



JOINT MEETING AGENDA

CITY COUNCIL
&
SEAGOVILLE ECONOMIC DEVELOPMENT
CORPORATION

MONDAY, FEBRUARY 3, 2020

6:30 P.M.

City Council Chambers, City Hall

702 N. Hwy 175

Seagoville, Texas 75159

WORK SESSION – 6:30 P.M.

Call to Order

A. Discuss regular session agenda items

Adjourn

REGULAR SESSION – 7:00 P.M.

City Council Call to Order

SEDC Call to Order

Invocation

Pledge

1. Discuss and consider a Resolution of the Board of Directors of the Seagoville Economic Development Corporation approving an Economic Development Incentive Agreement by and between the Seagoville Economic Development Corporation and TNM Properties LLC, a Texas Limited Liability Company, d/b/a Golden Chick, attached hereto as Exhibit “A” and a Purchase and Sale Agreement between those same parties attached hereto as Exhibit “B”; providing for a repealing clause; providing for a severability clause; and providing an effective date (City Manager)

2. Discuss and consider a Resolution of the City Council of the City of Seagoville, Texas, in accordance with Resolution 80-R-2019 adopted December 16, 2019, authorizing the City Manager to execute the Purchase and Sale Agreement between the City and the Seagoville Economic Development Corporation (SEDC), attached hereto as Exhibit “A”, including approval of the Purchase Grant provided for therein in the amount of \$63,000.00 by the City to the SEDC on behalf of TNM Properties, LLC, d/b/a Golden Chick (“Developer”) and the related Restriction Agreement attached hereto as Exhibit “B” and further approving the terms and conditions of an Economic Development Project and associated Purchase and Sale Agreement and Incentive Agreement by and between SEDC and Developer, attached hereto, respectively, as Exhibits “C” and ‘D’; and providing an effective date (City Manager)

3. Recess into Executive Session

Council and SEDC will recess into Executive Session in compliance with Texas Government Code:

A § 551.071. Consultation with City Attorney: receive legal advice related to John Bunker Sands Wetland Center Inc. Incentive Agreement

4. Reconvene into Regular Session

Council and SEDC will reconvene into open session, and take action, if any, on matters discussed in Executive Session.

A. § 551.071. Consultation with City Attorney: receive legal advice related to John Bunker Sands Wetland Center Inc. Incentive Agreement

SEDC Adjourn

Mayor’s Report

Citizens Public Comment Period- *This portion of the meeting is to allow each speaker up to six (6) minutes to address the council on items not posted on the current agenda. Council may not discuss these items but may respond with factual data or policy information, or place the item on a future agenda. Citizens wishing to speak on posted agenda items will be called upon at that time. Anyone wishing to speak shall submit a Speaker Request Form to the City Secretary.*

CONSENT AGENDA- The Consent Agenda contains items which are routine in nature and will be acted upon in one motion.

5. Discuss and consider a Resolution of the City of Seagoville, Texas, authorizing continued participation with the Atmos Cities Steering Committee; and authorizing the payment of five cents per capita to the Atmos Cities Steering Committee to fund regulatory and related activities related to Atmos Energy Corporation; and requiring delivery of this resolution and approved assessment fee to legal counsel for the steering committee (Director of Administrative Services)

REGULAR AGENDA-

6. Discuss and consider an Ordinance of the City of Seagoville, Texas, amending Ordinance 29-2019 which adopted the operating budget for the fiscal year beginning October 1, 2019 and ending September 30, 2020; providing for the repeal of all Ordinances in conflict; providing a severability clause; and providing an effective date (Finance Director)

7. Discuss and consider approving a Resolution ordering the General Election to be held May 2, 2020. (City Secretary)

Discuta y considere aprobar una Resolución ordenando la Elección General que se celebrará el 2 de Mayo de 2020.

8. Discuss and consider a Resolution of the City Council of the City of Seagoville, Texas, approving an agreement by and between the City of Seagoville, Texas, and Good Earth Corporation in an amount not to exceed \$161,820.00 for mowing services; and providing for an effective date (Community Development Director)

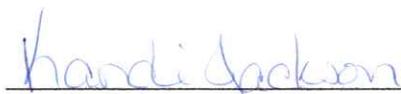
9. Discuss and consider approving a Resolution of the City of Seagoville, Texas, approving an agreement for professional engineering services on a defined scope of services basis (“Agreement”) with Halff Associates, Inc. for the East Malloy Bridge Road sidewalk extension, north of Highway 175 and Crestview Lane from the existing sidewalk to the Villas of Seagoville, which is attached hereto as Exhibit “A”, in an amount not to exceed \$25,500.00; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date (Community Development Director)

10. Receive Councilmember Reports/Items of Community Interest – as authorized by Section 551.0415 of the Texas Government Code.

11. Future Agenda Items – Council to provide direction to staff regarding future agenda items. These items will not be discussed and no action will be taken at this meeting.

City Council Adjourn

Posted Wednesday, January 29, 2020 by 5:00 P.M.



Kandi, Jackson, City Secretary



As authorized by Section 551.071(2) of the Texas Government Code, this meeting may be convened into closed executive session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item listed herein.

The City of Seagoville does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities. If you have a request for services that will make this program accessible to you, please contact the City of Seagoville at least 72 hours in advance at (972) 287-6819. (TDD access 1-800-RELAY-TX)

DATES TO REMEMBER

- **Monday, February 24, 2020 Regular Council Meeting**
- **Monday, March 2, 2020 Regular Council Meeting**
- **Monday, March 16, 2020 Regular Council Meeting**

Regular Session Agenda Item: 1

Meeting Date: February 3, 2020

ITEM DESCRIPTION

Discuss and consider a Resolution of the Board of Directors of the Seagoville Economic Development Corporation approving an Economic Development Incentive Agreement by and between the Seagoville Economic Development Corporation and TNM Properties LLC, a Texas Limited Liability Company, d/b/a Golden Chick, attached hereto as Exhibit “A” and a Purchase and Sale Agreement between those same parties attached hereto as Exhibit “B”; providing for a repealing clause; providing for a severability clause; and providing an effective date.

BACKGROUND OF ISSUE:

The SEDC has conducted a public hearing to consider the Economic Development Incentive Agreement between SEDC and TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick (collectively "Company") and the Purchase and Sale Agreement. The Company desires to purchase Land located at 550 N. Highway 175, Seagoville, Texas and an 0.320 acre parcel of land abutting the Land to develop and construct a 2,200 square foot building within which it will operate a Golden Chick fast casual restaurant franchise, together with the required concrete parking lot and driveways and landscaping. The SEDC has determined that the Agreement and the Purchase and Sale Agreement will promote new and expanded business enterprises within the City of Seagoville.

FINANCIAL IMPACT:

Economic Development Incentive Grant in the amount of \$200,000.00

EXHIBITS

Resolution

Exhibit A – Economic Development Incentive Agreement between the SEDC and Company

Exhibit B – Purchase and Sale Agreement between SEDC and Developer, with the accompanying Exhibits thereto

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SEAGOVILLE ECONOMIC DEVELOPMENT CORPORATION APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BY AND BETWEEN THE SEAGOVILLE ECONOMIC DEVELOPMENT CORPORATION AND TNM PROPERTIES LLC, A TEXAS LIMITED LIABILITY COMPANY, D/B/A GOLDEN CHICK, ATTACHED HERETO AS EXHIBIT “A” AND A PURCHASE AND SALE AGREEMENT BETWEEN THOSE SAME PARTIES ATTACHED HERETO AS EXHIBIT “B”; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the SEDC is authorized by the Development Corporation Act, Chapters 501-505 of the Texas Local Government Code (“Act”), to provide funding for projects which will result will promote new and expanding business enterprises within the City; and

WHEREAS, the SEDC has conducted a public hearing to consider the Economic Development Incentive Agreement between SEDC and TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick attached hereto as Exhibit “A” (the “Agreement”) and the Purchase and Sale Agreement between those same parties attached hereto as Exhibit “B” (the Purchase and Sale Agreement”)

WHEREAS, the SEDC Board of Directors has determined that the Agreement and the Purchase and Sale Agreement will promote new and expanded business enterprises within the City of Seagoville; and

WHEREAS, the SEDC finds that the expenditure of funds pursuant to the Agreement is authorized by the Act and that the Agreement and the Purchase and Sale Agreement should be approved;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SEAGOVILLE ECONOMIC DEVELOPMENT CORPORATION:

SECTION 1. That the Board of Directors of the Seagoville Economic Development Corporation hereby approves the Economic Development Incentive Agreement by and between the SEDC and TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick, in substantially the form of that attached hereto as Exhibit “A” including the provision of an economic development incentive grant in an amount not to exceed \$200,000.00.

SECTION 2. That the Board of Directors of the Seagoville Economic Development Corporation hereby approves the Purchase and Sale Agreement by and between the SEDC and TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick, in substantially the form of that attached hereto as Exhibit “B.”

SECTION 3. That the Board Chairman is authorized to execute the Agreement and the Purchase and Sale Agreement any other documents necessary or referenced therein on behalf of the SEDC.

SECTION 3. That all resolutions of the SEDC heretofore adopted which are in conflict with the provisions of this resolution be, and the same are hereby repealed, and all resolutions of the SEDC not in conflict with the provisions hereof shall remain in full force and effect.

SECTION 4. That if any article, paragraph, subdivision, clause or provision of this Resolution, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such judgement or holding shall not affect the validity of this Resolution as a whole or any part or provision thereof, as amended hereby, other than the part so declared to be invalid or unconstitutional.

SECTION 5. That this resolution shall take effect immediately from and after its passage.

DULY PASSED by the Board of Directors of the Seagoville Economic Development Corporation on the 3rd day of February, 2020.

APPROVED:

Jose Hernandez, Board Chair

ATTEST:

Kandi Jackson, City Secretary

APPROVED AS TO FORM:

Victoria W. Thomas, City Attorney
TM113446 012820

**EXHIBIT “A”
Form of Economic Development Incentive Agreement**

STATE OF TEXAS §
 § **ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**
COUNTY OF DALLAS §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the Seagoville Economic Development Corporation (“SEDC”) and TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick (“Company”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, Company desires to purchase Land located at 550 N. Highway 175, Seagoville, Texas (the “Primary Land”) and an 0.320 acre parcel of land abutting the Land (the “Secondary Land”) (collectively the Primary Land and Secondary Land are referred to herein as the “Land”) and thereon to develop and construct a 2,200 square foot building within which it will operate a Golden Chick fast casual restaurant franchise, together with the required concrete parking lot and driveways and landscaping (collectively, the “Improvements”); and

WHEREAS, Tex. Loc. Gov’t Code §272.001 allows City to convey land it wants developed by contracting with an independent foundation without auction or soliciting competitive bids; and

WHEREAS, SEDC is a Texas non-profit corporation and qualifies as an independent foundation under Tex. Loc. Gov’t Code §272.001; and

WHEREAS, SEDC desires to purchase the Secondary Land from City for resale to Company pursuant to a purchase and sale agreement (the “City Purchase and Sale Agreement”) subject to the Restriction Agreement (hereinafter defined); and

WHEREAS, Company intends or is under contract to purchase the Secondary Land from SEDC pursuant to a purchase and sale agreement (hereinafter defined as the “SEDC Purchase and Sale Agreement”); and

WHEREAS, Company has advised SEDC that a contributing factor that would induce Company to construct the Improvements would be an agreement by SEDC to provide an economic development grant to Company to defray a portion of the costs of the Improvements; and

WHEREAS, SEDC has adopted programs for promoting economic development; and

WHEREAS, the Development Corporation Act, Chapters 501-505 of the Texas Local Government Code, as amended (the “Act”) authorizes SEDC to provide economic development grants for land, buildings, equipment, facilities, expenditures, targeted infrastructure, and

improvements found by the SEDC's board of directors to promote new or expanded business development; and

WHEREAS, SEDC has determined that the Grant (hereinafter defined) to be made hereunder is required or suitable to promote or develop new or expanded business enterprises and constitutes a "project", as that term is defined in the Act; and

WHEREAS, SEDC has determined that making an economic development grant to Company in accordance with this Agreement will further the objectives of SEDC, will benefit City and City's inhabitants and will promote local economic development and stimulate business and commercial activity within City's corporate limits;

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:

"Bankruptcy or Insolvency" shall mean the dissolution or termination of Company's existence, insolvency, employment 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.

"Capital Investment" shall mean the total capitalized cost to Company for the acquisition of the Land, development and construction of the Improvements.

"City" shall mean the City of Seagoville, Texas, acting by and through its city manager, or designee.

"City Purchase and Sale Agreement" shall mean that certain Purchase and Sale Agreement by and between City and SEDC dated of approximate date herewith for the purchase of the Secondary Land by SEDC from City for the resale of the Secondary Land to Company, subject to the Restriction Agreement.

"Closing" shall mean the date Company closes on the purchase of the Secondary Land from SEDC and fee simple title to the Secondary Land is conveyed to Company pursuant to the SEDC Purchase and Sales Agreement.

"Commencement Date" shall mean the later of: (i) the date a certificate of occupancy is issued by City for the Improvements; and (ii) the date the Improvements are

open for business as a Golden Chick franchise restaurant and serving City's residents and visitors.

"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 construction of the Improvements; (ii) all necessary permits for the construction of the Improvements pursuant to the respective plans therefore have been issued by all the applicable governmental authorities; and (iii) grading of the Land or the construction of the vertical elements of the Improvements has commenced.

