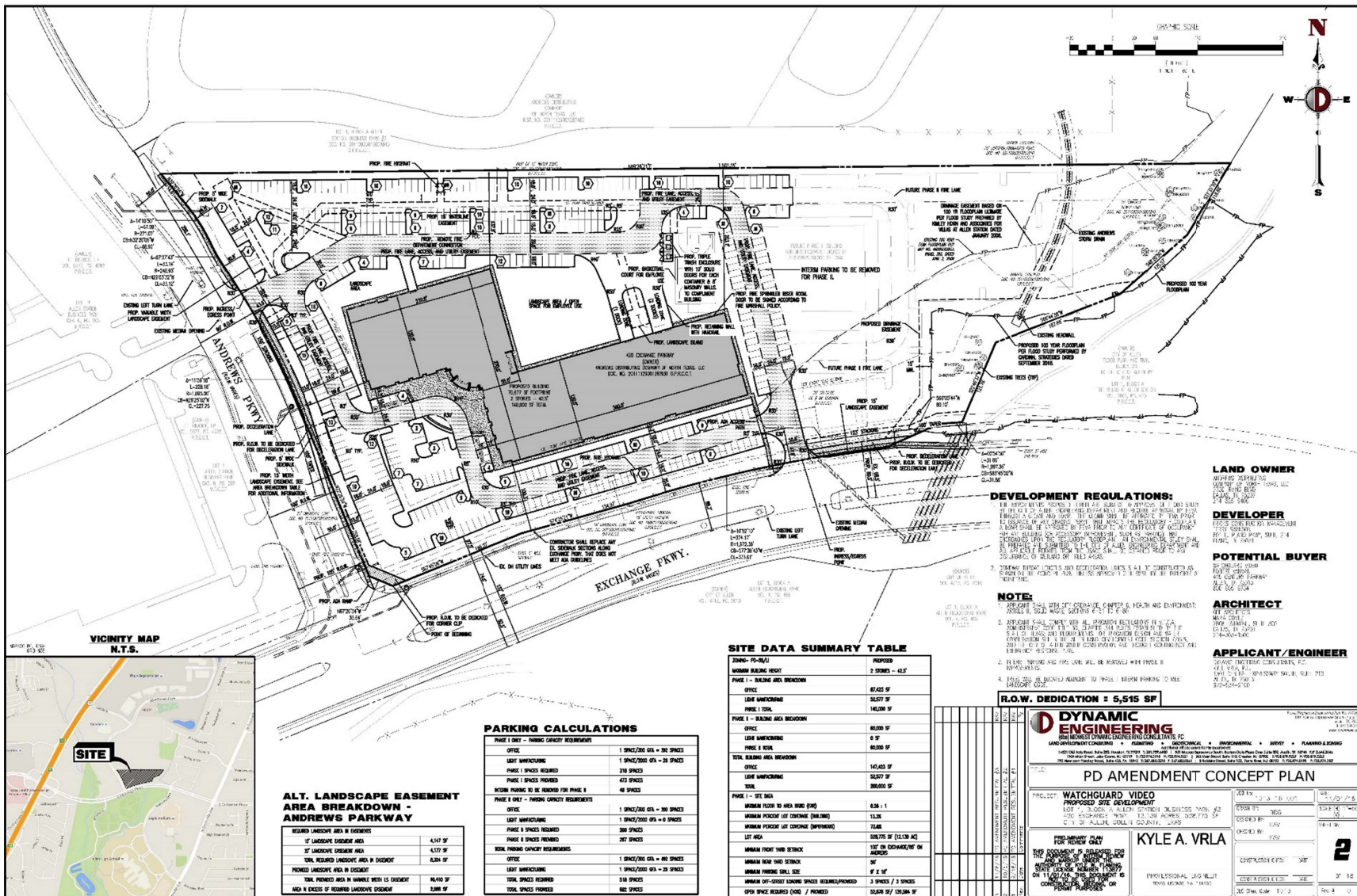
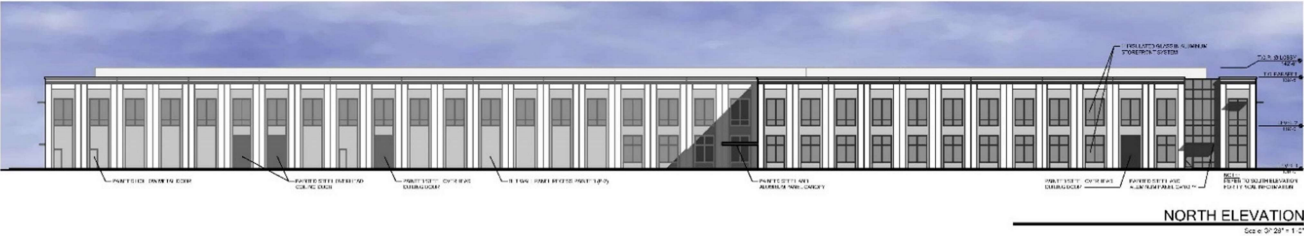




