

STATE OF TEXAS	§	ECONOMIC DEVELOPMENT INCENTIVE AND EASEMENT AGREEMENT (FARM)
	§	
COUNTY OF COLLIN	§	

This Economic Development Incentive and Easement Agreement (“Agreement”) is made by and between the City of Allen, Texas (“City”) and The Farm Development Co., a Texas corporation (“Company”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

**WITNESSETH:**

**WHEREAS**, Company owns approximately 135 acres of land located at the southeast corner of Alma road and State Highway 121 in Allen, Texas, and being further described in **Exhibit “A”** attached hereto (the “Land”); and

**WHEREAS**, Company intends to develop the Land in phases for a mixed use project consisting of approximately 1,680,000 square feet of office space, approximately 202,000 square feet of retail and dining space, and a hotel containing 150 rooms together with parks, trails, entertainment, office, corporate headquarters, retail, residential, and possibly hotel uses for the enjoyment of the public (collectively the “Project”); and

**WHEREAS**, Phase 1 of the Project includes construction of a structured parking garage with not less than three (3) stories containing a minimum of 300 parking spaces for public parking for patrons of the Project (hereinafter defined as the “Parking Garage”) to be constructed on an approximate 1.94 acre portion of the Land, described in **Exhibit “B”** (the “Parking Garage Site”); and

**WHEREAS**, Company has advised City that a contributing factor that would induce Company to construct the Project would be an agreement for City to provide the Parking Garage Grant (hereinafter defined) to offset a portion of the Company’s costs for the design and construction of the Parking Garage; and

**WHEREAS**, in exchange for the Parking Garage Grant Company has offered to convey to City, an easement for public parking in the Parking Garage (hereinafter defined as the “Easement”); and

**WHEREAS**, promoting the expansion and maintenance of existing business enterprises within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the property tax base and economic vitality of the City; and

**WHEREAS**, City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, City has adopted a program for promoting economic development (the “City Economic Development Program”) and this Agreement and the economic development incentives set forth herein are given and provided by City pursuant to and in accordance with that program; and

**WHEREAS**, City has determined that making an economic development grant to the Company in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of City; (2) benefit City and the City’s inhabitants; and (iii) promote local economic development and stimulate business and commercial activity in the City.

**NOW THEREFORE**, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **Article I Definitions**

Wherever used in this Agreement, the following words and phrases shall have the meanings ascribed to them:

“AEDC” shall mean the Allen Economic Development Corporation, a Texas non-profit corporation organized as a Type A corporation pursuant to the Act.

“ALDC” shall mean the City of Allen Land Development Code, as amended.

“Bankruptcy or Insolvency” shall mean the dissolution or termination of Company’s existence, insolvency, appointment of receiver for any part of Company’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors or the commencement of any proceedings under any bankruptcy or insolvency laws by or against Company and such proceedings are not dismissed within ninety (90) days after the filing thereof.

“Breach” shall have the meaning assigned by Section 4.1.

“Capital Investment” shall mean: (i) with respect to the Parking Garage total costs of design and construction of the Parking Garage (inclusive of all hard and soft costs); and (ii) with respect to Phase 1 of the Project and Phase 1 Infrastructure the capitalized costs to Company for the design and construction of Phase 1 of the Project and Phase 1 Infrastructure, as the case may be. For purposes of this Agreement, Capital Investment for the total costs of design and construction of the Parking Garage may include costs incurred and paid by a Company Affiliate or a subsequent owner of the Garage Site.

“Certificates of Obligations” shall mean certificate(s) of obligation issued by City in the approximate amount of Three Million Dollars (\$3,000,000.00) the sales proceeds from which will in part provide City funding of the costs for public infrastructure pursuant to the Developer Participation Agreement.

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

“Commencement of Construction” shall mean (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Parking Garage; (ii) all necessary permits for the construction of the Parking Garage have been issued by the applicable governmental authorities; and (iii) grading of the Garage Site or construction of the building elements of the Parking Garage has commenced.

“Company” shall mean The Farm Development Co., a Texas corporation.

“Company Affiliate” shall mean any entity that is directly or indirectly controlled by or is under common control with Company.

“Company Investment” shall mean Company has incurred, paid and expended at least Six Hundred Fifty Thousand Dollars (\$650,000.00) in Eligible Costs for the design and construction of the Parking Garage.

“Company’s Construction Lender” shall mean one or more lenders selected by Company (in its sole discretion) to provide a construction loan to construct the Parking Garage.

“Company’s Lender” shall mean Company’s Construction Lender or Company’s Permanent Lender, as applicable at the time.

“Company’s Permanent Lender” shall mean one or more lenders selected by Company (in its sole discretion) to provide permanent financing for the Parking Garage.

“Completion of Construction” shall mean the date the City has completed a final building inspection and issued a green tag for compliance with building codes for the Parking Garage.

“Contractor” shall mean the person or firm engaged by Company to construct the Parking Garage.

“Default” shall have the meaning assigned by Section 4.1.

