

STATE OF TEXAS §
§ PUBLIC PROJECT DEVELOPMENT AGREEMENT
COUNTY OF COLLIN §

This Public Project Development Agreement (“Agreement”) is made by and among the City of Allen, Texas (“City”); Twin Creeks Community Association, Inc., a Texas nonprofit corporation (“HOA”); Brilliant Stone Investments, LLC, a Texas liability company (509, 603 and 606 Lot Owner”); Eric Silvers and Christina Silvers (“601 Lot Owner”); The McClure Family Living Trust (“1810 Lot Owner”); Hari Reddy and Chanda Reddy (“1812 Lot Owner”); and Kenny Baker and Kristi Baker (“1814 Lot Owner”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized representatives.

W I T N E S S E T H:

WHEREAS, the 509, 603 and 606 Lot Owner, the 601 Lot Owner, the 1814 Lot Owner, the 1810 Lot Owner, the 1812 Lot Owner and the 1814 Lot Owner (collectively referred to as the “Lot Owners”) have requested City participate in the cost of designing and constructing the Project (hereinafter defined); and

WHEREAS, the Lot Owners have a tributary of Rowlett Creek running through the backyards of the respective lots and despite the easements shown on the recorded plat of such lots and the Declaration of Covenants Restrictions and Conditions for such lots the Lot Owners are concerned with large amounts of water flows through their respective backyards during rain events; and

WHEREAS, the Lot Owners assert that the fast-moving ephemeral flow of water inhibits the Lot Owners ability to maintain landscape or groundcover and use their respective backyards and as a result desire to have such drainage piped entirely underground and request the City to assist in such regard; and

WHEREAS, the City has agreed to participate in the costs of the design and construction of the Project provided the Lot Owners collectively pay to City the Lot Owner Contribution (hereinafter defined) and the City is provided, without costs, the necessary easements and consents from the HOA and the Lot Owners for the design, installation, construction, repair and maintenance of the Project; and

WHEREAS, City has bid and will award contract(s) for the design and construction of the Project after: (i) the Lot Owners have collectively paid the Lot Owner Contribution to City; (ii) the Lot Owners have conveyed and/or granted to City the necessary easements and consents for the design, installation, construction, repair and maintenance of the Project; (iii) the HOA has consented to the Lot Owners’ modification of their respective Lots for the Project

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I Definitions

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

“509, 603 and 606 Lot Owner” shall mean Brilliant Stone Investments, LLC, a Texas liability company, and owners of the real property located at 509 Lakeway Drive, 603 Lakeway Drive, and 606 Woodlake Drive, Allen, Texas, and more particularly described respectively as Lots 20, 22, and 2, Block J, Estates of Twin Creeks, Phase II, an addition to the City of Allen, Texas, according to the Plat thereof recorded in Volume 2016, Page 111, Plat Records, Collin County, Texas.

“601 Lot Owner” shall mean Eric Silvers and Christina Silvers, and owners of the real property located at 601 Lakeway Drive, Allen, Texas, and more particularly described as , Allen, Texas, and more particularly described as Lot 21, Block J, Estates of Twin Creeks, Phase II, an addition to the City of Allen, Texas, according to the Plat thereof recorded in Volume 2016, Page 111, Plat Records, Collin County, Texas.

“1810 Lot Owner” shall mean The McClure Family Living Trust, and owner of the real property located at 1810 Northbrook Court, Allen, Texas, and more particularly described as Lot 5, Block J, Estates of Twin Creeks, Phase I, an addition to the City of Allen, Texas, according to the Plat thereof recorded in Volume 2008, Page 158, Plat Records, Collin County, Texas.

“1812 Lot Owner” shall mean Hari Reddy and Chanda Reddy, and owners of the real property located at 1812 Northbrook Court, Allen, Texas, and more particularly described as Lot 4, Block J, Estates of Twin Creeks, Phase I, an addition to the City of Allen, Texas, according to the Plat thereof recorded in Volume 2008, Page 158, Plat Records, Collin County, Texas.

“1814 Lot Owner” shall mean Kenny Baker and Kristi Baker, and owners of the real property located at 1814 Northbrook Court, Allen, Texas, and more particularly described as Lot 3, Block J, Estates of Twin Creeks, Phase I, an addition to the City of Allen, Texas, according to the Plat thereof recorded in Volume 2008, Page 158, Plat Records, Collin County, Texas.

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’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 proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

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

“City Manager” shall mean the person appointed by City’s City Council to serve as City Manager, including any person serving as “Acting City Manager” or “Interim City Manager.”