"Company" shall mean TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick.

"Completion of Construction" shall mean that: (i) the construction of the Improvements on the Land has been substantially completed; and (ii) a certificate of occupancy for the Improvements has been issued by the City and in the case of the Infrastructure portion of the Improvements, the City has conducted a final inspection and has accepted or approved said Infrastructure..

"Employment Positions" shall mean non-temporary full-time employment positions of the Company which are eligible for employee benefits and are created, maintained and filled at the Property.

"Effective Date" shall mean the last date of execution hereof.

"Expiration Date" shall mean the fifth (5th) anniversary date of the Commencement Date.

"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, riot, terrorism, civil commotion, insurrection, government or de facto governmental action or inaction (unless caused by acts of omissions of the Party), fires, explosions or floods, strikes, slowdown or work stoppages, but may not impact any payments to be made hereunder.

"Grant" shall mean an economic development grant in the amount equal to the actual costs incurred and paid by Company for the design and construction of the parking lot and driveway portion of the Improvements ("Infrastructure"), not to exceed Two Hundred Thousand Dollars (\$200,000.00), to offset a portion of the costs paid and incurred by Company for Infrastructure necessary for the Improvements, to be paid as set forth herein.

"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, authority on

Company with respect to the Improvements or any property or any business owned by Company within City's corporate limits.

"Improvements" shall mean a 2,200 square foot building within which Company will operate a Golden Chick fast casual restaurant franchise, together with the required concrete parking lot and driveways and landscaping.

"Infrastructure" shall mean that part of the Improvements consisting of the concrete parking lot and driveways on the Land.

"Land" shall mean, collectively, the real property located at 550 N. Highway 175, Seagoville, Texas (the "Primary Land") and an 0.320 acre parcel of land abutting the Land described as all of that certain 0.320 acre tract of land situated in the J.D. Merchant survey, Abstract No. 850, and being a portion of Lot 1, Block C, Farris Addition, an addition to the City of Seagoville, Dallas County, Texas, according to a plat thereof recorded in Volume 78074, Page 124, Plat Records, Dallas County, Texas, and being a portion of that certain tract of land as conveyed to the City of Seagoville by deed recorded in Volume 96047, Page 1049, said Official Public Records (the "Secondary Land").

"Property" shall mean the Land and the Improvements following construction thereof.

"Related Agreement" shall mean any agreement (other than this Agreement) by and between Company and/or City and/or SEDC.

"Required Use" shall mean the development, use, and continued operation of the Improvements as a Golden Chick franchise restaurant in a building of not less than 2,200 square feet open to the public and serving the adjacent business community and City's residents and including the provision of a concrete access driveway as specified in the Restriction Agreement to allow for ingress and egress across, to, and from the Property and/or the abutting land and for the convenient and efficient flow of pedestrian and vehicular traffic for the public.

"Restriction Agreement" shall mean that certain restriction agreement between City and Company restricting the development and use of the Secondary Land for the construction and operation of a portion of the Infrastructure, as more fully set forth in that Restriction Agreement. The Restriction Agreement shall require Company to cause Commencement of Construction and Completion of Construction of the concrete access driveway and parking area on the Secondary Land, the same being a portion of the Infrastructure in accordance with this Agreement, grant City a right of first refusal in the event Company offers to sell the Secondary Land to a third party prior to Commencement of Construction of the Improvements, and grant City an option to repurchase the Secondary Land in the event Company fails to comply with the deadline for Commencement of Construction and Completion of Construction of the Improvements set forth in the Restriction Agreement.

“SEDC” shall mean the Seagoville Economic Development Corporation.

“SEDC Purchase and Sale Agreement” shall mean that certain Purchase and Sale Agreement by and between SEDC and Company dated of even date herewith for the purchase of the Secondary Land by Company from SEDC, subject to the Restriction Agreement.

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein.

Article III Improvements

3.1 Secondary Land Acquisition. SEDC intends to sell and convey, or cause to sell and convey, the Secondary Land to Company subject to the Restriction Agreement.

3.2 Construction Plans. Company shall cause all necessary permits and approvals required by City and any applicable governmental authorities to be issued for the construction of the Improvements. Prior to Commencement of Construction of the Improvements, Company shall submit the Construction Plans for approval by City. Company shall, subject to events of Force Majeure, cause the Construction Plans to be submitted to City for approval not later than thirty (30) days following the Closing.

3.3 Construction of Improvements. Company shall, subject to events of Force Majeure, cause Commencement of Construction of the Improvements to occur on or before one hundred twenty (120) days after the Effective Date; and, subject to events of Force Majeure, cause Completion of Construction of Improvements to occur not later than twelve (12) months after the Commencement of Construction.

3.4 Required Use. Beginning on the Commencement Date, and continuing thereafter until the Expiration Date, or earlier termination, the Improvements shall not be used for any purpose other than the Required Use and the Company shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than thirty (30) days, except in connection with and to the extent of an event of Casualty or Force Majeure.

Article IV Grant

4.1 Subject to the obligation of Company to repay the Grant pursuant to Section 6.2 herein, and the continued satisfaction of all the terms and conditions of this Agreement by Company, SEDC agrees to provide the Grant to the Company to be paid within thirty (30) days after the later of the closing on the Secondary Land at which Company receives fee simple title to the Secondary Land and execution of this Incentive Agreement and the Restriction Agreement.

4.2 Under no circumstances shall the obligations of SEDC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. SEDC 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 SEDC under this Agreement shall be pledged or otherwise encumbered by Company in favor of any commercial lender and/or similar financial institution.

4.3 The Grant made hereunder shall be paid solely from lawfully available funds that have been appropriated by SEDC. SEDC shall have no obligation or liability to provide any Grant except as allowed by law. SEDC shall not be required to provide any of the Grant if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

Article V

Conditions to Economic Development Grant

The obligation of SEDC to pay the Grant to Company shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the following:

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

5.2 Commencement of Construction. Commencement of Construction, as that term is defined herein, shall occur not later than one hundred twenty (120) days after the Effective Date of this Agreement.

5.3 Completion of Construction. Subject to Force Majeure, Completion of Construction, as that term is defined herein, shall occur not later than twelve (12) months Commencement of Construction.

5.4 Capital Investment. Company's Capital Investment for the Infrastructure portion of the Improvements as of the Completion of Construction shall be not less than Two Hundred Thousand (\$200,000.00) Dollars. Company shall, not later than fifteen (15) calendar days after the date of Completion of Construction (as defined herein) of the Improvements, deliver to SEDC copies of all records, contracts, receipts, invoices, bills, proofs of payment, and such other information as SEDC may reasonably request to document compliance with the required Capital Investment. In the event the final total cost of the construction of the Infrastructure portion of the Improvements, as reasonably verified by SEDC, is less than Two Hundred Thousand (\$200,000.00) Dollars, the Company shall, within thirty (30) days of receipt by Company of written demand by SEDC, pay the SEDC the difference in value between \$200,000.00 and the final total cost of the construction of the Infrastructure portion of the Improvements as reasonably verified by SEDC.

5.5 Required Use. During the term of this Agreement following Completion of Construction and continuing thereafter until expiration of this Agreement or earlier termination Company shall continuously own and occupy the Property which shall not be used during the term of this Agreement for any purpose other than the Required Use. Further, during the term of this

Agreement, such occupation and use shall not cease for more than thirty (30) days except in connection with, and to the extent of, an event of Force Majeure.

5.6 Employment Positions. Within thirty (30) days of Completion of Construction, Company shall create, fill and maintain a total of at least eight (8) Employment Positions for the term of this Agreement.

5.7 Continuous Ownership. During the term of this Agreement following the Effective Date and continuing thereafter until the Expiration Date, the Property shall be continuously owned and occupied by the Company.

5.8 Chamber of Commerce Membership. Company shall become a member of the Seagoville Chamber of Commerce, if not already a member, within thirty (30) days after the Effective Date and shall maintain such membership during the term of this Agreement, unless the Seagoville Chamber of Commerce shall cease to exist.

Article VI Termination

6.1 Termination. This Agreement shall terminate upon any one or more of the following:

- (a) by written agreement of the Parties;
- (b) on the Expiration Date;
- (c) upon written notice by either Party in the event the other Party 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 in accordance with this Agreement;
- (d) upon written notice by the SEDC, if the Company suffers an event of Bankruptcy or Insolvency;
- (e) upon written notice by SEDC, if any Impositions owed to City or the State of Texas by Company shall become delinquent after thirty (30) days written notice is delivered pursuant to this Agreement (provided, however, Company retains the right to timely and properly protest and contest any such Impositions); or
- (f) upon written notice by either Party, 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.

6.2 Repayment Due Upon Termination Due to Breach of Section 6.1(c). In the event the Agreement is terminated by SEDC pursuant to Section 6.1(c):

- (a) due to a breach of the obligation set forth in section 5.2 hereof, Company shall immediately refund to the SEDC an amount equal to the value of the Grant received by Company;
- (b) due to a breach of the obligation set forth in section 5.3 hereof, Company shall immediately refund to the SEDC an amount equal to eighty percent (80%) of the value of the Grant received by Company;
- (c) due to a breach of an obligation set forth in section 5.5, 5.6, and/or 5.7 hereof, Company shall immediately refund to the SEDC an amount equal to sixty percent (60%) of the Grant received by Company;
- (d) due to a breach of an obligation set forth in section 5.8 hereof, Company shall immediately refund to the SEDC an amount equal to forty percent (40%) of the Grant received by Company;
- (e) due to a breach of an obligation set forth in section 5.1 and not coming within any the obligations set forth in sections 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, and/or 5.8, and not constituting a breach covered by section 6.1(d), (e), and/or (f), Company shall immediately refund to the SEDC an amount equal to twenty percent (20%) of the Grant received by Company.

6.3 Repayment Due Upon Termination Due to Breach of Section 6.1(d), (e), and/or (f). In the event the Agreement is terminated by SEDC pursuant to Section 6.1(d), (e), and (f), Company shall immediately pay to SEDC an amount equal to the Grant previously paid by SEDC to Company as of the date of termination, plus interest at the rate 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 reasonably selected by SEDC) as its prime or base commercial lending rate, which shall accrue from the date of the Grant Payment until paid.

6.4 Right of Offset. SEDC may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City or SEDC 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 SEDC or City has been reduced to judgment by a court.

**Article VII
Miscellaneous**

7.1 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 without the prior written consent of SEDC.

7.2 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 SEDC assumes no responsibilities or liabilities to third parties in connection with these actions. Company agrees to indemnify and hold harmless SEDC 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.

7.3 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.

7.4 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 SEDC, to

Attn: Jose Hernandez, Board Chair
Seagoville Economic Development
Corporation
702 N. Highway 175
Seagoville, Texas 75115

With a copy to:

Victoria W. Thomas
Nichols, Jackson, Dillard, Hager &
Smith, LLP
1800 Ross Tower
100 N. Akard
Dallas, Texas 75201
214.965.0010 – facsimile

If intended for Company, to:

TNM Properties, LLC d/b/a Golden Chick
Attn: Tamer Kadah
1800 Windermere Drive
Plano, Texas 75093

7.5 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.

7.6 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 Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

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

7.8 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.

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

7.10 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.

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

7.12 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.

7.13 Employment of Undocumented Workers. 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 Grant and any other funds received by Company from SEDC as of the date of such violation within one hundred twenty (120) days after the date Company is notified by SEDC 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.

7.14 Conditions Precedent. The obligations of the Parties are expressly subject to and conditioned upon the following:

- (a) City and SEDC having entered into the City Sale and Purchase Agreement;
- (b) Company and SEDC having entered into the SEDC Sale and Purchase Agreement;

- (c) Company and City having entered into the Restriction Agreement; and
- (d) Company having closed on the purchase of the Primary Land and the Secondary Land.

(Signature Page to Follow)

EXECUTED on this _____ day of _____, 2020.

SEAGOVILLE ECONOMIC DEVELOPMENT CORPORATION

By: _____
Jose Hernandez, Board Chair

EXECUTED on this _____ day of _____, 2020.

TNM PROPERTIES, LLC, d/b/a GOLDEN CHICK

DO NOT SIGN – TO BE SIGNED AT CLOSING

By: _____
Tamer Kadah, Manager

and

DO NOT SIGN – TO BE SIGNED AT CLOSING

By: _____
Naim Tatari, Manager

Exhibit "B"

Purchase and Sale Agreement Between SEDC and Developer

PURCHASE AND SALE AGREEMENT

This Purchase and Sales Agreement (“Agreement”) to buy and sell real property is entered between Seagoville Economic Development Corporation (“SEDC” or “Corporation”) and TNM Properties, LLC d/b/a/ Golden Chick, a Texas limited liability company, and is effective on the date (“Effective Date”) of the last of the signatures by SEDC and TNM Properties, LLC d/b/a Golden Chick (each “Party” and collectively, the “Parties”) and the acknowledgement by the Title Company of receipt of this Agreement.

Seller: Seagoville Economic Development Corporation,
a Texas non-profit corporation

Seller’s Address: Attn: Jose Hernandez, Board Chairman
702 US-175 Frontage Road
Seagoville, Texas 75159

Phone: (972) 287-9944

Seller’s Attorney: Victoria W. Thomas
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201
Fax: (214) 965-0010
Phone: (214) 965-9900
E-mail: vthomas@njdhs.com

Seller’s Broker: None

Purchaser: TNM Properties, LLC d/b/a Golden Chick
a Texas limited liability company

Purchaser’s Address: Attn: Tamer Kadah
1800 Windermere Drive
Plano, Texas 75093
Phone: (469) 644-7027
E-mail: tamerk84@yahoo.com

Purchaser's
Attorney None.