EXHIBIT "B"  
BUILDING ELEVATIONS



NORTH ELEVATION  
Scale: 1/8" = 1'-0"



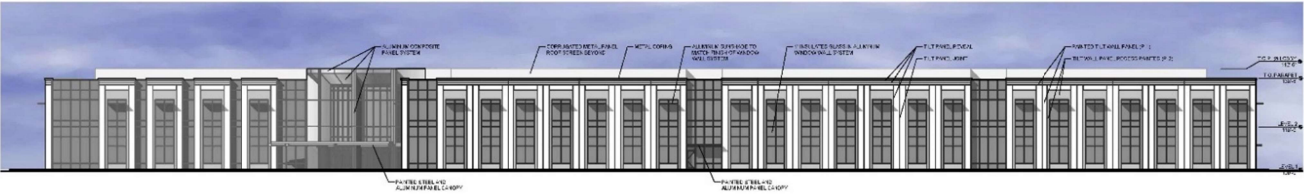
EAST ELEVATION  
Scale: 1/8" = 1'-0"



WEST ELEVATION  
Scale: 1/8" = 1'-0"

MATERIAL CALCULATIONS						
	QUANTITY	UNIT	AREA	WGT	VOLUME	PERCENTAGE
PAINTED STEEL AND ALUMINUM CLADDING	1000	SQ. FT.	1000	1000	1000	100.00%
PAINTED STEEL AND ALUMINUM CLADDING	1000	SQ. FT.	1000	1000	1000	100.00%
PAINTED STEEL AND ALUMINUM CLADDING	1000	SQ. FT.	1000	1000	1000	100.00%
PAINTED STEEL AND ALUMINUM CLADDING	1000	SQ. FT.	1000	1000	1000	100.00%
PAINTED STEEL AND ALUMINUM CLADDING	1000	SQ. FT.	1000	1000	1000	100.00%
PAINTED STEEL AND ALUMINUM CLADDING	1000	SQ. FT.	1000	1000	1000	100.00%

\*UNFINISHED GLAZING



SOUTH ELEVATION  
Scale: 1/8" = 1'-0"

BUILDING ELEVATIONS  
WatchGuard Video Headquarters  
Northeast Corner of Exchange Parkway and Andrews Parkway

Job #: 16120  
Date: 09/06/16



2801 Elm Street, Suite 300  
Dallas, Texas 75201 | 214.303.1500  
3000 West 7th Street, Suite 110  
Fort Worth, Texas 76107 | 817.303.1500





Property Ownership Notification

Watchguard

#### Map Legend

<all other values>

PARCELTYPE

ABSTRACT

COA

RESIDENTIAL

200' Notification Buffer

Railroad

Public Rezone

CollinCAD Parcels

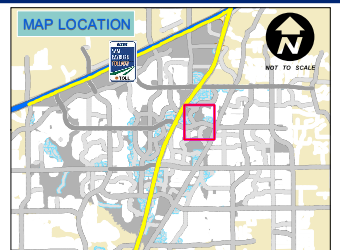


0 170 340 510  
Feet

Community Development - GIS

Date Saved: 11/2/2016

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





### **November 15, 2016 Planning and Zoning Commission Meeting Minutes**

Public Hearing – Conduct a Public Hearing and consider a request to amend the Development Regulations and adopt a Concept Plan and Building Elevations, for Lot 1, Block A, Allen Station Business Park #3; generally located north of Exchange Parkway and east of Andrews Parkway (and commonly known as 420 E. Exchange Parkway). (Z-8/26/16-74) [WatchGuard Video]

Ms. Mohan, Senior Planner, presented the item to the Commission. She stated that the item is a PD Amendment for WatchGuard Video. The property is generally located north of Exchange Parkway and east of Andrews Parkway (and commonly known as 420 E. Exchange Parkway). The properties to the north and west (across Andrews Parkway) are zoned Planned Development PD No. 58 Light Industrial LI. The property to the south (across Exchange Parkway) is zoned Planned Development PD No. 58 Community Facilities CF, the location of the Don Rodenbaugh Natatorium and the Allen ISD stadium. The property to the east is zoned Planned Development PD No. 58 Multi-Family MF.