“Developer Participation Agreement” shall mean that certain agreement dated of approximate date herewith by and among City, AEDC and Company for City pursuant to Section 21.071 Texas Local Government Code, for City participation in the costs of public

infrastructure to be constructed within the Project and for AEDC participation in the costs of infrastructure to be constructed within the Project .

“Easement” shall have the meaning assigned in Article III hereof.

“Easement Property” shall mean, collectively (i) the Garage Site; and (ii) the Parking Garage.

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

“Eligible Costs” shall mean the costs incurred and paid by Company for the design and construction of the Parking Garage, not including costs for legal fees, permit fees, insurance, land costs, Garage Site, interest, finance, the cost of financing, or management fees.

“Excess Parking Spaces” shall mean parking spaces in the Parking Garage constructed by Company and reserved for use by Company, its tenants, guests, invitees, agents, employees and assigns in addition to the three hundred (300) parking spaces to be open and available for use by the public without charge pursuant to the Easement.

“Final Acceptance” shall mean the City’s Chief Building official, or designee has performed a final building inspection of the Parking Garage and issued a green tag or other approval indicating compliance with applicable building code, construction code and other applicable ordinances of the City such that the Parking Garage may be used and occupied for the intended purposes.

“Force Majeure” shall mean that upon the occurrence of any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, government or de facto governmental action, restrictions or interferences (unless caused by the intentional acts or omissions of the Party), fires, explosions, floods or other inclement weather, strikes, slowdowns or work stoppages, incidence of disease or other illness that reaches outbreak, epidemic, or pandemic proportions or similar causes affecting the area the of the Garage Site that result in a reduction of labor force or work stoppage in order to comply with local, state, or national disaster orders, construction delays, shortages or unavailability of supplies, materials or labor, necessary condemnation proceedings, or any other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstances are similar to any of those enumerated or not, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or performance shall be extended for a period of time equal to the period such Party was delayed, provided the Party whose performance is delayed provides written notice to the other Party not later than fifteen (15) business days after occurrence of the event(s) or condition(s) causing the delay or the date the Party whose performance has been delayed becomes aware or should have reasonably known of the

event, describing such event(s) and/or condition(s) and the date on which such event(s) and/or condition(s) occurred.

“Garage Site” shall mean the real property described in **Exhibit “B”**.

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

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

“Maximum Grant Amount” shall mean the lesser of (a) Four Million Dollars (\$4,000,000.00); and (b) eighty-six percent (86%) of the total Eligible Costs incurred and paid by Company for the construction of the Parking Garage as verified by City.

“Notice Party” shall have the meaning assigned by Section 4.2.

“Parking Garage” shall mean a structured parking garage with not less than three (3) stories containing a minimum of 300 parking spaces to be constructed on the Garage Site more fully described in the submittals filed by or on behalf of Company with City from time to time in order to obtain one or more building permits for construction of the Parking Garage or any part thereof.

“Parking Garage Grant” shall mean an economic development grant to be paid by City to Company in the amount equal to the lesser of (a) Four Million Dollars (\$4,000,000.00); and (b) eighty-six percent (86%) of the total Eligible Costs incurred and paid by Company for the construction of the Parking Garage as verified by City, to be paid in installments as set forth herein.

“Payment Request” shall mean a written request from Company to City for payment of an installment of the Parking Garage Grant accompanied by the applicable written application for payment, copies of Lender third-party inspection reports as to the progress of the Parking Garage work, copies of invoices, bills, receipts and such other information, as may reasonably be requested by City, evidencing the Eligible Costs incurred and paid by Company for the Parking Garage, and for the required Capital Investment.

“PD-134 Ordinance” shall mean City of Allen, Texas, Ordinance No. 3761-7-20 adopted July 14, 2020, creating and adopting the development use and regulations of Planned Development “PD” No. 134, and all subsequent amendments to such ordinance as may be enacted from time to time.

“Phase 1 of the Project” shall mean that portion of the Project to be constructed on the Land consisting of the Parking Garage, an office building at least three (3) stories in height containing a minimum 100,000 square feet of gross rentable office space, and a

minimum of 50,500 square feet of rentable retail and restaurant space, as depicted in **Exhibit “C”**.

“Project” shall have the meaning assigned in the Recitals.

“Related Agreements” shall mean any agreement (other than this Agreement) by and between (i) AEDC or City and Company or Company; (ii) the Developer Participation Agreement; and (iii) the Tax Increment Zone No. 3 Agreement.

“Sales Tax Revenue Bonds” shall mean sales tax revenue bonds to be issued by AEDC in the approximate amount of Two Million Dollars (\$2,000,000.00) the sales proceeds from which will in part provide AEDC funding of the costs for public infrastructure pursuant to the Developer Participation Agreement.

“Tax Increment Zone No. 3 Agreement” shall mean that certain agreement by and between City and Company providing for the payment of City tax increment for the maintenance, repair and replacement of certain Project infrastructure dated of approximate date herewith.