Purchaser's
Broker/Agent: None.

City: City of Seagoville, Texas,
a home rule municipality

City's Address: Attn: Patrick Stallings, City Manager
702 US-175 Frontage Road
Seagoville, Texas 75159

Phone: (972) 287-2050
E-mail: PStallings@seagoville.us

City's Attorney: Victoria W. Thomas
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

Phone : (214) 965-9900
Fax : (214) 965-0100
E-mail : vthomas@njdhs.com

Property: All of that certain 0.320 acre tract of land situated in the J.D. Merchant survey, Abstract No. 850, and being a portion of Lot 1, Block C, Farris Addition, an addition to the City of Seagoville, Dallas County, Texas, according to a plat thereof recorded in Volume 78074, Page 124, Plat Records, Dallas County, Texas, and being a portion of that certain tract of land as conveyed to the City of Seagoville by deed recorded in Volume 96047, Page 1049, said Official Public Records.

Restriction
Agreement: That certain Restriction Agreement by and between City and Purchaser to be signed at Closing by City and Purchaser substantially in the form attached hereto as Exhibit "A" and incorporated herein by reference.

Economic Development Agreement: That certain Economic Development Agreement by and between Seller and Purchaser to be signed at Closing substantially in the form attached hereto as Exhibit "B" and incorporated herein by reference.

Title Company: Town Square Title Company.
Attn: Jessica Barton, Escrow Officer
310 N. 9th Street, Suite A
Midlothian, Texas 76065

Phone: (972) 935-0800
Fax: (972) 938-1045
E-Mail: jbarton@townsquaretitle.com

Inspection Period: The period commencing on the Effective Date and ending thirty (30) days after the Effective Date, but subject to extension as provided hereon.

Earnest Money: \$100.00, to be delivered to the Title Company not later than the third (3rd) business day after the Effective Date, \$50 of which shall constitute the Option Fee.

Option Fee: \$50.00, which amount shall be the non-refundable portion of the Earnest Money (except as may be otherwise expressly provided in this Agreement) and will be distributed to Seller upon any termination of this Agreement as independent consideration for Seller's performance under this Agreement, and which shall be applied as a credit to the Purchase Price if Closing occurs.

Closing Date: On or before thirty (30) days after the end of the Inspection Period, or such other date mutually agreed to in writing by the parties.

Purchase Grant: An economic development incentive grant paid outside of closing by City on behalf of Purchaser in accordance with the City Sales Contract and to be credited to the Purchase Price at Closing, being an amount equal to (i) the fair market value of the Property as determined by an appraisal obtained by City in the amount of \$63,000.00.

City Sales Contract: That certain Purchase and Sale Agreement by and between City and Seller relating to the sale by City of the Property to Seller.

Purchase Price: An amount equal to the appraised market value of the Property consisting of \$63,000.00, less the Purchase Grant.

NOW, THEREFORE, in consideration of the sum of the payment of the Purchase Price and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and Purchaser agree as follows:

1. Sale and Purchase. Seller agrees to sell, and Purchaser agrees to purchase, the Property as provided in this Purchase and Sale Agreement (“Agreement”) for the Purchase Price and subject to additional consideration set forth in this Agreement.

2. Title, Survey, and Environmental Reports.

(a) Not later than ten (10) days after the Effective Date, Seller shall, at Seller’s expense, deliver to Purchaser:

(i) a current commitment for an Owner’s Policy of Title Insurance for the Property from the Title Company issued to Purchaser in the amount of the Purchase Price, setting forth the state of title to the Property together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Property, together with all exceptions or conditions to such title;

(ii) legible copies of all documents referenced in the Title Commitment;

(iii) any environmental or geotechnical studies or reports that Seller may have in its possession or that is available to Seller as of the Effective Date with respect to the Property;

(iv) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years;

(v) the most recent survey and plat of the Property that Seller has in its possession or that may be available to Seller;

(vi) notices or other documents regarding any uncured violation of applicable laws, rules, regulations, codes or ordinances regarding the Property, or relating to any actual or claimed existence, release or disposal of any toxic or hazardous substance or waste in, upon or affecting the Property, or relating to any pending or threatened litigation affecting the Property; and

(vii) any other documents or information in Seller’s possession relating to the Property which may be reasonably requested by Purchaser.

(b) Not later than fifteen (15) calendar days after the Effective Date, Purchaser may, at Purchaser's expense and option, obtain an updated survey (the "Survey") of the Property prepared by a duly licensed Texas Registered Public Land Surveyor. The Survey shall be staked on the ground, and the plat shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, and rights-of-way on or adjacent to the Property, if any, and shall contain the surveyor's certification that there are no encroachments on the Property other than what are listed on the Title Commitment and shall set forth a metes and bounds description of the Property. If different than the platted description of the Property, the legal description contained in said Survey shall be used by the Parties as the legal description contained in the Special Warranty Deed.

(c) Purchaser shall, not later than ten (10) days after Purchaser's receipt of the last of the Survey and Title Commitment (or after the expiration of the period for obtaining the Survey, if a Survey is not obtained), notify Seller and Title Company of any objections to the Survey or Title Commitment related to the Property. If there are objections by Purchaser, Seller shall in good faith attempt to satisfy them prior to Closing, but Seller shall not be required to incur any cost to do so. If Seller delivers written notice to Purchaser not later than the fifth (5th) calendar day after Seller's receipt of Purchaser's objections that Seller is unable to satisfy such objections, Purchaser may either (i) waive such objections and accept title as Seller is able to convey or terminate this Agreement by written notice to Seller and the Title Company prior to the expiration of the Inspection Period or (ii) elect to extend the Closing Date, not to exceed an additional sixty (60) days, in order to provide Seller additional time to cure the objections. If Purchaser elects to extend the Closing Date, and Seller fails to cure the objection with such period, Purchaser may either waive the objection and proceed to Closing or terminate this Agreement without further liability to either Party.

3. Inspection Period.

(a) During the Inspection Period, Purchaser and its agents, contractors, representatives, consultants or employees shall have the right to enter upon the Property during regular business hours upon reasonable notice and conduct such inspections, tests and studies as they may deem necessary. If for any reason Purchaser determines not to purchase the Property, Purchaser may terminate this Agreement by notifying Seller and Title Company in writing prior to the expiration of the Inspection Period. In such event, neither Party shall have any further claim against the other under this Agreement, and Purchaser shall be entitled to a refund of the Earnest Money, but not the Option Fee. If Purchaser does not timely terminate this Agreement under this Section 3, it shall have no further right to do so under this Section 3; and Purchaser shall have waived its right to terminate this Agreement within the Inspection Period.

(b) Purchaser may enter the Property to conduct its inspection but shall be solely responsible for any damages caused thereby. Purchaser shall repair any damage to the Property it causes or that is caused by its agents, contractors, representatives, consultants or employees, and shall indemnify and defend Seller and City and hold Seller and City harmless from and against any and all claims, liabilities or damages to the Property or against Seller or City caused by the intentional or negligent acts or omissions of Purchaser and/or Purchaser's authorized agents, contractors, representatives, consultants or employees during the Inspection Period or as a result of any inspection of the Property by such parties; provided, that no indemnity shall be required for Purchaser's discovery of any violations of any applicable law, statute, rule, regulation, code or

ordinance during such inspection, or discovery of any preexisting conditions present at the Property.

4. Closing Date.

The closing of the sale of the Property (the “Closing”) shall occur on the Closing Date at the Title Company, or at such other time as may be agreeable to the parties.

5. Closing Deliverables.

(a) At the Closing, Seller shall deliver to the Title Company:

(i) a special warranty deed in form and substance reasonably acceptable to Seller and Purchaser, conveying good and indefeasible title to the Property to Purchaser, free and clear of any and all encumbrances except the Permitted Exceptions, excluding the mineral rights, such mineral rights being reserved by City;

(ii) such documents as may be reasonably required by Title Company in order to cause Title Company to issue a Texas owner’s policy of title insurance (or equivalent) (“Title Policy”) in the amount of the Purchase Price, insuring such title to the Purchaser, at Seller’s expense;

(iii) the documents required to be executed as a condition of closing as set forth in Section 8, below; and

(iv) possession of the Property, free of parties in possession.

(b) At the Closing, Purchaser shall deliver to Seller through the Title Company:

(i) the Purchase Price;

(ii) the documents required to be executed as a condition of closing as set forth in Section 8, below; and

(iii) such other documents as may be reasonably required by Title Company to close the contemplated transaction.

With respect to the issuance of the Title Policy, Purchaser agrees to execute such documents as required by the Title Company to allow the cost of the Title Policy and any related endorsements that are required to be issued pursuant to the City Sales Contract regarding the Property are passed through to the sale of the Property by Seller to Purchaser, it being the intent of Purchaser and Seller that only one title policy be issued in favor of Purchaser following the concurrent closing of this transaction and the transaction between Seller and City.

6. Taxes.

Purchaser understands and acknowledges that the Property is presently exempt from the assessment of ad valorem taxes, which status will change upon conveyance of the Property to Purchaser. Seller shall not be responsible for payment of property taxes assessed against the Property for periods after the date of Closing, if any become due and payable.

7. Closing Costs.

Purchaser agrees to pay and be responsible for the all closing costs related to the Closing of the transaction contemplated by this Agreement, including, but not limited to:

- (i) all fees and costs for the Survey;
- (ii) the Title Company's escrow fees;
- (iii) all costs and expenses incurred by or on behalf of Purchaser, including Purchaser's attorneys' fees;
- (iv) all premiums and fees related to issuance of the Title Policy, including all endorsements, deletions, and amendments thereto, and all costs related to issuance of any Mortgagee's Title Policy, and/or Interim Construction Lender Endorsement, if any;
- (v) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Property;
- (vi) Recording fees for the special warranty deed conveying the Property to Purchaser, the special warranty deed conveying the Property from City to Seller, the Restriction Agreement, and any other documents that are required to be recorded granting any liens or security interests in the Property and/or any improvements constructed thereon; and
- (vii) such other incidental costs and fees customarily paid by purchasers of property in Dallas County, Texas, for transactions of a similar nature to the transaction contemplated herein.

Purchaser shall not be responsible for payment of Seller's or City's attorneys' fees.

8. Conditions to Closing.

Closing on the sale of the Property shall be conditioned upon and subject to the following:

- (a) Purchaser and City having executed the Restriction Agreement and the Economic Development Agreement; and
- (b) City having closed on the sale of the Property to Seller pursuant to the City Purchase Contract.

9. Permitted Exceptions.

(a) Purchaser acknowledges and agrees that the Property will be conveyed by Seller at closing subject to the Restriction Agreement, and that the Special Warranty Deed shall contain reference to same. The (i) lien for current taxes not yet due and payable, (ii) the Restriction Agreement, and (iii) other appropriate matters appearing on Schedule B of the Title Commitment that were not cured and to which Purchaser failed to object or otherwise waived objection, shall

be deemed to be Permitted Exceptions. Notwithstanding anything to the contrary herein, as a condition of Closing, Seller must resolve at Seller's sole cost the items that are listed on Schedule C of the Title Commitment which are by their nature Seller's responsibility, remove all liquidated liens, remove all exceptions that arise by, through or under Seller after the Effective Date of this Agreement, and use due diligence to cure the title and survey objections that Seller has agreed to cure.

(b) Purchaser understands, acknowledges, and agrees that all rights-of-ways and easements dedicated to City on behalf of the public and which appear on the final plat of the Property, the Survey, and/or the Title Commitment may be reserved by City at Closing for itself and its successors and assigns and the public, which reservations shall constitute Permitted Exceptions at Closing to the extent they affect the Property.

10. Representations and Covenants.

Seller represents and covenants that: (a) it has authority to enter into this Agreement, and that this Agreement represents the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms; (b) no other person has any interests in or claims against the Property (other than as reflected by the Title Commitment); (c) it has no knowledge of any uncured violation of applicable laws, rules, regulations, codes or ordinances with respect to the Property, nor of any existence, release or disposal of any toxic or hazardous substance or waste upon or affecting the Property, nor of any pending or threatened litigation affecting the Property; and (d) it will not hereafter encumber the Property, or take any other action with respect to the Property which Seller knows will materially adversely affect the development, lease or other transactions contemplated by this Agreement. Purchaser represents that it has authority to enter into this Agreement and that this Agreement represents the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms. The only representations made by any party concerning the Property and this Agreement are as set out in this Section 10. The representations set forth in this Section 10 shall survive Closing.

11. Property Sold As Is.

(a) Purchaser hereby acknowledges and agrees that the sale of the Property hereunder is and will be made on an "as is, where is and with all faults" basis. The occurrence of Closing shall constitute an acknowledgment by Purchaser that the Property was accepted without representation or warranty, express or implied (except as otherwise specifically set forth herein and except for the special warranties of title set forth in the special warranty deed, and the bill of sale and assignment).