The property is currently zoned Planned Development PD No. 58 Light Industrial LI. The applicant is proposing to develop the 12.139± acre lot for a WatchGuard Video facility, and amend the Development Regulations, adopt a Concept Plan, and Building Elevations for the property. Ms. Mohan said that there is an existing WatchGuard Video facility at 415 Century Parkway. The applicant is currently leasing the 415 Century Parkway location and wishes to relocate to the subject property.

Ms. Mohan said that the site will be developed in two phases. Phase I will include the 140,000 square foot proposed building. The building will be two stories with a maximum height of 42.5 feet. Phase II will add an additional 60,000 square feet to the site. This Phase II building will either be an expansion to the Phase I building or constructed as a separate building.

The total parking provided (for the build out of both phases) exceeds the Allen Land Development Code (ALDC) parking requirement. Additionally, two loading areas (with three docks) are proposed for the building on Phase I. These loading areas are located on the northern side of the building, and meet the required number of loading areas per the ALDC.

There are two points of access into the development; one on Exchange Parkway and one on Andrews Parkway. The developer will also be installing deceleration lanes on Exchange Parkway and Andrews Parkway. A 5' sidewalk will also be constructed along Andrews Parkway.

The building elevations show concrete, aluminum, and glass storefront as the primary exterior building materials.

Ms. Mohan summarized the Proposed Development Regulations:

- Base Zoning District: LI
- Concept Plan: The Property shall be developed in general conformance with the Concept Plan.
- Building Elevations: The Property shall be developed in general conformance with the height, materials, and architectural style shown in the Building Elevations.
- Setbacks:
  - Front Yard Setback (Andrews Parkway): 85'
  - Parking Setback (Andrews Parkway): 15'
  - Parking Setback (Exchange Parkway): 25'



- Street Improvements: The Developer shall install deceleration lanes on Exchange Parkway and Andrews Parkway. No CO shall be issued until completion of construction and acceptance by Engineering.
- Driveways: Driveway throat lengths and spacing shall be constructed as shown on the Concept Plan.
- Flood Study: Any improvements on any area of the Property located within the regulatory flood plain is subject to approval of a flood plain study by the City of Allen Engineering Department and requires approval by FEMA (through a CLOMR and LOMR)
  - The CLOMR shall be approved prior to any grading or development permit that impacts the floodplain.
  - A LOMR shall be approved prior to a CO for any building or improvements that encroaches the floodplain.
  - An environmental study is required prior to any disturbance of wetland or treed areas.

The PD Amendment request has been reviewed by the Technical Review Committee. Ms. Mohan said that staff received one letter in support of the request.

Commissioner Orr asked if there would be fencing between the Multi-Family property and the subject property.

Ms. Mohan said yes. The fencing will likely be wrought iron because the property is adjacent to the floodplain (open space).

Chairman Cocking confirmed that the LOMR and CLOMR letters will be approved prior to any permitting or an issuance of a CO.

Ms. Mohan said yes.

Chairman Cocking opened the Public Hearing.

Chairman Cocking closed the Public Hearing.

The following residents submitted citizen responses:

- Joe Jernigan, 1300 Andrews Pkwy., Allen, Texas - Support

**Motion:**                    **Upon a motion by Commissioner Hollingsworth, and a second by 2<sup>nd</sup> Vice-Chair Platt, the Commission vote 5 in favor and 0 opposed to approve the request to amend the Development Regulations and adopt a Concept Plan and Building Elevations, for Lot 1, Block A, Allen Station Business Park #3; generally located north of Exchange Parkway and east of Andrews Parkway (and commonly known as 420 E. Exchange Parkway). (Z-8/26/16-74) [WatchGuard Video]**

**The motion carried.**



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

December 13, 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 December 12, 2016, the Allen Economic Development Corporation Board of Directors Considered Approval of 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 December 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 \$11,810,000.

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 \$863,573 and the Net Present Value savings is expected to be approximately \$424,869. 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 \$424,869 represents 3.4% of the prior issue. The expected savings exceed our benchmark of 3%.

The interest rates today are 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 1.12% to 3.48%. The existing bond issues mature in 2032 and 2025 and the proposed issue keeps 2031 as the maturity date.