“Zoning” shall mean PD-134 Ordinance and the applicable provisions of the ALDC, as amended, and the zoning ordinance approved by City for the development of the Land, as amended.

## **Article II**

### **Term**

The term of this Agreement is perpetual and shall be effective on the last date of execution hereof (the “Effective Date”), unless sooner terminated as provided herein.

## **Article III**

### **Easement**

#### **3.1 Grant of Easement.**

(a) As consideration for payment of the Parking Garage Grant and subject to the provisions of this Agreement, Company hereby grants and conveys to City an exclusive, perpetual easement, including the right of ingress, egress, and regress therein (the “Easement”) for the purpose of allowing the operation and parking of motor vehicles on the Easement Property by the public without charge or payment of a fee (the “Permitted Purpose”). Company further grants to City a non-exclusive perpetual easement on and over the driveway areas, common areas and public access easements located on the Land for the purpose of providing ingress to and egress from the Parking Garage by members of the public to and from the public and/or private streets located

and/or adjacent to the Land from and to the Easement Property. The parking spaces in the Parking Garage may be used to satisfy the Zoning parking requirements for the Project.

(b) Notwithstanding the exclusivity of the Grant of the Easement to City, Company reserves for the benefit of Company, any Company Affiliate, and their respective successors and permitted assigns; (i) the right to construct Excess Parking Spaces; and (ii) the right of ingress and egress through the Parking Garage reasonable and necessary to provide access to the Excess Parking Spaces. Excess Parking Spaces shall not be subject to the Easement. Only the Excess Parking Spaces may be reserved for the benefit of Company, any Company Affiliate, and their respective successors and permitted assigns

3.2 Limitations on Use for Permitted Purpose. City acknowledges, understands, and agrees that the use of the Easement Property is limited to the Permitted Purpose. City shall have the right to install signs directing and identifying the public to the Parking Garage on the Easement Property.

3.3 Repair, Replacement and Maintenance of the Easement Property.

(a) At all times following Final Acceptance and continuing during the Term of this Agreement, Company shall, at Company's own cost and expense, keep and maintain, or cause to be kept and maintained, the Parking Garage and the Easement Property, and improvements constructed or installed in or on the Parking Garage in a good state of appearance and repair, reasonable wear and tear excepted. Company shall perform such maintenance and repair as necessary to operate the Parking Garage, including the Easement Property, in accordance with generally accepted commercial standards applicable to a commercial parking facility located within the Dallas/Fort Worth Metroplex, keep and maintain the Easement Property and the Parking Garage and all improvements located on the Easement Property in good repair, reasonable wear and tear excepted, including, but not limited to, wiring, electrical, drainage, curbs, curb stops, parking space paint striping, designated handicap parking space signs and related poles. All paved areas of the Parking Garage and the Easement Property shall be kept free of potholes, cracks, and other conditions which could reasonably result in damage to vehicles or a tripping hazard to people traversing the Parking Garage and the Easement Property.

(b) Company's obligations with respect to the maintenance and repair of the Parking Garage and the Easement Property includes all of the components comprising the Parking Garage including, but not limited to, the repair and replacement of all structural items, including the walls, roof, gutters, storm drains, and foundation, lighting, heating, air conditioning, plumbing and other electrical and mechanical equipment, signs, elevators, fixtures and systems, and also including all utility repairs in ducts, conduits, pipes and wiring located in, under and above the Parking Garage and the Easement Property, and all paving, driveways, sidewalks and parking areas. City shall have no duty, obligation or liability to make any repairs, replacements, or alterations to the Parking Garage or the Easement Property, or any portion thereof, at any time during the term of this Agreement.

(c) In the event Company fails to perform maintenance or repair in compliance with this Section 3.4 not later than thirty (30) days after receipt of written request from City to perform

such maintenance or repair, City may, after notifying Company of its intent to exercise such right, perform such maintenance or repair, the cost of which shall become a debt owed by Company and/or the then current owner of the Garage Site and the Parking Garage to City and which shall be paid to City on written demand by City. Amounts due City by Company pursuant to this Section shall accrue interest at the highest rate permitted by law if not paid on or before the thirtieth (30th) day after written demand is made for such payment. In the event City must institute suit to collect amounts owing by Company pursuant to this Section 3.4, City shall be entitled to its cost of court and reasonable attorneys' fees.

(d) Company shall (i) conduct regular inspections of the Parking Garage and the Easement Property for compliance with health and safety standards and building codes and for cleanliness, good order, condition, and repair; (ii) buy, clean, and repair all furnishings and equipment in and for the Parking Garage and the Easement Property; (iii) periodically paint, renovate, and refurbish the Parking Garage and the Easement Property, and related equipment; (iv) hire and maintain a staff to clean and maintain the Parking Garage and the Easement Property; (v) cause all equipment and fixtures in and about the Parking Garage and the Easement Property to be repaired and maintained in good condition, including, but not limited to lights, wiring, plumbing, and other equipment; and (vi) contract for required services.