(b) Except as otherwise specifically set forth in this Agreement and except for the special warranties of title set forth in the special warranty deed, Seller hereby specifically negates and disclaims any representations, warranties or guaranties of any kind or character, whether express or implied, oral or written, past, present, future or otherwise, of, as to, concerning or with respect to the Property, including without limitation (i) the nature and condition of the Property and the suitability thereof for any and all activities and uses which Purchaser may elect to conduct thereon, (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or any other matter relating in any way to the Property, (iii) the compliance of the Property or its operation with any laws, ordinances or regulations of any

government or other authority or body, (iv) the existence of any toxic or hazardous substance or waste in, on, under the surface of or about the Property, (v) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water and faulting, (vi) whether or not and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, flood prone area, floodplain, floodway or special flood hazard, (vii) drainage, (viii) zoning or land use restrictions rules and regulations to which the Property or any portion thereof may be subject, (ix) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas and electric and including the utility availability capacities allocated to the Property by the relevant governmental or regulatory authority, (x) usages of adjoining property, (xi) access to the Property or any portion thereof, (xii) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, durability, structural integrity, operation, leasing, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (xiii) the potential for further development of the Property, or (xiv) the merchantability of the Property or fitness of the Property for any particular purpose (Purchaser affirming that Purchaser has not relied on Seller's skill or judgment to select or furnish the Property for any particular purpose, and that Seller makes no warranty that the Property is fit for any particular purpose).

(c) Purchaser agrees that, prior to the expiration of the Inspection Period, it will have the opportunity to examine and investigate the Property and that, in purchasing the Property, Purchaser will rely solely upon its independent examination, study, inspection and knowledge of the Property, and Purchaser is relying solely upon its own examination, study, inspection, and, except for representations and warranties specifically set forth herein and, except for the special warranties of title set forth in the special warranty deed, and in the bill of sale and assignment, knowledge of the Property and Purchaser's determination of the value of the Property and uses to which the Property may be put, and not on any information provided or to be provided by Seller.

(d) The provisions of this Section 11 shall survive the termination of this Agreement and the Closing.

12. Reservation of Minerals; Waiver of Surface Rights.

Purchaser understands, acknowledges, and agrees that City, for itself and its successors and assigns, as their interests may appear, has reserved from its conveyance of the Property to Seller pursuant to the City Purchase Contract all oil, gas and other minerals owned by City located in and under and that may be produced from the Property to the extent not reserved by prior grantors; and that City, for itself and its successors and assigns has agreed (i) to waive all surface rights and other rights of ingress and egress in and to the Property, and (ii) that in conducting operations with respect to the exploration for and production, processing, transporting and marketing of oil, gas and other minerals from the Property, that no portion of the surface of the Property will be used, occupied or damaged and that fixtures, equipment, buildings or structures used in connection with the exploitation of the reserved mineral, oil and gas rights, shall not be placed on the surface of the Property. Purchaser further understands, acknowledges, and agrees that City shall not be restricted or prohibited from the pooling or unitization of the portion of the mineral estate owned by City with land other than the Property; or the exploration or production of the oil, gas, and other minerals by means of wells that are drilled or mines that open on land other than the Property but

enter or bottom under the Property, provided that such operations will in no manner interfere with the surface or subsurface support of any improvements constructed or to be constructed on the Property. The foregoing reservation of minerals and City's waiver of surface rights set forth above shall survive closing and be included in substance in the special warranty deed from City to Seller.

13. Remedies.

If Purchaser defaults, Seller's sole remedy shall be to terminate this Agreement and receive the Earnest Money as liquidated damages, thereby releasing both parties from this Agreement. If Seller defaults, Purchaser's sole remedy shall be to terminate this Agreement and receive a refund of the Earnest Money and the Option Fee, thereby releasing both parties from this Agreement. No termination shall occur pursuant to a default until the non-defaulting party has provided written notice of default not less than ten (10) days prior to the proposed date of termination and the defaulting party has failed to cure the default; provided, however, if all parties have fully performed and all conditions to Closing have been satisfied other than the signing of documents and closing on the sale of the Property and one party fails to perform such necessary acts to deliver funds and execute documents required for Closing on the date of Closing, then this Agreement shall terminate one (1) business day after demand is made to the non-performing party and the party continues to fail to close on the transaction.

14. Notices.

Notices must be in writing and may be hand delivered and/or mailed by certified mail with return receipt requested, or sent by facsimile transmission, to the addresses stated above. Notice given by delivery service shall be effective upon receipt at the address of the addressee; notice given by mail shall be effective upon earlier of actual receipt or three (3) days after placing the notice in a receptacle of the United States Postal Service, postage prepaid and properly addressed, and notice sent by facsimile transmission shall be effective upon electronic confirmation of receipt. In addition, copies of notices shall be provided to the party's attorney at the addresses indicated above.

15. Sale Subject to Provisions of Tex. Loc. Govt. Code §272.001.

Purchaser acknowledges having been advised that pursuant to the City Purchase Contract, City has contracted with Seller as an independent foundation to sell the Property without requiring an auction or solicitation of competitive bids subject to City's requirement that the Property be developed by Purchaser in accordance with the Restriction Agreement.

16. Miscellaneous. This Agreement is subject to the following additional provisions and conditions:

(a) Entireties. This Agreement contains the entire agreement of the parties pertaining to the purchase, sale, and development of the Property.

(b) Modifications. This Agreement may only be modified by a written document signed by both parties.

(c) Assignment. Purchaser may not assign its rights under this Agreement, except (i) to any entity controlling, controlled by, or under common control with, Purchaser, or (ii) to any

person or entity with the express written consent of Seller (which consent shall not be unreasonably withheld); provided, however, the assignee pursuant to such assignment must agree in writing to assume all of the assignor's obligations under this Agreement.

(d) Time is of the Essence. Time is of the essence with respect to the performance by the parties of their respective obligations hereunder.

(e) Effective Date. The Effective Date of this Agreement shall be the last date on which the authorized representatives of all Parties have signed this Agreement, and the Title Company has acknowledged in writing its receipt of this Agreement as so signed.

(f) Non-Business Day. If the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday, or federal holiday, or a day on which Seller's main offices are not open for regular business, then the end of such period shall be extended to the next day that is not one of the foregoing described days.

(g) Zoning. Seller assumes no obligation to change the current zoning on the Property.

(h) Brokers. Purchaser and Seller represent that neither party has engaged a broker in this transaction and that no broker is involved in this Agreement. To the extent allowed by law, each party shall indemnify the other from any claim for brokers' commissions relative to the sale of the property and alleged to be due by, through or under the indemnifying party.

(i) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes and constitute one and the same instrument; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(j) 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 the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

(k) Law Governing. This Agreement shall be construed under and in accordance with the laws of the State of Texas; and venue for any action arising from this Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court in any such action.

(l) 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.

(m) Employment of Undocumented Workers. Purchaser understands, acknowledges, and agrees that Seller is off-setting a portion of the Purchase Price with an economic development grant in the form of the Purchase Grant. During the term of this Agreement, and for a period of five (5) years after the Closing and conveyance of the Property to Purchaser, Purchaser agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Purchaser shall pay the amount of the Purchase Grant and any other funds received by Purchaser from Seller as of the date of such violation within 120 days after the date

Purchaser is notified by Seller of such violation, plus interest at the rate of 4% compounded annually from the date of violation until paid. Purchaser is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Purchaser or by a person with whom Purchaser contracts. This Section 16(m) shall survive the Closing.

(signature page to follow)

SIGNED AND AGREED this the _____ day of _____, 2020.

Seagoville Economic Development Corporation

By: _____
Jose Hernandez, Board Chairman

SIGNED AND AGREED this the _____ day of _____, 2020.

Purchaser:
TNM Properties, LLC d/b/a Golden Chick

By: _____
Tamer Kadah, Manager

and

By: _____
Naim Tatari, Manager

RECEIPT OF CONTRACT

Title Company acknowledges receipt of a copy of this Agreement executed by both Seller and Purchaser on the ___ day of _____, 2020.

By: _____

Name: _____

Title: _____

**EXHIBIT “A”
Form of Restriction Agreement**

WHEN RECORDED RETURN TO:

Attention: City Manager
City of Seagoville
702 US-175 Frontage Road
Seagoville, Texas 75159

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER’S LICENSE NUMBER

**STATE OF TEXAS §
 § RESTRICTION AGREEMENT
COUNTY OF DALLAS §**

This **RESTRICTION AGREEMENT** (“Agreement”) is made and entered into as of the Effective Date by and between the City of Seagoville, Texas, a Texas home-rule municipality (“City”), and TNM Properties, LLC d/b/a Golden Chick, a Texas limited liability company (“Builder”). City and Builder are collectively referred to herein as the “Parties” and individually as “Party.”

RECITALS

WHEREAS, as of the Effective Date, pursuant to the Purchase Agreement, Builder has purchased the Land from the Seagoville Economic Development Corporation (“SEDC”); and

WHEREAS, prior to or concurrent with the sale of the Land to Builder, SEDC purchased the Land from City pursuant to that certain Purchase and Sale Agreement effective _____, 2020, between City and SEDC (“the City Contract”) without City seeking sealed bids or conducting an auction prior to the sale of the Land to SEDC pursuant to the statutory exception to such requirements set forth in Texas Local Government Code §272.001(b)(4); and

WHEREAS, as a condition of the sale of the Land to SEDC and pursuant to Texas Local Government Code §272.001(b)(4), the City Contract requires that SEDC have the Land developed with the Improvements and used consistent with the Required Use; and

WHEREAS, SEDC has, as a condition of the conveyance of the Land to Builder, restricted the use of the Land and required Builder to develop the Land with the Improvements in accordance with the terms and conditions set forth herein; and

WHEREAS, as a condition to and in consideration of SEDC's conveyance of the Land to Builder, Builder has agreed to develop the Land in accordance with this Restriction Agreement; and

WHEREAS, Builder desires to grant City an option to repurchase the Land in the event Builder fails to cause Commencement of Construction or Completion of Construction (hereinafter defined) of the Improvements in accordance this Restriction Agreement, and a right of first refusal, subject to the terms and conditions hereafter set forth;

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Builder hereby agree as follows:

Article I Land Subject to Declaration

1.1 The Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Builder and any subsequent owners of all or any part of the Property, subject to the terms of this Restriction Agreement.

1.2 Builder shall, subject to events of Force Majeure, cause Commencement of Construction of the Improvements to occur on or before one hundred eighty (180) days after the Closing; and, subject to events of Force Majeure, cause Completion of Construction of Improvements to occur not later than thirteen (13) months after the Commencement of Construction.

1.3 Builder shall, by executing this Restriction Agreement and for the consideration stated hereinabove, and does hereby grant to City as owner of the parcel of land abutting the Land, and to City's successors and assigns, a right to access the Land and the Improvements thereon for the purpose of pedestrian and vehicular ingress and egress across, to, and from the Land and/or the abutting land and for the convenient and efficient flow of pedestrian and vehicular traffic for their customers and the public in general, with such route being open to the public and serving the adjacent business community and City's residents. This right of access may be terminated or amended only by filing in the Deed Records a revision to this Agreement approved by the City Council. This access agreement contained in this Section 1.3 shall be a covenant running with the Land. Builder agrees that this agreement shall bind its successors, heirs, and assigns, if any.

Article II Definitions

For purposes of this Agreement, the following words and phrases shall have the following meanings unless the context clearly indicates a different meaning:

"Builder" shall mean TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick.

"City" shall mean the City of Seagoville, a Texas a home rule municipality located in the County of Dallas, State of Texas.

“City Manager” shall mean the City Manager of City.

“Closing” shall mean the date Builder closes on the purchase of the Land from SEDC and title to the Land is conveyed to Builder pursuant to the Purchase and Sales Agreement.

“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 Improvements, (ii) all necessary permits for the construction of the Improvements have been issued by the applicable governmental authorities and (iii) grading of the Property or construction of the building elements of the Improvements (whether located above or below ground) has commenced.

“Completion of Construction” shall mean (i) substantial completion of the Improvements on the Property has occurred, and (ii) a certificate of occupancy or final inspection has been issued by City for occupancy or use of the Improvements for the Required Use by Builder.

“Effective Date” shall mean the date this Agreement is signed by all Parties.

“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, riot, civil commotion, insurrection, by the order of a court resulting from any litigation brought by a third party to prevent or delay Builder’s development, construction, or operation, City delay of permits or other approvals, government or de facto governmental action (unless caused by acts of omissions of the Party), pending referendum, fires, explosions or floods, strikes, slowdowns or work stoppages. Such extension shall be for a period equal to the actual length of such delay, together with any time reasonably required by Builder to re-mobilize for construction as a result of such delay.

“Improvements” shall mean construction on the Land of a concrete parking area and a concrete driveway, said driveway being not less than 25 feet in width and running the length of the Land from N. U.S. Highway No. 175 to its northernmost boundary, all designed and constructed in accordance with City standards and specifications and in conformance with all applicable laws and regulations, for the purpose of pedestrian and vehicular ingress and egress across, to, and from the Land and/or the abutting land in accordance with the access agreement set forth in section 1.3 herein.

“Improvement Value” shall mean the fair market value of all improvements constructed by Builder on the Land or portion thereof as determined by an appraiser selected by the Parties. In the event the Parties cannot agree upon an appraiser, each Party shall select an appraiser who, in turn, will select an appraiser who will determine the fair market value of such improvements, or portion constructed thereof.