The sale is expected to be conducted on December 14th. The bond closing is scheduled for January 12th. 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.

This Resolution supersedes the previous Resolution adopted by City Council on November 8, 2016. Since City Council's passage of the November 8 resolution, the Municipal Bond market has experienced a drastic change in interest rates, negatively impacting the original projections. The market change conditions have resulted in an inability to achieve the refunding and issuance within the original parameters approved by the board. However, the refunding transaction anticipated in the new parameters still provides a significant savings and exceeds the targeted benchmark of 3% NPV.

A more detailed explanation will be provided in the presentation at the City Council meeting.

### **BUDGETARY IMPACT**

The anticipated savings from the refunding is expected to generate fair value saving from cash flow of \$863,573 or average annual saving of \$53,973.

### **STAFF RECOMMENDATION**

Staff recommends that the City Council adopt a resolution approving the resolution of the Board of Directors of the corporation authorizing the issuance of sales tax revenue refunding bonds, Series 2017A.

### **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



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 December 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 3.60% and the net present value savings must be at least 3.00%.

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: Resolution No. 3436-11-16(R) adopted by the City Council on November 8, 2016 approving the bond resolution of the Corporation adopted October 20, 2016 is hereby revoked and rescinded.

SECTION 7: 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 8: 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 13<sup>th</sup> DAY OF DECEMBER, 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/registrar 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 3.00%, net of any contribution by the Corporation.

(3) the true interest cost rate for the Bonds shall not exceed 3.60%;  
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>
-------------	-----------------------------------	--------------------------

(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 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.

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: Prior Resolution Rescinded. The Resolution adopted by the Board of Directors on October 20, 2016 authorizing the issuance of the Bonds is hereby revoked and rescinded.

SECTION 45: 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 46: Effective Date. This Resolution shall be in force and effect from and after its passage on the date shown below.



PASSED AND ADOPTED, this December 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 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



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

**AGENDA DATE:**

December 13, 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 December 12, 2016, the Allen Economic Development Corporation (AEDC) Board of Directors Considered Approval of 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 \$6,135,000. 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 3.27 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 1.32% to 2.5%. The true interest cost on the bonds is projected to be 2.34%. The bonds will not be priced until December 14, 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 December 12, 2016, anticipated pricing of the bonds on December 14, 2016, with a closing date in January 12, 2016.

A Preliminary Official Statement (POS) has been prepared in connection with the bond issuance. The POS has been discussed with Moody's Investor's Service, Inc. During this process the EDC received a rating bump to Aa2 from Aa3.

This Resolution supersedes the previous Resolution adopted by City Council on November 8, 2016. Since City Council's passage of the November 8 resolution, the Municipal Bond market has experienced a drastic change in interest rates, negatively impacting the original projections. The market change conditions have resulted in an inability to accomplish the refunding and issuance within the original parameters approved by the board. However, the refunding transaction anticipated in the new parameters still provides a significant savings and exceeds the targeted benchmark of 3% NPV.

A more detailed explanation will be provided in the presentation at the City Council meeting.

### **BUDGETARY IMPACT**

The impact on the AEDC budget over the term of this debt on an annual basis would be approximately \$1.6 million, 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 that the City Council adopt a resolution 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.

### **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



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 December 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 3.00%.

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: Resolution No. 3437-11-16(R) adopted by the City Council on November 8, 2016 approving the bond resolution of the Corporation adopted October 20, 2016 is hereby revoked and rescinded.

SECTION 5: 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 6: 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 13<sup>th</sup> DAY OF DECEMBER, 2016.

CITY OF ALLEN, TEXAS

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STEPHEN TERRELL  
Mayor

ATTEST:

---

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 the promotion and development of new and expanded business enterprises, to wit: expansion or development of regional or national corporate headquarters facilities and any other projects authorized by Section 501.101 of the Local Government Code which will create or retain primary jobs (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 3.00%;  
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 the promotion and development of new and expanded business enterprises, to wit: expansion or development of regional or national corporate headquarters facilities and any other projects authorized by Section 501.101 of the Local Government Code which will create or retain primary jobs (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

---

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 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>
-------------	-----------------------------------	--------------------------

(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: Prior Resolution Rescinded. The Resolution adopted by the Board of Directors on October 20, 2016 authorizing the issuance of the Bonds is hereby revoked and rescinded.

SECTION 43: 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 44: 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 December 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