3.4 Construction of Parking Garage. Subject to events of Force Majeure, Company agrees to cause the Commencement of Construction of the Parking Garage to occur on or before January 1, 2022, and, subject to events of Force Majeure, to cause Completion of the Construction of the Parking Garage to occur on or before December 31, 2022.

3.5 Design and Construction of Parking Garage.

(a) Design and Construction. Prior to Commencement of Construction, Company shall make, or cause to be made, application for any necessary permits and approvals that are customarily required by City ordinances and any applicable governmental authorities to be issued for the construction of the Parking Garage.

(b) Completion of Construction. Company shall comply with and shall cause the Contractor to comply with all applicable local and state laws and regulations regarding the design and construction of the Parking Garage. Upon Completion of the Parking Garage, Company shall provide City with (i) a final cost summary of all costs incurred and paid associated with the construction of the Parking Garage; and (ii) the Final Acceptance Package (hereinafter defined).

(d) Parking Garage Inspection. The City Engineer shall have the right to inspect the Parking Garage to determine whether the Parking Garage construction is in accordance with the requirements of this Agreement.

(e) Final Acceptance Procedures. The procedures for Final Acceptance of the Parking Garage shall contain the following items:



(i) An executed contractor's affidavit stating that all payrolls, invoices for materials and equipment, and other liabilities connected with the Parking Garage have been fully paid or otherwise satisfied; and

(ii) Delivery of a Payment Request to City accompanied by an application for the final payment of the Parking Garage Grant and supporting documentation.

### 3.6 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 ACTS OR OMISSIONS OF COMPANY OR ITS CONTRACTOR PURSUANT TO THIS AGREEMENT. COMPANY HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS COUNCIL, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS THE "CITY REPRESENTATIVES") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL ACT OF ONE OR MORE OF THE CITY REPRESENTATIVES. COMPANY DOES HEREBY INDEMNIFY AND SAVE HARMLESS THE CITY REPRESENTATIVES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON, OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM COMPANY'S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF COMPANY, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTOR, LICENSEES, INVITEES, SUCCESSORS OR PERMITTED ASSIGNS IN THE PERFORMANCE OF THIS AGREEMENT (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL ACT OF THE CITY REPRESENTATIVES). IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF ONE OR MORE OF THE CITY REPRESENTATIVES AND COMPANY, THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY REPRESENTATIVE(S) AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST ONE OR MORE OF THE CITY REPRESENTATIVES IN CONNECTION WITH ANY LIABILITY OR CLAIM COVERED BY THIS INDEMNITY, COMPANY SHALL BE REQUIRED, ON NOTICE FROM CITY, TO DEFEND SUCH ACTION OR PROCEEDINGS AT COMPANY'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THE COMPANY'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE

LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY COMPANY UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT

3.7 Parking Garage Records and Audits.

(a) Company shall maintain, and shall require the Contractor to maintain, all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement for two (2) years following Completion of Construction of the Parking Garage; and Company shall make, and cause the Contractor to make, such materials available to City for review and inspection during the term of this Agreement and for a period of two (2) years from the date of Final Acceptance of the Parking Garage, or until any pending litigation or claims are resolved, whichever is later.

(b) Upon not less than 72-hours' prior written notice, Company shall provide, and shall require the Contractor to provide, to City, during normal business hours for the purpose of making audits, examinations, excerpts, and transcriptions access to all Parking Garage records that are applicable to this Agreement at a location designated by Company within Collin County, Texas, provided any such audit must be initiated not later than two (2) years following Final Acceptance of the Parking Garage.

3.8 Work by Disbarred Person. Company and the Contractor shall not knowingly contract with any person or entity that is suspended, debarred, proposed for disbarment, declared ineligible or voluntarily excluded from covered transactions by any federal agency or that is debarred or suspended by the State of Texas.

3.9 Parking Garage Grant Payments.

(a) In consideration of the grant of the Easement and for the Permitted Purposes and construction of the Parking Garage, and subject to the continued satisfaction of all the terms and conditions of the Agreement by Company, and the obligation of Company to repay the Parking Garage Grant pursuant to Article IV, City shall pay, and Company shall accept, as full and complete payment for all of work required herein for the Parking Garage and the Easement, the Parking Garage Grant, not to exceed the Maximum Grant Amount, which shall be paid to Company by City in accordance with the terms, provisions and conditions set forth in this Section 3.9. City shall retain or withhold at least five percent (5%) of all sums due to Company until Completion of Construction of the Parking Garage and Final Acceptance has occurred. The amount of Retainage by the City shall not take into consideration any amounts retained by Company from its Contractor ("Company Retainage").

(b) Following the Completion of Construction of the Parking Garage, Company shall provide City the final Payment Request, accompanied by a final written accounting of the total expenditures constituting Eligible Costs for the Parking Garage. Prior to payment of the final installment of the Parking Garage Grant City and Company shall reconcile the amount of the Company Investment and the total Eligible Costs for the Parking Garage. In the event the product of the total Eligible Costs for the Parking Garage x 14% ("Final Actual Company Investment") is

less than the Company Investment then City shall pay such difference to Company not to exceed the Maximum Grant Amount.