“Land” shall mean the real property described as all of that certain 0.320 acre tract of land situated in the J.D. Merchant survey, Abstract No. 850, and being a portion of Lot 1, Block C, Farris Addition, an addition to the City of Seagoville, Dallas County, Texas, according to a plat thereof recorded in Volume 78074, Page 124, Plat Records, Dallas County, Texas, and being a portion of that certain tract of land as conveyed to the City of Seagoville by deed recorded in Volume 96047, Page 1049, said Official Public Records.

“Option Period” shall mean that period of time commencing on closing of the purchase of the Land by Builder and ending on the earlier of (a) Completion of Construction or (b) one year after the deadline for Completion of Construction of the Improvements].

“Option Price” shall mean the Purchase Price stated in the Purchase Agreement plus the Improvement Value less (i) all closing costs and expenses paid or incurred by SEDC pursuant to the Purchase Agreement and pursuant to the exercise of the Option and (ii) any amount constituting a grant provided by City to Builder to be credited to the Purchase Price under the Purchase Agreement.

“Property” shall collectively mean the Land, and any Improvements, or portion thereof, following construction thereof on the Land.

“Purchase Agreement” shall mean that certain Purchase and Sale Agreement effective _____, 2020, between SEDC and Builder setting forth their agreement regarding the sale of the Land by SEDC to Builder.

“Repurchase Price” shall mean the Purchase Price stated in the Purchase Agreement less (i) all closing costs and expenses paid or incurred by SEDC pursuant to the Purchase Agreement and pursuant to the exercise of the Option and (ii) any amount constituting a grant provided by City to Builder to be credited to the Purchase Price under the Purchase Agreement.

“Required Use” shall mean the development and use of the Land with the Improvements for use by Builder for vehicular parking area and by Builder and owner of abutting land and each of their successors and assigns as a mutual access driveway or route to allow for ingress and egress across, to, and from the Land and/or the abutting land and for the convenient and efficient flow of pedestrian and vehicular traffic for their customers and the public in general, with such route being open to the public and serving the adjacent business community and City’s residents, all in accordance with the access agreement of Builder set forth in section 1.3 of this Restriction Agreement.

“SEDC” shall mean the Seagoville Economic Development Corporation, a Texas non-profit corporation.

Article III Option to Repurchase

3.1 **Grant of Option.** In consideration of TEN AND NO/100 DOLLARS (\$10.00), in hand paid by City to Builder and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Builder, Builder hereby grants to City during the Option Period an option to repurchase the Land (the “Option”) for the Option Price.

3.2 **Time for Exercising Option.** Subject to Section 3.3, below, the Option may be exercised by City in its sole discretion by providing written notice to Builder upon the occurrence of the following:

(a) any time after 180 days after Closing, if Builder has failed to cause Commencement of Construction of the Improvements to occur on the Property on or before that date, provided Commencement of Construction has in fact still not occurred on the date of the exercise of the Option; or

(b) any time after the last day of the thirteenth (13th) month following Commencement of Construction of the Improvements, but before the end of the Option Period, if Commencement of Construction has occurred, but Builder has failed to cause Completion of Construction by said date, provided Completion of Construction has in fact still not occurred on the date of the exercise of the Option.

3.3 **Force Majeure.** In the event of Force Majeure, Builder shall have such additional time to cause Commencement of Construction or Completion of Construction, as the case may be, so long as Builder is diligently and faithfully pursuing the same. The termination of the Option Period shall be extended for the same number days that the performance of Builder with respect to Commencement of Construction or Completion of Construction is extended by Force Majeure.

3.4 **Sole Remedy.** City's sole and exclusive remedy for violation of the obligation of Builder for the Commencement of Construction of Construction and Completion of Construction shall be the exercise of the Option.

Article IV Right of First Refusal

4.1 **Grant.** Subject to the terms and conditions hereinabove and hereinafter set forth, Builder hereby agrees that City shall have, and hereby grants to City, during the period commencing upon the Effective Date and ending upon the Commencement of Construction ("the ROFR Period"), a right of first refusal (the "ROFR") to purchase the Land, or portion thereof, on the terms and conditions set forth herein. Notwithstanding the foregoing, the ROFR shall not apply to any sale or transfer of the Land to (i) any entity wholly owned by or under common control with Builder or (ii) by foreclosure or deed in lieu of foreclosure (collectively, an "Excluded Transfer"); provided, however, the ROFR shall survive any Excluded Transfer and shall be binding upon the party or parties acquiring title by way of such Excluded Transfer.

4.2 **Notice of Third-Party Offer.** If (i) Builder receives a bona fide offer for the purchase of any portion of Land that it intends to accept, or (ii) Builder receives any offer to purchase the Land or any portion thereof from any governmental exercise of the power of eminent domain with respect to the Land, Builder shall give notice thereof in writing to City (the "Third-Party Notice"). The Third-Party Notice shall include a copy of any offer to be made or any offer received by Builder, the proposed purchaser, whether the purchase price is to be paid in cash, securities or evidenced by promissory notes, and the other material terms and conditions of such offer.

4.3 **City's Exercise of ROFR.** For a period of thirty (30) days after receipt by City of the Third-Party Notice, City shall have the right to repurchase the Property or portion thereof which is the subject of the Third-Party Notice, upon the same terms and price as set forth in the Third-Party Notice or for the Repurchase Price, whichever is deemed by City to be more favorable to City (the "ROFR Price"). The ROFR may be exercised by City by providing written notice to

Builder not later than thirty (30) days after City's receipt of the Third-Party Notice. City's notice shall indicate acceptance of the terms set forth in the offer as recited in the Third-Party Notice, and whether or not the repurchase will be subject to the price set forth in the Third-Party Notice or the Repurchase Price.

4.4 **City Fails to Exercise ROFR.** In the event City does not elect to exercise the ROFR during the thirty (30) day period following its receipt of the Third-Party Notice:

(a) Builder may sell the Land, or portion thereof, at the price and on the terms and conditions described in the Third-Party Notice during the one hundred eighty (180) day period following the date of the Third-Party Notice; and

(b) City shall execute and deliver an acknowledgement, in recordable form, evidencing its waiver of its ROFR with respect to such sale. Builder agrees not to sell the Land, or portion thereof, during the ROFR Period at any price less than ninety-five percent (95%) of the price reflected in the Third-Party Notice, on any terms or conditions materially more favorable to the buyer than those set forth in the Third-Party Notice, or at any time after expiration of the one hundred eighty (180) day period described above, without first giving City the opportunity to exercise the ROFR at such different price, on such altered terms and conditions, or at such later time.

4.5 **No Release of Restrictions Required.** City's failure to exercise the ROFR shall not constitute a release of the Option, City's rights to repurchase the Land pursuant to the Option, or the obligations of any subsequent owner of the Land to comply with the obligations of this Restriction Agreement.

Article V

Terms of Sale Upon Exercise of Right

5.1 **Effect of Exercise of Right.** Upon any timely exercise of the Option or the ROFR (jointly and severally, the "Right") by City in accordance with the foregoing provisions, the conveyance of the Land or portion thereof to be conveyed to City shall be in accordance with the provisions in this Article V.

5.2. **Title, Survey, and Environmental Reports.**

(a) Not later than the fifteenth (15th) business day after the exercise of the Right, Builder shall, at Builder's expense, deliver to City:

(i) a current commitment for an Owner's Policy of Title Insurance from the Title Company for the portion of the Land to be conveyed to City, setting forth the state of title to the Land or portion thereof together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Land, together with all exceptions or conditions to such title;

(ii) legible copies of all documents referenced in the Title Commitment;

(iii) any environmental studies or reports that Builder may have in its possession with respect to the Land; and,

(iv) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years.

(b) Upon any exercise of the Right, City shall have the right, at its sole option, to cause a boundary or “as-built” survey of the Land to be made by a certified land surveyor selected by it. Such survey shall be made at the sole cost and expense of Builder

(c) City shall, not later than twenty (20) days after City’s receipt of the last of the Survey and Title Commitment, notify Builder and Title Company of any objections to the Survey or Title Commitment. If there are objections by City, Builder shall in good faith attempt to satisfy them prior to Closing. If Builder delivers written notice to City not later than the tenth (10th) calendar day after Builder’ receipt of City’s objections that Builder is unable to satisfy such objections, City may either waive such objections and accept title as Builder is able to convey or terminate the exercise of the Right by written notice to Builder and the Title Company.

5.3. **Closing.**

(a) The closing of the sale of the Land identified in the notice exercising the Right shall occur not later than sixty (60) calendar days following the date of exercise of the Right unless otherwise extended by written agreement of Builder and City.

(b) At the closing, Builder shall deliver to City:

(i) a special warranty deed, in form and substance substantially similar to the form used to convey the Land to Builder pursuant to the Purchase Agreement, conveying good and indefeasible title to the Land described in the notice exercising the Right and/or the survey obtained by City (whichever is the most accurate description) to City, free and clear of any and all encumbrances except the Permitted Exceptions, save and except such oil, gas, and other minerals as may have been reserved by prior grantors;

(ii) an owner’s policy of title insurance (or equivalent) in the amount of the Purchase Price, insuring such title to City; and

(iii) possession of the portion of the Land described in the notice of the exercise of the Option, free of parties in possession.

(c) At closing, City shall pay either the Option Price described in Article III or the ROFR Price described in Article IV, in either case less all Closing Costs and other costs and expenses to be paid by Builder pursuant to this Article.

5.4 **Taxes.** Ad valorem taxes, assessments, and any other charges against the Land and/or Improvements conveyed to City pursuant to this Article V shall be prorated as of the Closing Date for the current year, such that Builder will be responsible for all such items which accrue prior to the Closing Date, and City will be responsible for all such items which accrue on and after the Closing Date. Taxes and assessments for all prior years shall be paid by Builder.

5.5 **Closing Costs.**

(a) Builder will pay and be responsible for all closing costs relating to conveyance of the Land or portion thereof to City, including, but not limited to:

(i) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Land;

(ii) all fees and premiums for Basic Owner's Title Policy, and any endorsements to the Basic Owner's Title Policy;

(iii) the Title Company's escrow fees;

(iv) all recording fees;

(v) the cost of the Survey;

(vi) all costs and expenses incurred by or on behalf of Builder, including Builder's attorney's fees;

(vii) all costs related to obtaining any releases of liens on the portion of the Land conveyed relating to any loans secured by a deed of trust lien on said property; and

(viii) such other incidental costs and fees customarily paid by sellers of real property in Dallas County, Texas, for transactions of a similar nature to the transaction contemplated herein.

(b) City hereby agrees to pay and be responsible for City's attorneys' fees.

5.6. **Permitted Exceptions.** City acknowledges and agrees that the Land and Improvements, or portions thereof, conveyed pursuant to this Article V will be conveyed by Builder at closing subject only to such easements, conditions and restrictions as have been approved or deemed approved by City, including; (i) utility easements granted by subdivision plat or instrument subsequent to the purchase of the Land by Builder; and (ii) such other matters as City may waive.

5.7 **Conveyance As Is.** City acknowledges and agrees that the property and/or improvements conveyed pursuant to this Article V will be conveyed "AS IS" with all faults and defects, whether patent or latent, existing as of the Closing. Except with respect to the quality of the title being conveyed by Builder as set forth in the Special Warranty Deed, City acknowledges and agrees that Builder will be making no representations, warranties, guarantees, statements or information, express or implied, pertaining to the property or improvements conveyed, their condition, or any other matters whatsoever, made to or furnished to City by Builder or any employee or agent of Builder, except as specifically set forth in this Restriction Agreement.

Article VI Restrictions

6.1 **Use of Property; Buildings.** No portion of the Property shall be utilized for any use other than the Required Use. No building or infrastructure shall be constructed, reconstructed, erected, altered, or placed on any portion of the Property other than the Improvements or other structures that will be used in conformance with the Required Use.

6.2 **Term of Restrictions.** The restrictions set forth in Section 6.1, above, shall commence on the Effective Date and continue thereafter until the expiration of fifteen (15) years following the Completion of Construction of the Improvements. The access agreement set forth in Section 1.3 above shall not, however, terminate until a termination is filed in the Land Records as specified in and in accordance with the requirements of that Section 1.3.

6.3 **Plans and Specifications; Modifications.** The Improvements shall be constructed in accordance with plans and specifications approved by the City in writing prior to the Commencement of Construction. No modifications thereto shall be made during the term of these Restrictions without the written consent of the City.

Articles VII Miscellaneous

7.1 **Enforcement.** City shall have the right, but not the obligation, to enforce this Restriction Agreement and any covenants and restrictions contained herein, as the same may be amended as herein provided. Subject to the limitations set forth in Article VI, above, enforcement of the provisions set forth in Article VI contained herein may be exercised after failure of any person or persons violating or attempting to violate any covenants or restrictions to cure such violation or breach within two (2) thirty (30) day notice periods after receipt of written notice thereof, by proceeding at law or in equity, against any person or persons violating or attempting to violate any covenants or restrictions, to restrain violation or to recover damages, and failure to enforce any covenant, restriction or condition shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. This Restriction Agreement is not intended to restrict the rights of the City Council in the exercise of its legislative duties and powers insofar as the Property is concerned. For further remedy, Builder, for itself, its successors, and assigns agrees that City may withhold building permits, development approvals, certificates of occupancy and/or final inspection necessary for the lawful use of any portion of the Property not then in compliance with this Agreement. City's right to repurchase the Land pursuant to the exercise of the Right as set forth in Articles III and IV of this Restriction Agreement constitutes City's sole and exclusive remedy for any failure by Builder to cause Commencement of Construction or Completion of Construction of the Improvements on the Property. The rights of City under this Restriction Agreement may not be waived or released except pursuant to an amendment or termination approved in accordance with the provisions hereof, except by expiration of the Term.