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for commencement of construction of the Project; (ii) all necessary permits for the commencement of construction of the Project pursuant to the respective plans therefore have been issued by all the applicable governmental authorities; and (iii) clearing and/or grading has commenced.

“Completion of Construction” shall mean: (i) substantial completion of the Project; and (ii) the City conducted a final inspection of and has accepted the Project.

“Covenants” shall mean, collectively, (i) the Declaration of Covenants, Conditions, and Restrictions for Twin Creeks recorded as Instrument No. 94-0002647, Real Property Records, Collin County, Texas, and (ii) Second Supplemental Declaration of Covenants, Conditions, and Restrictions for Twin Creeks recorded as Instrument No. 20070517000665210, Real Property Records, Collin County, Texas.

“Easement” shall collectively mean (i) temporary construction easements and (ii) permanent public drainage facility easements on, under, and across the Properties in a form prepared by City for the construction, repair, and maintenance of the Project.

“Expiration Date” shall mean the date the Parties have fully satisfied their respective obligations herein.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, in the Commencement of Construction and/or Completion of Construction not due to the actions or inactions of Company, slowdowns or work stoppages.

“HOA” shall mean Twin Creeks Community Association, Inc., a Texas nonprofit corporation, as represented by its Board of Directors.

“Lot Owner Contributions” shall mean One Hundred Twelve Thousand Five Hundred Dollars (\$112,500.00) to be collectively paid by the Lot Owners to City for the Project to be applied by City to the costs for the design and construction of the Project.

“Lot Owners” shall collectively mean the 509, 603 and 606 Lot Owner, the 601 Lot Owner, the 1810 Lot Owner, the 1812 Lot Owner, and the 1814 Lot Owner. “Lot Owner” shall mean one of the Lot Owners.

“Project” shall mean the design and construction of a new storm sewer pipeline through the Properties in accordance with plans prepared by Cross Engineering Consultants signed and sealed by John David Cross, P.E., on November 6, 2018.

“Properties” collectively means the real property described as (i) Lots 2, 20, 21, and 22, Block J, Estates of Twin Creeks, Phase II, an addition to the City of Allen, Texas, according to the Plat thereof recorded in Volume 2016, Page 111, Plat Records, Collin County, Texas, and (ii) Lot 3, 4, and 5, Block J, Estates of Twin Creeks, Phase I, an addition to the City of Allen, Texas, according to the Plat thereof recorded in Volume 2008, Page 158, Plat Records, Collin County, Texas.

Article II

Term

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and continue until the Expiration Date, unless sooner terminated as provided herein.

Article III

Project

3.1 Construction of the Project.

(a) General. City has solicited bids and will award one or more contracts for the design and construction of the Project. Subject to events of Force Majeure, City shall cause the Commencement of Construction of the Project to occur within sixty (60) days after the later of: (i) the award of the contract(s) for the Project; (ii) the Effective Date; (iii) City receipt of the full amount of the Lot Owner Contributions; and (iv) receipt of the Easements signed by each of the Lot Owners in recordable form, inclusive of any necessary consents of lenders holding deed of trust liens on any of the Properties; and subject to events of Force Majeure, cause the Completion of Construction of the Project to occur within ninety (90) days thereafter.

(b) Permits. City shall make application and secure all necessary permits and approvals from the applicable governmental authorities for the construction of the Project.

(c) Restoration of Disturbed Areas. Following Completion of Construction of the Project, City agrees to restore disturbed areas through seeding, fence repair, repair of existing landscaping; provided, however any trees that are removed as result of the Project shall not be replaced by City. The Parties understand and agree that enhanced landscape, permanent grass, irrigation, backyard drainage piping beyond the scope of the Project, and fine grading shall be the sole responsibility of the Lot Owners.

(d) Maintenance. City shall be responsible for maintaining the new storm sewer pipeline installed with the limits of the Project after Completion of Construction.

(e) Construction Staging: The 509, 603 and 606 Lot Owner hereby grants to City and its contractor the right to enter and use its property described as Lot 20, Block J, Estates of Twin Creeks, Phase II, an addition to the City of Allen, Texas, according to the Plat thereof recorded in Volume 2016, Page 111, Plat Records, Collin County, Texas, for purposes of staging equipment, vehicles, supplies, and tools related to and used in construction of the Project. Not later than ten (10) days following completion and acceptance of the Project by City, City's contractor shall vacate said property, following which City shall cause the property to be graded in accordance with the grading plan attached as Exhibit "A" attached hereto and made a part hereof and restored in accordance with Section 3.1(c).