(c) Company shall be responsible for payment of all costs for the design and construction of the Parking Garage in excess of the Parking Garage Grant.

(d) Company shall provide City on a monthly-basis a written progress report and a Payment Request that includes an itemized statement specifying the Eligible Costs for the Parking Garage that have been incurred to date and supporting copies of invoices from the Contractor and copies of all payments made to the Contractor until Completion of Construction of the Parking Garage.

(e) Based upon the Company's monthly Payment Requests and the written applications for payment submitted to City, City shall make progress payments of Eligible Costs to Company as installments of the Parking Garage Grant. On or before the tenth (10th) day of each month after Commencement of Construction of the Parking Garage following the date Company has achieved the Company Investment, Company shall submit a Payment Request which shall include an application for payment for the period ending the last day of the previous month to City in such form and manner, and with such supporting data and content, as City may reasonably require. City will review the application for payment and may also review the Parking Garage work to determine whether the quantity and/or quality of the Parking Garage work is as represented in the application for payment and is as required by the Plans and Specifications. City shall make installment payments of the Parking Garage Grant to Company of the amounts requested by Company not later than fifteen (15) business days following City's receipt and approval of each Payment Request and application for payment. Failure to include an Eligible Cost in a Payment Request shall not preclude Company from including such unpaid Eligible Cost in a subsequent monthly Payment Request prior to Final Acceptance.

(f) Company warrants that upon submittal of each Payment Request and application for payment, all Parking Garage work for which progress payments have been received from City shall be free and clear of liens, claims, security interest or other encumbrances in favor of Company or any other person or entity whatsoever.

(g) Prior to Final Acceptance, no installment of the Parking Garage Grant, nor any use or occupancy of the Parking Garage for the Permitted Purposes, shall be interpreted to constitute an acceptance of any Parking Garage work not constructed in strict accordance with the approved plans and specifications for the Parking Garage. City shall have no obligation to pay any portion of the Parking Garage Grant during the occurrence of a breach of a term or condition of this Agreement on the part of Company, but City may do so; provided, however, if City elects to pay any such installment, no such payment shall be deemed a waiver of any remedies City may have in respect to such breach.

(h) City may decline to make Parking Garage Grant payments, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to Company for defective Parking Garage work, to protect City from loss or damage because of:

(i) Defective Parking Garage work, not remedied by Company or, in the reasonable opinion of City, not likely to be remedied by Company; and/or

(ii) Failure by Company to pay or otherwise satisfy Contractor or others under contract with Company with respect to the Parking Garage for amounts due in a prompt and timely manner.

3.10 Current Revenue. The Parking Garage Grant shall be paid solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for such purpose consistent with Article III, Section 52(a) of the Texas Constitution. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Company. City shall not be required to pay any installment of the Parking Garage Grant if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.11 Grant Limitations. Under no circumstances shall the obligations of City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision; provided; however, City agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the installments of the Parking Garage Grant for the then ensuing fiscal year. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Company. None of the obligations of City under this Agreement shall be pledged or otherwise encumbered by Company in favor of any commercial lender and/or similar financial institution except for a collateral assignment pursuant to Section 6.1.

3.12 Final Payment. When the Completion of Construction and Final Acceptance of the Parking Garage occurs, City will promptly issue a final certificate of acceptance certifying that the Parking Garage is complete, and Company shall be entitled to the remainder of the unpaid Parking Garage Grant, if any ("Final Payment"). City shall make Final Payment of all remaining sums due Company not later than fifteen (150 business days after City's execution of a final certificate of acceptance. Acceptance of Final Payment shall constitute a waiver by Company of all claims against City except for those claims previously made in writing against City by Company pending at the time of Final Payment and identified in writing by Company as unsettled at the time of its request for Final Payment. Under no circumstance shall Company be entitled to receive interest on any payments or monies due Company by City, whether the amount on which the interest may accrue is timely, late, wrongfully withheld, or an assessment of damages of any kind.

3.13 Casualty. Risk of loss due to casualty shall be borne by Company until Completion of Construction of the Parking Garage. Company shall carry, or cause to be carried as an Eligible Cost, insurance in amounts sufficient to restore any portion of the Parking Garage damaged by casualty to the same condition as existed immediately prior to such casualty. Company will, in any event, restore any portion of the Parking Garage damaged or destroyed by casualty as part of its obligation to construct the Parking Garage.

3.14 Insurance. Company at its sole cost and expense, shall obtain and maintain in full force and effect during the term of this Agreement, (or shall cause the Contractor during

construction of the Parking Garage to obtain and maintain at their expense) (but as an Eligible Cost) the following policies of insurance and coverage:

(a) Commercial General Liability Policy covering bodily injury, death and property damage, including the property of the City Representatives insuring against all claims, demands or actions relating to the work and services provided pursuant to this Agreement with minimum limits on a per occurrence of not less than One Million Dollars (\$1,000,000) combined single limit and Two Million Dollars (\$2,000,000) aggregate, including products and completed operations coverage. This policy shall be primary to any policy or policies carried by or available to City.