7.2 **Amendment.** No amendment or any termination of this Restriction Agreement shall be effective unless and until approved by Builder and City; provided, however, City may, without the consent of Builder, terminate and release the restrictions set forth in Article VI. In the event

Builder, or a subsequent owner of the Property desires to change, amend or alter the covenants, conditions or restrictions as set forth herein, Builder, or the subsequent owner, as the case may be, shall file a written application for such change or amendment with City, which shall approve or deny such application in whole or in part within thirty (30) days after receipt of such application. Any change or amendment approved by City shall not be effective unless and until an instrument executed by the Mayor or City Manager is recorded in the Official Public Records in the office of the Dallas County Clerk in accordance with this Section.

7.3 **Notices.** All notices, requests, demands or other communications required or permitted hereunder shall be in writing and shall be deemed to have been fully and completely made when given by hand, by confirmed facsimile transmission by overnight delivery by Federal Express or other reliable courier or the mailing of such by registered or certified mail, addressed as follows:

If intended for City, to:

City of Seagoville, Texas
Attn: Patrick Stallings
City Manager
702 US-175 Frontage Road
Seagoville, Texas 75159

With a copy to:

Victoria W. Thomas
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201
Fax: (214) 965-0010

If intended for Builder:

TNM Properties, LLC d/b/a Golden Chick
Attn: Tamer Kadah
1800 Windermere Drive
Plano, Texas 75093

Any Party may at any time and from time to time by notice in writing to the other Party change the name or address of the person to who notice is to be given as hereinbefore provided.

7.4 **Successors and Assigns.** This Restriction Agreement shall bind, and inure to the benefit of, the Parties and their respective successors and assigns.

7.5 **Governing Law.** This Restriction Agreement is entered and is intended to be performed in the State of Texas, and the validity, enforceability, interpretation and construction hereof shall be determined and governed by the laws (other than conflict of law provisions) of the State of Texas. Venue for any action shall be in the state district court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

7.6 **Recording.** The Parties agree that City may record this Restriction Agreement in the Official Public Records of Dallas County.

7.7 **Covenants Run with the Property.** This Restriction Agreement and the restrictions, covenants, agreements, and conditions set forth herein are for the purpose of protecting the value and desirability of the Property as well as to carry out compliance with Tex. Loc. Govt. Code §272.001(a)(4), as amended, and, consequently, shall run with the Property and be binding on Builder and all Parties having all right, title, or interest in the Property, in whole or in part, and their heirs, successors and assigns. These covenants, conditions, agreements, and restrictions shall be for the benefit of City. This Restriction Agreement is binding upon Builder and each and every subsequent owner, tenant, subtenant, licensee, manager, and occupant of all or any portion of the Property, but only during the term of such party's ownership, tenancy, license, management or occupancy of the Property, for which such party shall remain liable and shall be binding upon and inure to the benefit of City and its successors and assigns. It is expressly understood and agreed that acceptance of title to all or a portion of the Land shall automatically, and without further acknowledgement or confirmation from the owner, constitute such owner's assumption of the obligations of Builder hereunder.

7.8 **Severability.** Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way affect any other provisions, and all other provisions shall remain in full force and effect.

7.9 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and no statement, promise, representation or modification hereof by any person, if any, and whether oral or written, shall be binding upon any Party.

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

(signatures on following pages)

SIGNED AND AGREED on this _____ day of _____, 2020.

City of Seagoville, Texas,

By: _____
Patrick Stallings, City Manager

City's Acknowledgment

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Acknowledged before me, the undersigned authority, this _____ day of _____, 2020,
by Patrick Stallings, City Manager for the City of Seagoville, Texas, a Texas home rule
municipality, on behalf of such municipality.

Notary Public, State of Texas

My Commission expires: _____

SIGNED AND AGREED on this ____ day of _____, 2020.

TNM PROPERTIES, LLC, d/b/a GOLDEN CHICK

DO NOT SIGN – TO BE SIGNED AT CLOSING

By: _____
Tamer Kadah, Manager

and

DO NOT SIGN – TO BE SIGNED AT CLOSING

By: _____
Naim Tatari, Manager

Builder’s Acknowledgment

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2020, by Tamer Kadah and Naim Tatari, managers of TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick, and each of them acknowledged that they executed the foregoing Restriction Agreement on behalf of said TNM Properties, LLC as its act and deed after having first been duly authorized so to do.

Notary Public, State of Texas

My Commission expires: _____

EXHIBIT “B”
Form of Economic Development Incentive Agreement

STATE OF TEXAS §
 § **ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**
COUNTY OF DALLAS §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the Seagoville Economic Development Corporation (“SEDC”) and TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick (“Company”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, Company desires to purchase Land located at 550 N. Highway 175, Seagoville, Texas (the “Primary Land”) and an 0.320 acre parcel of land abutting the Land (the “Secondary Land”) (collectively the Primary Land and Secondary Land are referred to herein as the “Land”) and thereon to develop and construct a 2,200 square foot building within which it will operate a Golden Chick fast casual restaurant franchise, together with the required concrete parking lot and driveways and landscaping (collectively, the “Improvements”); and

WHEREAS, Tex. Loc. Gov’t Code §272.001 allows City to convey land it wants developed by contracting with an independent foundation without auction or soliciting competitive bids; and

WHEREAS, SEDC is a Texas non-profit corporation and qualifies as an independent foundation under Tex. Loc. Gov’t Code §272.001; and

WHEREAS, SEDC desires to purchase the Secondary Land from City for resale to Company pursuant to a purchase and sale agreement (the “City Purchase and Sale Agreement”) subject to the Restriction Agreement (hereinafter defined); and

WHEREAS, Company intends or is under contract to purchase the Secondary Land from SEDC pursuant to a purchase and sale agreement (hereinafter defined as the “SEDC Purchase and Sale Agreement”); and

WHEREAS, Company has advised SEDC that a contributing factor that would induce Company to construct the Improvements would be an agreement by SEDC to provide an economic development grant to Company to defray a portion of the costs of the Improvements; and

WHEREAS, SEDC has adopted programs for promoting economic development; and

WHEREAS, the Development Corporation Act, Chapters 501-505 of the Texas Local Government Code, as amended (the “Act”) authorizes SEDC to provide economic development grants for land, buildings, equipment, facilities, expenditures, targeted infrastructure, and

improvements found by the SEDC's board of directors to promote new or expanded business development; and

WHEREAS, SEDC has determined that the Grant (hereinafter defined) to be made hereunder is required or suitable to promote or develop new or expanded business enterprises and constitutes a "project", as that term is defined in the Act; and

WHEREAS, SEDC has determined that making an economic development grant to Company in accordance with this Agreement will further the objectives of SEDC, will benefit City and City's inhabitants and will promote local economic development and stimulate business and commercial activity within City's corporate limits;

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:

"Bankruptcy or Insolvency" shall mean the dissolution or termination of Company's existence, insolvency, employment 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.

"Capital Investment" shall mean the total capitalized cost to Company for the acquisition of the Land, development and construction of the Improvements.

"City" shall mean the City of Seagoville, Texas, acting by and through its city manager, or designee.

"City Purchase and Sale Agreement" shall mean that certain Purchase and Sale Agreement by and between City and SEDC dated of approximate date herewith for the purchase of the Secondary Land by SEDC from City for the resale of the Secondary Land to Company, subject to the Restriction Agreement.

"Closing" shall mean the date Company closes on the purchase of the Secondary Land from SEDC and fee simple title to the Secondary Land is conveyed to Company pursuant to the SEDC Purchase and Sales Agreement.

"Commencement Date" shall mean the later of: (i) the date a certificate of occupancy is issued by City for the Improvements; and (ii) the date the Improvements are

open for business as a Golden Chick franchise restaurant and serving City's residents and visitors.

"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 construction of the Improvements; (ii) all necessary permits for the construction of the Improvements pursuant to the respective plans therefore have been issued by all the applicable governmental authorities; and (iii) grading of the Land or the construction of the vertical elements of the Improvements has commenced.

"Company" shall mean TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick.

"Completion of Construction" shall mean that: (i) the construction of the Improvements on the Land has been substantially completed; and (ii) a certificate of occupancy for the Improvements has been issued by the City and in the case of the Infrastructure portion of the Improvements, the City has conducted a final inspection and has accepted or approved said Infrastructure..

"Employment Positions" shall mean non-temporary full-time employment positions of the Company which are eligible for employee benefits and are created, maintained and filled at the Property.

"Effective Date" shall mean the last date of execution hereof.

"Expiration Date" shall mean the fifth (5th) anniversary date of the Commencement Date.

"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, riot, terrorism, civil commotion, insurrection, government or de facto governmental action or inaction (unless caused by acts of omissions of the Party), fires, explosions or floods, strikes, slowdown or work stoppages, but may not impact any payments to be made hereunder.

"Grant" shall mean an economic development grant in the amount equal to the actual costs incurred and paid by Company for the design and construction of the parking lot and driveway portion of the Improvements ("Infrastructure"), not to exceed Two Hundred Thousand Dollars (\$200,000.00), to offset a portion of the costs paid and incurred by Company for Infrastructure necessary for the Improvements, to be paid as set forth herein.

"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, authority on

Company with respect to the Improvements or any property or any business owned by Company within City's corporate limits.

"Improvements" shall mean a 2,200 square foot building within which Company will operate a Golden Chick fast casual restaurant franchise, together with the required concrete parking lot and driveways and landscaping.

"Infrastructure" shall mean that part of the Improvements consisting of the concrete parking lot and driveways on the Land.

"Land" shall mean, collectively, the real property located at 550 N. Highway 175, Seagoville, Texas (the "Primary Land") and an 0.320 acre parcel of land abutting the Land described as all of that certain 0.320 acre tract of land situated in the J.D. Merchant survey, Abstract No. 850, and being a portion of Lot 1, Block C, Farris Addition, an addition to the City of Seagoville, Dallas County, Texas, according to a plat thereof recorded in Volume 78074, Page 124, Plat Records, Dallas County, Texas, and being a portion of that certain tract of land as conveyed to the City of Seagoville by deed recorded in Volume 96047, Page 1049, said Official Public Records (the "Secondary Land").

"Property" shall mean the Land and the Improvements following construction thereof.

"Related Agreement" shall mean any agreement (other than this Agreement) by and between Company and/or City and/or SEDC.

"Required Use" shall mean the development, use, and continued operation of the Improvements as a Golden Chick franchise restaurant in a building of not less than 2,200 square feet open to the public and serving the adjacent business community and City's residents and including the provision of a concrete access driveway as specified in the Restriction Agreement to allow for ingress and egress across, to, and from the Property and/or the abutting land and for the convenient and efficient flow of pedestrian and vehicular traffic for the public.

"Restriction Agreement" shall mean that certain restriction agreement between City and Company restricting the development and use of the Secondary Land for the construction and operation of a portion of the Infrastructure, as more fully set forth in that Restriction Agreement. The Restriction Agreement shall require Company to cause Commencement of Construction and Completion of Construction of the concrete access driveway and parking area on the Secondary Land, the same being a portion of the Infrastructure in accordance with this Agreement, grant City a right of first refusal in the event Company offers to sell the Secondary Land to a third party prior to Commencement of Construction of the Improvements, and grant City an option to repurchase the Secondary Land in the event Company fails to comply with the deadline for Commencement of Construction and Completion of Construction of the Improvements set forth in the Restriction Agreement.

“SEDC” shall mean the Seagoville Economic Development Corporation.

“SEDC Purchase and Sale Agreement” shall mean that certain Purchase and Sale Agreement by and between SEDC and Company dated of even date herewith for the purchase of the Secondary Land by Company from SEDC, subject to the Restriction Agreement.

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein.

Article III Improvements

3.1 Secondary Land Acquisition. SEDC intends to sell and convey, or cause to sell and convey, the Secondary Land to Company subject to the Restriction Agreement.

3.2 Construction Plans. Company shall cause all necessary permits and approvals required by City and any applicable governmental authorities to be issued for the construction of the Improvements. Prior to Commencement of Construction of the Improvements, Company shall submit the Construction Plans for approval by City. Company shall, subject to events of Force Majeure, cause the Construction Plans to be submitted to City for approval not later than thirty (30) days following the Closing.

3.3 Construction of Improvements. Company shall, subject to events of Force Majeure, cause Commencement of Construction of the Improvements to occur on or before one hundred twenty (120) days after the Effective Date; and, subject to events of Force Majeure, cause Completion of Construction of Improvements to occur not later than twelve (12) months after the Commencement of Construction.

3.4 Required Use. Beginning on the Commencement Date, and continuing thereafter until the Expiration Date, or earlier termination, the Improvements shall not be used for any purpose other than the Required Use and the Company shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than thirty (30) days, except in connection with and to the extent of an event of Casualty or Force Majeure.

Article IV Grant

4.1 Subject to the obligation of Company to repay the Grant pursuant to Section 6.2 herein, and the continued satisfaction of all the terms and conditions of this Agreement by Company, SEDC agrees to provide the Grant to the Company to be paid within thirty (30) days after the later of the closing on the Secondary Land at which Company receives fee simple title to the Secondary Land and execution of this Incentive Agreement and the Restriction Agreement.

