

STATE OF TEXAS §
§ SALES TAX REVENUE REIMBURSEMENT AGREEMENT
COUNTY OF COLLIN §

This Sales Tax Revenue Reimbursement Agreement (“Agreement”) is made by and between the Allen Economic Development Corporation (“AEDC”) and the City of Allen, Texas (“City”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, City and AEDC desire to incentivize the development of The Farm Project and the Avenue Project; and

WHEREAS, City has requested AEDC assist in funding incentives for The Farm Project and the Avenue Project; and

WHEREAS, City and The Farm Development Co., a Texas corporation (“The Farm”) entered that certain Economic Development and Easement Agreement dated February 10, 2021 for the Farm Project (the “Farm Economic and Easement Agreement”); and

WHEREAS, AEDC, City and The Farm entered that certain Project Development Agreement dated February 10, 2021 for The Farm Project (the “Farm Project Development Agreement”) pursuant to which the City intends to issue certificates of obligation in the approximate amount of Three Million Dollars (\$3,000,000.00), the sales proceeds from which will in part provide City funding for the public infrastructure pursuant to the Farm Project Development Agreement (the “Farm Project Certificates of Obligation”), and pursuant to which the AEDC intends to issue sales tax revenue bonds 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 infrastructure pursuant to the Farm Project Development Agreement (the “Farm Sales Tax Revenue Bonds”); and

WHEREAS, AEDC and Thakkar Development Group, LLC, a Texas limited liability company (“Thakkar”) intend to enter or have entered that certain Infrastructure Reimbursement Agreement for the Avenue Project (the “Avenue Infrastructure Reimbursement Agreement”) pursuant to which the AEDC intends to issue sales tax revenue bonds in the approximate amount of Four Million Five Hundred Thousand Dollars (\$4,500,000.00), the sales proceeds from which will in part provide AEDC funding of the costs for infrastructure pursuant to Avenue Infrastructure Reimbursement Agreement (the “Avenue Sales Tax Revenue Bonds”); and

WHEREAS, City and Thakkar intend to enter or have entered that certain Project Development Agreement for the Avenue Project (the “Avenue Project Development Agreement”) pursuant to which City intends to issue certificates of obligation in the approximate amount of Five Million Nine Hundred Thousand Dollars (\$5,900,000.00), the sales proceeds

from which will in part provide City funding for the public infrastructure pursuant to the Avenue Project Development Agreement (the “Avenue Certificates of Obligation”); and

WHEREAS, City has agreed to reimburse AEDC the amount of annual debt service payments for the Farm Sales Tax Revenue Bonds and the Avenue Sales Tax Revenue Bonds;

NOW THEREFORE, in consideration of the foregoing, and other 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 terms shall have the meanings ascribed to them:

“AEDC” shall mean the Allen Economic Development Corporation.

“Avenue Infrastructure Reimbursement Agreement” shall have the meaning assigned by the Recitals.

“Avenue Project Development Agreement” shall have the meaning assigned by the Recitals.

“Avenue Sales Tax Revenue Bonds” shall have the meaning assigned by the Recitals.

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

“Farm Economic and Easement Agreement” shall have the meaning assigned by the Recitals.

“Farm Project Development Agreement” shall have the meaning assigned by the Recitals.

“Farm Sales Tax Revenue Bonds” shall have the meaning assigned by the Recitals.

“Property Tax Revenue” shall mean the amount of the ad valorem taxes assessed by the City against the Taxable Property located within the Farm Project and the Avenue Project, as the case may be, and collected by the City.

“Sales Tax Revenue” shall mean the sales and use taxes received by the City from the State of Texas Comptroller for the sale of Taxable Items consummated within the Farm Project and within the Avenue Project, as the case may be.

“Sales Tax Revenue Bonds” shall collectively mean the Farm Sales Tax Revenue Bonds and the Avenue Sales tax Revenue Bonds.

“Taxable Items” shall mean both “taxable items” and “taxable services” as those terms are defined by Chapter 151, Texas Tax Code, as amended.

“Taxable Property” shall mean real property and tangible personal property located in Farm Project and the Avenue Project, as the case may be, subject to ad valorem taxation by the City.

Article II

Term

The term of this Agreement shall begin on the Effective Date and continue until the Parties have fully satisfied their respective obligations herein, unless sooner terminated as provided herein.

Article III

Sales Tax Revenue Bond Reimbursement

City agrees, subject to AEDC issuance of the Farm Sales Tax Revenue Bonds and the Avenue Sales tax Revenue Bonds, to reimburse AEDC for the AEDC annual debt service payments for the Avenue Sales Tax Revenue Bonds and the Farm Sales Tax Revenue Bonds. The annual debt service payments for the Sales Tax Revenue Bonds will be due each calendar year, with a payment for interest due on March 1 and on September 1 of each calendar year and a payment of principal due on September 1 of each calendar year. City shall make such reimbursement payments to AEDC at least thirty (30) days prior to each due date for the annual debt service payments (“Reimbursement Payments”); provided, however, in the event the combined Property Tax Revenue and the Sales Tax Revenue for any given year for the respective project is less than the annual debt service payments for the Avenue Sales Tax Revenue Bonds and the Farm Sales Tax Revenue Bonds, as the case may be, the Reimbursement Payment shall be the lesser of the combined Property Tax Revenue and the Sales Tax Revenue for such period for the respective project and the annual debt service payment for the respective Sales Tax Revenue Bond, with any deficiency carried forward to future Reimbursement Payments until such deficiency has been paid. The Parties acknowledge that AEDC may elect to combine the Avenue Sales Tax Revenue Bonds and the Farm Sales Tax Revenue Bonds into one issuance which issuance may include additional funds for other AEDC projects, in which event the Reimbursement Payments shall only apply to such issuance directly related to the Avenue Project Infrastructure Reimbursement Agreement and The Farm Project Development Agreement. The City may elect to make the Reimbursement Payments on behalf of AEDC directly in accordance with the respective sales tax revenue bonds.

Article IV

Termination

This Agreement shall terminate upon the date the Parties have fully satisfied their respective obligation herein and upon any one of the following:

- (a) by written agreement of the Parties;
- (b) upon written notice by either Party in the event the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof; and
- (c) upon written notice by either AEDC or City, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal, or unenforceable.

Article V Miscellaneous

5.1 Binding Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and permitted assigns of the respective Parties. This Agreement may not be assigned by either Party without the prior written consent of the other Party.

5.2 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 City, in satisfying the conditions of this Agreement, has acted independently, and AEDC assumes no responsibilities or liabilities to third parties in connection with these actions.

5.3 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.

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

If intended for AEDC, to:

Attn: Daniel Bowman
Executive Director/CEO
Allen Economic Development Corp.
900 W. Bethany Drive, Suite 280
Allen, Texas 75013

With a copy to:

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

If intended for City, to:

Attn: Eric Ellwanger
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 North Akard Street
Dallas, Texas 75201

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

5.6 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.

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

5.8 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.

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

5.10 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.

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

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

(Signature page to follow)

EXECUTED on this _____ day of _____, 2021.

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

EXECUTED on this _____ day of _____, 2021.

ALLEN ECONOMIC DEVELOPMENT CORPORATION

By: _____
Daniel Bowman, Executive Director/CEO