(b) Workers' Compensation/Employer's Liability Insurance Policy in full accordance with the statutory requirements of the State of Texas and shall include bodily injury, occupational illness or disease coverage with minimum Employer's Liability limits of not less than \$500,000/\$500,000/\$500,000.

(c) Automobile Liability Insurance Policy covering all operations of Company and its Contractor 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 Liability Insurance Policy with a limit of not less than Ten Million Dollars (\$10,000,000). Such insurance shall be in excess of the commercial general liability insurance, business auto liability insurance and employer's liability insurance. This insurance will apply as primary insurance with respect to any other insurance or self-insurance programs maintained by City and shall be provided on a "following form basis". Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the Contractor's completed work, including its sub-contractor(s), consultants and employees.

(e) Property/Builders Risk Insurance Policy with "all-risk" coverage covering all buildings and other improvements located or being constructed on the Land against loss or damage from perils covered by an all risk or special form policy in amounts not less than one hundred (100%) percent of the full insurable value of the buildings and other improvements to be constructed or included in the Land to include the interest of City.

(f) Professional Liability Insurance (if applicable) with limit of not less than Two Million Dollars (\$2,000,000) for all negligent acts, errors and omissions by Company's engineers and architects that arise out of the performance of this Agreement.

(g) Garage keeper's Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for property damages and personal injuries arising from or relating to operation and management of the Parking Garage.

(g) The Commercial General Liability, Worker's Compensation, Business Auto and Excess Liability insurance required pursuant to this Agreement shall be endorsed to provide for waivers of all rights of subrogation against City.

(h) Except for the Worker's Compensation Insurance and any Professional Liability Insurance, all insurance required pursuant to this Agreement shall include and name the City Representatives as additional insureds using Additional Insured Endorsements that provide the most comprehensive coverage to the City Representatives under Texas law including products/completed operations. The Additional Insured status for the City Representatives shall remain in force and effect for a minimum of two (2) years following abandonment or completion of the work and services provided pursuant to this Agreement.

(i) Certificates of Insurance and policy endorsements in a form reasonably satisfactory to City shall be delivered to City prior to the commencement of any work or services under this Agreement and annually for a minimum of two (2) years following termination of this Agreement, abandonment or completion of Parking Garage work. All required policies shall be endorsed to provide City with thirty (30) days advance notice of cancellation or material change in coverage. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, Company shall provide at least thirty (30) days prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance. On every date of renewal of the required insurance policies, Company shall deliver to City (and cause the Contractor to deliver to City) a Certificate of Insurance and policy endorsements to be issued evidencing the required insurance herein. In addition, Company shall, within ten (10) business days after written request, provide City with Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies). The failure to provide valid Certificates of Insurance and policy endorsements shall be deemed a breach of this Agreement. All policies and endorsements shall remain in effect for not less than two (2) years after abandonment of the work or services or the completion of the Parking Garage work and services provided pursuant to this Agreement.

(j) All policies of insurance required to be obtained by Company and its Contractor 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" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by City. All insurance coverage required herein shall be evidenced by a certificate of insurance and policy endorsements submitted by Company's and its Contractor's insurer.

3.15 Mechanic's Liens. Company shall not suffer or permit any mechanics' liens or other liens to be filed against the Easement Property. If any such mechanics' liens shall be recorded against the Easement Property, Company shall cause the same to be removed within thirty (30) days after obtaining knowledge thereof; or, in the alternative, if Company desires in good faith to contest the same, Company shall be privileged to do so, but in such case Company shall indemnify and save City harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to the execution of such judgment.

3.16 Damages by Company. Company shall be responsible for damages to the Easement Property and the Parking Garage caused by the action of Company, its officers, employees, guests, invitees, agents, or assigns, in which case Company shall be responsible for making the repair or performing the necessary maintenance resulting from such acts or, if such repairs or maintenance are performed by City pursuant to Section 3.3 (c), reimbursing City for the reasonable costs incurred by City for such performance

3.17 Damage to Parking Garage. If, during the Term of this Agreement the Parking Garage and/or the Easement Property are wholly or partially destroyed or damaged by Casualty, Company shall promptly repair, replace, restore and reconstruct such improvements in a good and workmanlike manner consistent with industry standards for the operation of similar types of parking garages. Company shall, subject to events of Force Majeure, within two hundred seventy (270) days from the date of such Casualty commence to repair, reconstruct or replace the damaged or destroyed portion of the Parking Garage and the Easement Property, as applicable, and pursue the repair, reconstruction, or replacement consistent with industry standards for the operation of similar types of Parking Garages with reasonable diligence so as to restore the Parking Garage and the Easement Property, as applicable, to substantially the condition it was in before the Casualty.