4.2 Under no circumstances shall the obligations of SEDC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. SEDC 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 SEDC under this Agreement shall be pledged or otherwise encumbered by Company in favor of any commercial lender and/or similar financial institution.

4.3 The Grant made hereunder shall be paid solely from lawfully available funds that have been appropriated by SEDC. SEDC shall have no obligation or liability to provide any Grant except as allowed by law. SEDC shall not be required to provide any of the Grant if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

Article V

Conditions to Economic Development Grant

The obligation of SEDC to pay the Grant to Company shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the following:

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

5.2 Commencement of Construction. Commencement of Construction, as that term is defined herein, shall occur not later than one hundred twenty (120) days after the Effective Date of this Agreement.

5.3 Completion of Construction. Subject to Force Majeure, Completion of Construction, as that term is defined herein, shall occur not later than twelve (12) months Commencement of Construction.

5.4 Capital Investment. Company's Capital Investment for the Infrastructure portion of the Improvements as of the Completion of Construction shall be not less than Two Hundred Thousand (\$200,000.00) Dollars. Company shall, not later than fifteen (15) calendar days after the date of Completion of Construction (as defined herein) of the Improvements, deliver to SEDC copies of all records, contracts, receipts, invoices, bills, proofs of payment, and such other information as SEDC may reasonably request to document compliance with the required Capital Investment. In the event the final total cost of the construction of the Infrastructure portion of the Improvements, as reasonably verified by SEDC, is less than Two Hundred Thousand (\$200,000.00) Dollars, the Company shall, within thirty (30) days of receipt by Company of written demand by SEDC, pay the SEDC the difference in value between \$200,000.00 and the final total cost of the construction of the Infrastructure portion of the Improvements as reasonably verified by SEDC.

5.5 Required Use. During the term of this Agreement following Completion of Construction and continuing thereafter until expiration of this Agreement or earlier termination Company shall continuously own and occupy the Property which shall not be used during the term of this Agreement for any purpose other than the Required Use. Further, during the term of this Agreement, such occupation and use shall not cease for more than thirty (30) days except in connection with, and to the extent of, an event of Force Majeure.

5.6 Employment Positions. Within thirty (30) days of Completion of Construction, Company shall create, fill and maintain a total of at least eight (8) Employment Positions for the term of this Agreement.

5.7 Continuous Ownership. During the term of this Agreement following the Effective Date and continuing thereafter until the Expiration Date, the Property shall be continuously owned and occupied by the Company.

5.8 Chamber of Commerce Membership. Company shall become a member of the Seagoville Chamber of Commerce, if not already a member, within thirty (30) days after the Effective Date and shall maintain such membership during the term of this Agreement, unless the Seagoville Chamber of Commerce shall cease to exist.

Article VI Termination

6.1 Termination. This Agreement shall terminate upon any one or more of the following:

- (a) by written agreement of the Parties;
- (b) on the Expiration Date;
- (c) upon written notice by either Party in the event the other Party 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 in accordance with this Agreement;
- (d) upon written notice by the SEDC, if the Company suffers an event of Bankruptcy or Insolvency;
- (e) upon written notice by SEDC, if any Impositions owed to City or the State of Texas by Company shall become delinquent after thirty (30) days written notice is delivered pursuant to this Agreement (provided, however, Company retains the right to timely and properly protest and contest any such Impositions); or

- (f) upon written notice by either Party, 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.

6.2 Repayment Due Upon Termination Due to Breach of Section 6.1(c). In the event the Agreement is terminated by SEDC pursuant to Section 6.1(c):

- (a) due to a breach of the obligation set forth in section 5.2 hereof, Company shall immediately refund to the SEDC an amount equal to the value of the Grant received by Company;
- (b) due to a breach of the obligation set forth in section 5.3 hereof, Company shall immediately refund to the SEDC an amount equal to eighty percent (80%) of the value of the Grant received by Company;
- (c) due to a breach of an obligation set forth in section 5.5, 5.6, and/or 5.7 hereof, Company shall immediately refund to the SEDC an amount equal to sixty percent (60%) of the Grant received by Company;
- (d) due to a breach of an obligation set forth in section 5.8 hereof, Company shall immediately refund to the SEDC an amount equal to forty percent (40%) of the Grant received by Company;
- (e) due to a breach of an obligation set forth in section 5.1 and not coming within any the obligations set forth in sections 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, and/or 5.8, and not constituting a breach covered by section 6.1(d), (e), and/or (f), Company shall immediately refund to the SEDC an amount equal to twenty percent (20%) of the Grant received by Company.

6.3 Repayment Due Upon Termination Due to Breach of Section 6.1(d), (e), and/or (f). In the event the Agreement is terminated by SEDC pursuant to Section 6.1(d), (e), and (f), Company shall immediately pay to SEDC an amount equal to the Grant previously paid by SEDC to Company as of the date of termination, plus interest at the rate 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 reasonably selected by SEDC) as its prime or base commercial lending rate, which shall accrue from the date of the Grant Payment until paid.

6.4 Right of Offset. SEDC may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City or SEDC 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 SEDC or City has been reduced to judgment by a court.

**Article VII
Miscellaneous**

7.1 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 without the prior written consent of SEDC.

7.2 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 SEDC assumes no responsibilities or liabilities to third parties in connection with these actions. Company agrees to indemnify and hold harmless SEDC 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.

7.3 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.

7.4 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 SEDC, to

Attn: Jose Hernandez, Board Chair
Seagoville Economic Development
Corporation
702 N. Highway 175
Seagoville, Texas 75115

With a copy to:

Victoria W. Thomas
Nichols, Jackson, Dillard, Hager &
Smith, LLP
1800 Ross Tower
100 N. Akard
Dallas, Texas 75201
214.965.0010 – facsimile

If intended for Company, to:

TNM Properties, LLC d/b/a Golden Chick
Attn: Tamer Kadah
1800 Windermere Drive
Plano, Texas 75093

7.5 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.

7.6 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 Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

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

7.8 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.

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

7.10 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.

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

7.12 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.

7.13 Employment of Undocumented Workers. 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 Grant and any other funds received by Company from SEDC as of the date of such violation within one hundred twenty (120) days after the date Company is notified by SEDC 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.

7.14 Conditions Precedent. The obligations of the Parties are expressly subject to and conditioned upon the following:

- (a) City and SEDC having entered into the City Sale and Purchase Agreement;
- (b) Company and SEDC having entered into the SEDC Sale and Purchase Agreement;

- (c) Company and City having entered into the Restriction Agreement; and
- (d) Company having closed on the purchase of the Primary Land and the Secondary Land.

(Signature Page to Follow)

EXECUTED on this _____ day of _____, 2020.

SEAGOVILLE ECONOMIC DEVELOPMENT CORPORATION

By: _____
Jose Hernandez, Board Chair

EXECUTED on this _____ day of _____, 2020.

TNM PROPERTIES, LLC, d/b/a GOLDEN CHICK

DO NOT SIGN – TO BE SIGNED AT CLOSING

By: _____
Tamer Kadah, Manager

and

DO NOT SIGN – TO BE SIGNED AT CLOSING

By: _____
Naim Tatari, Manager

Regular Session Agenda Item: 2

Meeting Date: February 3, 2020

ITEM DESCRIPTION:

Discuss and consider a Resolution of the City Council of the City of Seagoville, Texas, in accordance with Resolution 80-R-2019 adopted December 16, 2019, authorizing the City Manager to execute the Purchase and Sale Agreement between the City and the Seagoville Economic Development Corporation (SEDC), attached hereto as Exhibit “A”, including approval of the Purchase Grant provided for therein in the amount of \$63,000.00 by the City to the SEDC on behalf of TNM Properties, LLC, d/b/a Golden Chick (“Developer”) and the related Restriction Agreement attached hereto as Exhibit “B” and further approving the terms and conditions of an Economic Development Project and associated Purchase and Sale Agreement and Incentive Agreement by and between SEDC and Developer, attached hereto, respectively, as Exhibits “C” and ‘D’; and providing an effective date.

BACKGROUND OF ISSUE:

Resolution 80-R-2019 adopted by the City Council on or about December 16, 2019, authorized the City Manager to execute all documents necessary to transfer title to that certain 0.320 acre tract of real property described therein (the “Property”) from the City to the SEDC in order to develop the property for economic development purposes. The City has determined that making a Purchase Grant to the SEDC on behalf of the Developer to be applied to the Purchase Price of the Property, will further objectives of the City, benefit the City and the City’s inhabitants, and promote local economic business development and stimulate business and commercial activity.

FINANCIAL IMPACT:

Economic Development Incentive Grant in the amount of \$200,000.00

EXHIBITS

Resolution

Exhibit A – Purchase and Sale Agreement between City and SEDC

Exhibit B – Restriction Agreement

Exhibit C – Purchase and Sale Agreement between SEDC and Developer, with the accompanying Exhibits thereto

Exhibit D – Incentive Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, IN ACCORDANCE WITH RESOLUTION 80-R-2019 ADOPTED DECEMBER 16, 2019, AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE AND SALE AGREEMENT BETWEEN THE CITY AND THE SEAGOVILLE ECONOMIC DEVELOPMENT CORPORATION (SEDC), ATTACHED HERETO AS EXHIBIT “A”, INCLUDING APPROVAL OF THE PURCHASE GRANT PROVIDED FOR THEREIN IN THE AMOUNT OF \$63,000.00 BY THE CITY TO THE SEDC ON BEHALF OF TNM PROPERTIES, LLC, D/B/A GOLDEN CHICK (“DEVELOPER”) AND THE RELATED RESTRICTION AGREEMENT ATTACHED HERETO AS EXHIBIT “B” AND FURTHER APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT PROJECT AND ASSOCIATED PURCHASE AND SALE AGREEMENT AND INCENTIVE AGREEMENT BY AND BETWEEN SEDC AND DEVELOPER, ATTACHED HERETO, RESPECTIVELY, AS EXHIBITS “C” AND “D”; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has previously, by Resolution 80-R-2019 adopted December 16, 2019, authorized the City Manager to execute all documents necessary to transfer title to that certain 0.320 acre tract of real property described therein (the “Property”) from the City to the Seagoville Economic Development Corporation (“SEDC”) in order to develop the property for economic development purposes; and

WHEREAS, the City of Seagoville (“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, the City has determined that making a Purchase Grant to the Seagoville Economic Development Corporation (“SEDC”) on behalf of TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick (“Developer”) to be applied to the Purchase Price of the Property, as set forth in the Purchase and Sale Agreement and the Restriction Agreement attached hereto respectively as Exhibits “A” and “B” will further objectives of the City, benefit the City and the City’s inhabitants, and promote local economic business development and stimulate business and commercial activity; and

WHEREAS the SEDC is authorized by the Development Corporation Act, Chapters 501-505 of the Texas Local Government Code (“Act”), to provide funding for building improvements and targeted infrastructure for new and expanding business enterprises; and

WHEREAS, the SEDC has approved the Purchase and Sale Agreement and Economic Development Incentive Agreement (“Agreement”) with Developer, attached hereto respectively as Exhibits “C”, “D”, finding that they will promote new and expanded business within the City of Seagoville; and

WHEREAS, the City Council has determined that the Agreement and the Economic Development Project reflected in the Agreement will promote new and expanded business enterprises within the City of Seagoville; and

WHEREAS, the City Council has determined that the expenditure of funds pursuant to the Agreement is authorized by the Act and is an authorized project under the Act, and that the Agreement should be approved;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEGOVILLE, TEXAS:

Section 1. That the findings and recitations set forth above are hereby adopted;

Section 2. That the City Council hereby authorizes the City Manager to execute the Purchase and Sale Agreement between the City and the SEDC in substantially the form of that attached hereto as Exhibit "A", with express approval of the provision therein of the Purchase Grant in the amount of \$63,000.00 to the SEDC on behalf of the Developer and further authorizes the City Manager to execute a Restriction Agreement with regard to the Property in substantially the form of that attached hereto as Exhibit "B."

Section 3. That the City Council hereby approves and ratifies the project set forth in the Purchase and Sale Agreement and Economic Development Incentive Agreement between SEDC and Developer, attached hereto respectively as Exhibits "C" and "D", including an economic development incentive grant by SEDC to Developer in an amount not to exceed \$200,000.00 as set forth therein.

Section 4. That all resolutions of the City Council heretofore adopted which are in conflict with the provisions of this resolution be, and the same are hereby, repealed, and all resolutions of the City Council not in conflict with the provisions hereof shall remain in full force and effect.

Section 5. That if any article, paragraph, subdivision, clause, or provision of this Resolution be adjudged invalid or held unconstitutional for any reason, such judgment or holding

shall not affect the validity of this Resolution as a whole or any part or provision thereof other than the part so declared to be invalid or unconstitutional.

Section 6. That this Resolution shall take effect immediately from and after its passage, and it is, accordingly, so resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Seagoville, Texas, this the 3rd day of February, 2020.

CITY OF SEAGOVILLE, TEXAS

Dennis Childress, Mayor

ATTEST:

Kandi Jackson, City Secretary

APPROVED AS TO FORM:

Victoria W. Thomas, City Attorney
TM113438 012820

Exhibit "A"
Purchase and Sale Agreement Between City and SEDC

PURCHASE AND SALE AGREEMENT

This **Purchase and Sales Agreement** (“Agreement”) to buy and sell real property is entered between City and Corporation as identified below and is effective on the date (“Effective Date”) of the last of the signatures by City and Corporation as parties to this Agreement and the acknowledgement by Title Company of receipt of this Agreement.