3.2 Project Costs. City shall pay and be responsible for all costs of the Project in excess of the Lot Owners Contributions.

3.3 Easements. Each of the Lot Owners shall, without cost or expense to City, convey, dedicate, or cause to be conveyed, dedicated, the necessary permanent easements for the Project (the "Easement") to City prior to City's award of a contract(s) for the construction of the Project.

3.4 HOA Consent. The HOA hereby consents to City's construction of the Project; and approves the Lot Owners' Easement Modification Application submitted to the HOA's Modification Committee as evidenced by its signature to the applications, true, correct, and complete copies of which have been provided by the HOA to City prior to the Effective Date and are incorporated herein by reference. The HOA warrants and represents that (a) HOA has the required authority under the Covenants to consent to the construction of the Project; and (b) prior to the Effective Date, the HOA Board of Directors has taken all action required under the Covenants and the HOA's Articles of Incorporation and Bylaws to authorize entering into this Agreement and granting the consents and releases required herein.

3.5 Lot Owner Contributions. The Lot Owners shall pay the full amount of the Lot Owner Contribution to City within five (5) business days after the Effective Date. In the event (i) the conditions precedent for this Agreement are not satisfied or (ii) City fails to cause the Project to be constructed, City shall refund the Lot Owner Contributions to the respective Lot Owners. The Lot Owner Contributions shall be deposited in a separate interest-bearing account of City and applied to the costs for the construction of the Project. Any interest earned in such account shall be applied to the costs for the design and construction of the Project.

3.6 Release of Existing Drainage Easements: Upon Completion of Construction of the Project and only after all Lot Owners of the Lots on which residences have been or are being constructed as of the Effective Date have channelized, graded, or piped the surface drainage from such Lots to the Project:

(a) The HOA agrees to consent to and join with the Lot Owners in executing and recording such documents the Parties determine are necessary to release and terminate the existing drainage easements located on the Properties as shown on the recorded plats of the Properties; and

(b) Without admitting that City owns any interest in such existing drainage easements, City agrees to release and quitclaim such interest City may own, if any, in such drainage easements.

3.7 Release. As further consideration for City participating and constructing the Project, the Parties, for themselves and their respective heirs, administrators, successors, and assigns, including any successor in title to the Properties, hereby release, acquit, and forever discharge each other, their respective agents, employees, representatives, attorneys, and officials (the "Released Parties"), from and against any and all claims, demands or causes of action of any kind whatsoever at law, statutory or otherwise, that the Released Parties might have or claim to have, whether now known or unknown, now existing or that might arise hereafter, directly or indirectly attributable to the drainage, lack of drainage, and water flow on or across the Properties, it being intended by the Released Parties to release all claims of any kind that the Released Parties might have against those hereby released, whether asserted or not. This is an unconditional, unqualified release and without being necessarily limited thereto, includes all claims of every kind, character or nature which any Party hereto could, may or might assert on its behalf, by reason of the subject matter of this Agreement and the drainage, lack of drainage and water flow on or across the Properties, including property damage, takings claims, loss of earnings and any other kind, character or nature of claim which may or might be the subject matter of a claim by the Released Parties hereto.

3.8 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 CITY, ITS OFFICERS, EMPLOYEES AND ITS CONTRACTORS PURSUANT TO THIS AGREEMENT. EACH LOT OWNER AND THE HOA HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS 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 GROSS NEGLIGENCE OR WILLFUL ACT OF THE CITY REPRESENTATIVES. EACH LOT OWNER AND THE HOA DOES HEREBY INDEMNIFY AND SAVE HARMLESS THE CITY REPRESENTATIVES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE 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 THE ACTS OR OMISSIONS OF THE CITY REPRESENTATIVES PURSUANT TO THIS AGREEMENT (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE GROSS NEGLIGENCE OR WILLFUL ACT OF THE CITY REPRESENTATIVES). 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. Nothing herein shall be construed as a release or indemnity of City's contractors, subcontractors, the engineers with whom the City contracted to design the Project for claims for property damage or personal injury arising from the

negligent or intentional acts or omissions of City's contractors, subcontractors, and/or their respective officers, employees, or agents.

3.9 Insurance. City agrees that during the periods of construction of the Project to require its contractors to maintain (a) Commercial General Liability Policy covering bodily injury, death and property damage insuring against all claims, demands or actions relating to the work and services provided pursuant to this Agreement with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit and One Million Dollars (\$1,000,000); (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; and (c) Automobile Liability Insurance Policy covering all operations of the contractors 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. City shall require its contractors to name the Lot Owners and the HOA as additional insureds on the contractors' commercial general liability and automobile liability policies.