3.18 Payment of Insurance Proceeds. The use of insurance proceeds to repair, replace, restore or reconstruct the Parking Garage and the Easement Property destroyed by Casualty (“Restoration”) shall be subject to the following: (a) Prior to the commencement of the Restoration of the Easement Property and the Parking Garage, the plans and specifications for the Restoration of the Easement Property and the Parking Garage must be approved by City; and (b) if, in the reasonable judgment of City, the costs of the Restoration will exceed the amount of the insurance proceeds, Company will, upon demand by City, give satisfactory proof or assurances to City that the funds required to meet such deficiency (such funds to be provided by Company) are or will be available for such purposes;

#### **Article IV Default and Remedies**

4.1 Default. If any Party fails to pay or perform any of its obligations under this Agreement or is otherwise in default under this Agreement (any of the foregoing being a “Breach”), and such Breach is not cured within thirty (30) days following any such defaulting Party’s receipt of a written notice of such Breach from any non-defaulting Party, a default by such defaulting Party shall exist hereunder (“Default”).

4.2 Remedies. If a Default exists, any non-defaulting Party that provided notice of such default pursuant to Section 4.1 above (a “Notice Party”), shall be entitled to exercise any and all rights and remedies available to it at law or equity in connection therewith and under this Agreement subject to the provisions hereof.

4.3 Right to Cure. If a defaulting Party fails to cure its Default, any Notice Party electing to cure such Default may enter upon the defaulting Party’s portion of the Property to perform any necessary work or furnish any necessary materials or services to cure such Default; provided that such Notice Party has satisfied the insurance obligations herein. If any Notice Party

cures a Default, the defaulting Party, within fifteen (15) days after receipt of the curing Notice Party's written demand, shall reimburse such Notice Party for all actual and reasonable costs and expenses incurred in connection with such curative action, plus interest at the lesser of (x) the maximum rate of interest permitted by applicable law to be paid on such type of obligation, or (y) ten percent (10%) per annum, from the date that such reimbursement is due pursuant to this Agreement. Any Notice Party which cures a Default shall include with such demand reasonable documentation supporting such costs and expenses incurred by such non-defaulting Party and a final lien waiver from the contractor that performed such curative work.

4.4 Prosecution. Subject to Section 4.1 above, the Notice Party shall have the right to (a) prosecute any proceedings at law or in equity against the defaulting Party or any other Party or person violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, and (b) recover damages for any such violation or Default; provided that each Party to this Agreement hereby waives the right to seek and to recover punitive, special and/or consequential damages. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

4.5 Agreement Shall Continue Notwithstanding Breach. Unless expressly stated otherwise herein, it is agreed that no Breach of or Default under this Agreement shall entitle any Party to cancel, rescind, or otherwise terminate this Agreement.

4.6 Termination Prior to Final Acceptance. This Agreement may terminate prior to Final Acceptance upon any one of the following:

- (a) by written agreement of the Parties;
- (b) upon written notice by City to Company in the event Company breaches any of the terms or conditions of this Agreement or a Related Agreement and such breach is not cured within thirty (30) days after written notice thereof; provided however if such breach cannot reasonably be cured within such 30-day period, the time to cure such reach shall be extended for an additional thirty (30) days;
- (c) upon written notice by City to Company, if Company suffers an event of Bankruptcy or Insolvency;
- (d) upon written notice by City to Company, if any Impositions owed to City or the State of Texas by Company shall become delinquent (provided, however Company retains the right to timely and properly protest and contest any such Impositions);



(e) upon written notice by either Party, if any subsequent Federal or State legislation or any final, non-appealable decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable; and

(f) upon written notice by Company to City at any time prior to: (i) Company's receipt of any funds under the Parking Garage Grant and funds pursuant to the Developer Participation Agreement; (ii) prior to the date of issuance of the Certificates of Obligation; and (iii) prior to the date issuance of the Sales Tax Revenue Bonds.

4.7 Termination Repayment. In the event the Agreement is terminated by City pursuant to Section 4.6 (b), (c), (d), or (e), Company shall immediately refund to City an amount equal to the amount of the Parking Garage Grant paid by City to Company preceding the date of such termination. If such termination occurs prior to Final Acceptance, repayment shall be made with interest at the rate of interest periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by City) as its prime or base commercial lending rate, from the Effective Date. The repayment obligation of Company set forth in this section 5.2 hereof shall survive termination.

4.8. Right of Offset. City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from the Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether the debt due City has been reduced to judgment by a court.

## **Article V**

### **Conditions to Economic Development Grant**

The obligation of City to pay the Parking Garage Grant and any installment thereof shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the following conditions.

5.1 Payment Request. Company shall, as a condition precedent to the payment of the applicable installment of the Parking Garage Grant, timely provide City with a Payment Request.

5.2 Good Standing. Company shall not have an uncured breach or default of this Agreement or a Related Agreement.

5.3 Construction of Parking Garage. Company shall cause the Commencement of Construction and Completion of Construction of the Parking Garage to occur in accordance with Section 3.5, above.

5.4 Construction of Phase 1 Project. Company shall subject to events of Force Majeure, cause Completion of Construction of Phase 1 Project to occur on or before December 31, 2023.

5.5 Capital Investment for the Parking Garage. The Capital Investment for the Parking Garage shall be at least Four Million Six Hundred Fifty Thousand Dollars (\$4,650,000.00) as of the date of Final Acceptance of the Parking Garage. Company shall, within thirty (30) days after Completion of Construction of Parking Garage, deliver to City copies of invoices, bills, receipts and such other information as may be reasonably requested by City to document compliance with the required Capital Investment.

5.6 Capital Investment for Phase 1 of the Project. The Capital Investment shall be at least Forty Nine Million Dollars (\$49,000,000.00) as of the date of Final Acceptance of the Completion of Construction of Phase 1 of the Project. Company shall, within thirty (30) days after Completion of Construction of Phase 1 of the Project, deliver to City copies of invoices, bills, receipts and such other information as may be reasonably requested by City to document compliance with the required Capital Investment.

## **Article VI Miscellaneous**

6.1 Binding Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the respective Parties. This Agreement may not be assigned without the prior written consent of City; provided however Company may collaterally assign or pledge Company's rights under this Agreement to Company's Lender as security for a loan for the Parking Garage. Notwithstanding the foregoing Company may assign this Agreement to a Company Affiliate without the consent of City provided: (i) Company provides thirty (30) days prior written notice thereof to City and (ii) the assignee assumes all of the rights and obligations of Company in writing in a form reasonably approved by City.

6.2 Limitation on Liability. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties. It is understood and agreed between the Parties that the Parties, in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions. Company agrees to indemnify and hold harmless City from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever arising out of Company's performance of the conditions under this Agreement.

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

6.4 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received upon the earlier of (a) actual receipt or (b) three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below, or such other address as is designated by the applicable Party from time to time, or on the day actually received as sent by courier or otherwise hand delivered.

If intended for City, to

Eric Ellwanger  
City Manger  
Allen City Hall  
One Allen Civic center Drive  
Allen, Texas 75013

With a copy to:

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

If intended for Company, to:

Robert J. Johnson, Jr.  
Director  
The Farm Development Co.  
2095 N Collins Blvd., 200  
Richardson, TX 75080-75080

With a copy to:

William S. Dahlstrom  
Jackson Walker  
2323 Ross Avenue, Suite 600  
Dallas, Texas 75201

With copy to:

Bruce Heller  
JaRyCo Development LLC  
714 Greenville Suite 120  
Allen, Texas 75002

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

6.6 Governing Law. 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 jurisdiction of said Court.

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

6.8 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

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

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

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

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

6.13 Recordation of Agreement. This Agreement shall be recorded in the Official Public Records of Collin County, Texas.

6.14 Covenants Run with Land. The provisions of this Agreement are hereby declared covenants running with the Land, and are fully binding on Company and each and every subsequent owner of all or any portion of the Land, but only during the term of such party's ownership thereof (except with respect to defaults that occur during the term of such party's ownership) and shall be binding on all successors, heirs, and assigns of Company which acquire any right, title, or interest in or to the Land, or any part thereof. Any person who acquires any right, title, or interest in or to the Land, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Agreement with respect to the right, title or interest in such Land.

6.15 Employment of Undocumented Workers. During the term of this Agreement Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the amount of the Parking Garage Grant and any other funds received by Company from City as of the date of such violation within one hundred twenty (120) days after the date Company is notified by City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. Company is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts.

6.16 Conditions Precedent. The following are conditions precedent to this Agreement and the obligations of the Parties pursuant to this Agreement are expressly subject to the following: (i) the execution of the Developer Participation Agreement; (ii) the execution of the Tax Increment Zone No 3. Agreement; (iii) the issuance of the Sales Tax Revenue Bonds; and (iv) the issuance of the Certificates of Obligation.

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

*[Signature Page to Follow]*

**EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.**

**CITY OF ALLEN, TEXAS**

By: \_\_\_\_\_  
Eric Ellwanger, City Manager

**City's Acknowledgment**

State of Texas       §  
                                  §  
County of Collin     §

Acknowledged before me, the undersigned authority, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Eric Ellwanger, the City Manager of the City of Allen, Texas a home rule municipality, on behalf of said municipality.

(Notary Seal)

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**THE FARM DEVELOPMENT CO.,**

By: \_\_\_\_\_  
Robert J. Johnson, Jr., Director

**Company's Acknowledgment**

State of Texas           §

§

County of Collin       §

Acknowledged before me, the undersigned authority, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Robert J. Johnson, Jr., Director of The Farm Development Co., a Texas corporation, on behalf of said corporation

\_\_\_\_\_  
Notary Public, State of Texas

(Notary Seal)

My Commission Expires: \_\_\_\_\_

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



**EXHIBIT “B”**  
**Description of the Garage Site**

**EXHIBIT “C”**  
**Depiction of Phase I of the Project**