Article IV Termination

This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the Parties;
- (b) upon written notice by a Party, if another Party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof; and
- (c) upon written notice by City, if any Impositions owed to City or the State of Texas by any of the Lot Owners shall have become delinquent (provided, however, such Party retains the right to timely and properly protest and contest any such taxes or Impositions); and
- (d) as provided in Section 5.15, below.

Article V Miscellaneous

5.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the heirs, successors, executors, administrators, and permitted assigns of the Parties.

5.2 Limitation on Liability. It is understood and agreed between the Parties that the Lot Owners, the HOA, and City, 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.

5.3 No Joint Venture. 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.

5.4 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. The undersigned officers and/or agents of the Parties are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties.

5.5 Notice. Any notice required or permitted to be delivered hereunder shall be delivered and 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 such other address as such Party may subsequently designate in writing) or on the day actually received if sent by overnight delivery, courier or otherwise hand delivered.

If intended for City, to:

Peter H. Vargas
Interim 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
Dallas, Texas 75201

If intended for HOA, to:

Attn: Danny Haisler
Twin Creeks Community Association, Inc.
1800 Preston Park Boulevard, Suite 101
Plano, Texas 75093

If intended for 509, 603 and 606 Lot Owner, to:

Attn: Bin Wang, Managing Member
Brilliant Stone Investments, LLC
10759 Camellia Dr
Dallas, TX 75230-3815

If intended for 601 Lot Owner, to:

Eric Silvers
Christina Silvers
1831 Walnut Springs Dr
Allen, TX 75013-5391

If intended for 1810 Lot Owner, to

The McClure Family Living Trust
1810 Northbrook Court
Allen, Texas 75013

If intended for 1812 Lot Owner, to:

Hari Reddy
Chanda Reddy
1812 Northbrook Court
Allen, Texas 75013

If intended for 1814 Lot Owner, to:

Kenny Baker
Kristi Baker
1814 Northbrook Court
Allen, Texas 75013

5.6 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 among the Parties that in any manner relates to the subject matter of this Agreement.

5.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive 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.

5.8 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties. City Manager, or designee, shall have the authority to enter into any amendments to this Agreement on behalf of City.

5.9 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 shall 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.

5.10 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

5.11 Successors and Assigns. This Agreement may not be assigned without the prior written consent of City Manager, except, prior to the Expiration Date, a Lot Owner may assign this Agreement to a successor in title to the portion of the Properties owned by said Lot Owner, provided the successor Lot Owner expressly assumes the obligations and liabilities of the assigning Lot Owner under this Agreement pursuant to an agreement in form and substance reasonably approved by City.

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

5.13 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.

5.14 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.

5.15 Conditions Precedent. This Agreement is expressly subject to and the obligations of the Parties are conditioned on the following: (i) City receipt of the Lot Owners Contribution; (ii) Lot Owners having delivered to City the signed Easements in recordable form; (iii) the HOA having provided the necessary approvals and consent to City and the Lot Owners for the Project. The conditions precedent shall be fully satisfied within thirty (30) days after the Effective Date; provided, however, this Agreement will not terminate until after City has provided prior written notice to the Parties of the failure of the conditions precedent to be satisfied within such thirty (30) day period and such conditions precedent have not been fully satisfied within thirty (30) days after such notice has been sent to the Parties by the City.

[Signature Page to Follow]

EXECUTED on this _____ day of _____, 2019.

CITY:

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, Interim City Manager

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

EXECUTED on this _____ day of _____, 2019.

HOA:

TWIN CREEKS COMMUNITY ASSOCIATION, INC.

By: _____
Danny Haisler, President

EXECUTED on this _____ day of _____, 2019.

509, 603 AND 606 LOT OWNER:

BRILLIANT STONE INVESTMENTS, LLC,

By: _____
Bin Wang, Managing Member

EXECUTED on this _____ day of _____, 2019.

601 LOT OWNER:

By: _____
Eric Silvers

By: _____
Christina Silvers

EXECUTED on this _____ day of _____, 2019.

1810 LOT OWNER:

THE MCCLURE FAMILY LIVING TRUST

By: _____
Name: _____
Title: _____

EXECUTED on this _____ day of _____, 2019.

1812 LOT OWNER:

By: _____
Hari Reddy

By: _____
Chanda Reddy

EXECUTED on this _____ day of _____, 2019.

1814 LOT OWNER:

By: _____
Kenny Baker

By: _____
Kristi Baker

Exhibit "A"

Lot 20 Finished Grading Elevations