City: City of Seagoville, Texas,
a home rule municipality
Attn: Patrick Stallings, City Manager
702 US-175 Frontage Road
Seagoville, Texas 75159

Phone: (972) 287-2050
E-mail: PStallings@seagoville.us

City’s Attorney: Victoria W. Thomas
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

Phone: (214) 965-9900
Fax: (214) 965-0010
E-mail: vthomas@njdhs.com

Corporation: Seagoville Economic Development Corporation,
a Texas non-profit corporation
Attn: Jose Hernandez, Board Chairman
702 US-175 Frontage Road
Seagoville, Texas 75159

Phone: (972) 287-9944
E-mail: jhernandez@seagoville.us

**Corporation’s
Attorney:** Victoria W. Thomas
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

Phone: (214) 965-9900
Fax: (214) 965-0010
E-mail: vthomas@njdhs.com

Developer: TNM Properties, LLC d/b/a Golden Chick
a Texas professional limited liability company
Attn: Tamer Kadah
1800 Windermere Drive
Plano, Texas 75093

Phone: (469) 644-7027
E-mail: tamerk84@yahoo.com

Title Company: Town Square Title Company.
Attn: Jessica Barton, Escrow Officer
310 N. 9th Street, Suite A
Midlothian, Texas 76065

Phone: (972) 935-0800
Fax: (972) 938-1045
E-Mail: jbarton@townsquaretitle.com

Property: All of that certain 0.320 acre tract of land situated in the J.D. Merchant survey, Abstract No. 850, and being a portion of Lot 1, Block C, Farris Addition, an addition to the City of Seagoville, Dallas County, Texas, according to a plat thereof recorded in Volume 78074, Page 124, Plat Records, Dallas County, Texas, and being a portion of that certain tract of land as conveyed to the City of Seagoville by deed recorded in Volume 96047, Page 1049, said Official Public Records.

Developer Sales

Contract: That certain *Purchase and Sale Agreement* by and between Corporation and Developer relating to the sale by Corporation of the Property to Developer and incorporated herein by reference.

**Restriction
Agreement:**

That certain *Restriction Agreement* by and between City and Developer to be signed at Closing of the Developer Sales Contract substantially in the form attached as Exhibit "A" to the Developer Sales Contract.

Inspection Period: The period commencing on the Effective Date and ending on the termination of the Inspection Period as defined in the Developer Sales Contract.

Closing Date: Concurrent with Corporation's closing on the sale of the Property pursuant to the Developer Sales Contract.

Purchase Price: An amount equal to the appraised market value of the Property consisting of \$63,000.00 less the Purchase Grant.

Purchase Grant: An economic development incentive grant paid outside of Closing of the Developer Sales Contract by City to Corporation on behalf of Developer and to be credited to the Purchase Price at Closing, being an amount equal to (i) the fair market value of the Property as determined by an appraisal obtained by City in the amount of \$63,000.00.

**Economic
Development
Agreement:**

That certain Economic Development Agreement by and between Developer and Corporation to be signed at Closing of the Developer Sales Contract substantially in the form attached as Exhibit "B" to the Developer Sales Contract.

WHEREAS, City is authorized by Section 380.001 TEX. LOC. GOV'T CODE to provide economic development incentives to support the expansion of local economic development; and

WHEREAS, Corporation desires to purchase the Property from City for resale to Developer pursuant to the Developer Sales Contract for development in accordance with the Restriction Agreement; and

WHEREAS, Tex. Loc. Gov't Code §272.001 allows City to convey land it wants developed by contracting with an independent foundation without auction or soliciting competitive bids; and

WHEREAS, Corporation is a Texas non-profit corporation and qualifies as an independent foundation under Tex. Loc. Gov't Code §272.001; and

WHEREAS, City has obtained an appraisal of the Property and has determined that the fair market value of the Property is greater than the amount of funds to be paid by Developer to Corporation for the Property; and

WHEREAS, City desires to make the Purchase Grant pursuant to Section 380.001 of the TEX. LOC. GOV'T CODE to provide an economic development incentive to Developer to purchase the Property and develop the Property in accordance with the Restriction Agreement;

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Sale and Purchase.** City agrees to sell and convey the Property to Corporation for the Purchase Price.

2. **Title, Survey, and Inspection Reports.** City and Corporation understand and acknowledge that Corporation will contract or has contracted with Developer pursuant to the Developer Sales Contract to sell and convey the Property to Developer. In order to save City, Corporation, and Developer the cost of multiple surveys and title policies and to expedite both transactions, City and Corporation agree:

(a) City, as owner of the Property, agrees to reasonably cooperate with Corporation's obligations as Seller set forth in Section 2 of the Developer Sales Contract with respect to curing title objections and, pursuant thereto, Corporation shall immediately forward to City any and all notices received by Corporation pursuant to Section 2(c) of the Developer Sales Contract;

(b) The transaction described in this Agreement and the transaction described in the Developer Sales Contract shall be treated by the Title Company as a pass-through transaction such that Title Company shall issue only one owner's title policy to Developer as the ultimate purchaser and owner of the Property pursuant to Section 5 of the Developer Sales Contract; and

(c) City and Corporation will accept, review, and rely upon the survey, environmental studies, and other inspection reports of the Property obtained by Developer pursuant to the Developer Sales Contract as if they were obtained by Corporation pursuant to this Agreement.

3. **Inspection Period.** During the Inspection Period, Corporation and/or Developer and its agents or employees shall have the right to enter upon the Property and conduct such inspections, tests and studies as they may deem reasonable and necessary in accordance with and subject to Section 3(a) of the Developer Sales Contract, including, but not limited to, Developer's agreement to indemnify, defend, and hold City harmless as set forth in said Section 3(b). If for any reason Developer determines not to purchase the Property from Corporation and terminates the Developer Sales Contract in accordance with Section 3(a) of the Developer Sales Contract, Corporation shall notify City and Title Company of such termination, in which case this Agreement shall terminate. In such event, neither party shall have any further claim against the other party under this Agreement. If Corporation does not timely terminate this Agreement under this Section 3, it shall have no further right to do so under this Section 3; and Corporation shall have waived its right to terminate this Agreement within the Inspection Period.

4. **Closing.**

(a) Except as extended as provided herein, the closing of the sale of the Property (“the Closing”) shall occur on the Closing Date at the Title Company.

(b) At the Closing, City shall deliver to the Title Company:

(i) A special warranty deed, in form and substance reasonably acceptable to City, Corporation, and Developer conveying good and indefeasible title to the Property to Corporation, free and clear of any and all encumbrances subject only to the Permitted Exceptions;

(ii) Such documents as may be reasonably required by Title Company in order for Title Company to issue a Title Policy in favor of Developer as the insured owner pursuant to Section 5 of the Developer Sales Contract;

(iii) Such documents as identified in Section 8 of the Developer Sales Contract to which City is a party and which must be signed as a condition of closing;

(iv) Evidence of City’s authority to close this transaction as may be required by the Title Company; and

(v) Settlement statement, and such other documents as Title Company may reasonably require.

(b) At the closing, Corporation shall deliver to City through Title Company:

(i) The Purchase Price in cash or immediately available funds, inclusive of the Earnest Money previously paid by Developer and placed in Escrow pursuant to the Developer Sales Contract but less Corporation’s Closing Costs deducted from the Purchase Price in accordance with the Developer Sales Contract; and

(ii) Such other documents that the Title Company may reasonably require of Corporation.

With respect to the issuance of the title policy, City agrees to execute such documents as required by the Title Company to allow the cost of the Owner’s Title Policy and any related endorsements that are required to be issued pursuant to the Developer Sales Contract regarding the Property are passed through to the sale of the Property by Corporation to Developer, it being the intent of City and Corporation that only one title policy be issued in favor of Developer following the concurrent closing of this transaction and the transaction between Corporation and Developer.

5. **Taxes.** Corporation understands and acknowledges that the Property is presently exempt from the assessment of ad valorem taxes, which status may change upon conveyance of the Property to Corporation or Developer. City shall not be responsible for payment of property

taxes assessed against the Property for periods after the date of Closing if any become due and payable. Taxes for the current year will be prorated through the Closing Date; provided however, City shall be responsible only for payment of property taxes assessed against the Property for the current year attributable to periods prior to Closing in which the Property was not owned by City.

6. **Closing Costs.** City hereby agrees to pay and be responsible for all closing costs related to the sale of the Property to Corporation pursuant to this Agreement and Corporation's closing costs as Seller pursuant to Section 7 of the Developer Sales Contract.

7. **Permitted Exceptions.** Those matters constituting Permitted Exceptions pursuant to the Developer Sales Contract shall constitute Permitted Exceptions pursuant to this Agreement. In addition, the Restriction Agreement shall be deemed to be a Permitted Exception.

8. **Property Sold As Is.**

(a) Corporation hereby acknowledges and agrees that the sale of the Property hereunder is and will be made on an "as is, where is and with all faults" basis. The occurrence of Closing shall constitute an acknowledgment by Corporation that the Property was accepted without representation or warranty, express or implied (except as otherwise specifically set forth herein and except for the special warranties of title set forth in the special warranty deed).

(b) Except as otherwise specifically set forth in this Agreement and except for the special warranties of title set forth in the special warranty deed, City hereby specifically negates and disclaims any representations, warranties or guaranties of any kind or character, whether express or implied, oral or written, past, present, future or otherwise, of, as to, concerning or with respect to the Property, including without limitation (i) the nature and condition of the Property and the suitability thereof for any and all activities and uses which Corporation or Developer may elect to conduct thereon, (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or any other matter relating in any way to the Property, (iii) the compliance of the Property or its operation with any laws, ordinances or regulations of any government or other authority or body, (iv) the existence of any toxic or hazardous substance or waste in, on, under the surface of or about the Property, (v) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water and faulting, (vi) whether or not and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, flood prone area, floodplain, floodway or special flood hazard, (vii) drainage, (viii) zoning or land use restrictions rules and regulations to which the Property or any portion thereof may be subject, (ix) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas and electric and including the utility availability capacities allocated to the Property by the relevant governmental or regulatory authority, (x) usages of adjoining property, (xi) access to the Property or any portion thereof, (xii) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, durability, structural integrity, operation, leasing, title to, or physical or financial condition of the Property or

any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (xiii) the potential for further development of the Property, or (xiv) the merchantability of the Property or fitness of the Property for any particular purpose (Corporation affirming that Corporation has not relied on City's skill or judgment to select or furnish the Property for any particular purpose, and that City makes no warranty that the Property is fit for any particular purpose).

(c) Corporation agrees that prior to the expiration of the Inspection Period it will have the opportunity to examine and investigate the Property and that, in purchasing the Property, Corporation will rely solely upon its independent examination, study, inspection and knowledge of the Property, and Corporation is relying solely upon its own examination, study, inspection, and, except for representations and warranties specifically set forth herein and, except for the special warranties of title set forth in the special warranty deed, knowledge of the Property and Corporation's determination of the value of the Property and uses to which the Property may be put, and not on any information provided or to be provided by City.

(d) The provisions of this Section 8 shall survive the termination of this Agreement and the Closing.

9. **Compliance with Tex. Loc. Govt. Code §272.001.** Corporation understands and acknowledges that City is selling the Property to Corporation in Corporation's capacity as an independent foundation pursuant to Tex. Loc. Gov't Code §272.001 without conducting an auction or soliciting competitive bids, but subject to the requirement that the Property be developed in accordance with the Restriction Agreement. Corporation agrees that the resale of the Property to Developer shall be subject to the Restriction Agreement, which Developer must sign at Closing and which shall be recorded along with the Special Warranty Deed.

10. **Conditions of Closing.** Closing on this Agreement is expressly conditioned on and subject to the following:

(a) The closing of the sale of the Property by Corporation to Developer pursuant to the Developer's Sales Contract concurrently with the Closing of this Agreement; and

(b) Satisfaction of the conditions of closing set forth in Section 8 of the Developer Sales Contract.

11. **Remedies.** If a party hereto defaults, the non-defaulting party's sole remedy shall be to terminate this Agreement by providing written notice to the defaulting party.

12. **Assignment of Rights to Deposit and Option Fee.** As additional consideration for this Agreement, Corporation hereby assigns to City any and all rights that Corporation has as Seller pursuant to the Developer Sales Contract to receipt of any Earnest Money and the Option Fee as defined in the Developer Sales Contract in the event the Developer Sales Contract is terminated under such circumstances that Corporation becomes entitled to receipt of the Earnest

Money from the Escrow Agent. City understands, acknowledges, and agrees that City shall have no vested rights in and to the Earnest Money unless and until such rights are vested in Corporation pursuant to the Developer Sales Contract.

13. **Reservation of Minerals.** Corporation agrees that City, for itself and its successors and assigns, as their interests may appear, reserves unto City all oil, gas and other minerals owned by City located in and under and that may be produced from the Property to the extent not reserved by prior grantors; provided, however, City, for itself and its successors and assigns hereby waives all surface rights and other rights of ingress and egress in and to the Property, and agrees that in conducting operations with respect to the exploration for and production, processing, transporting and marketing of oil, gas and other minerals from the Property, that no portion of the surface of the Property will be used, occupied or damaged and that fixtures, equipment, buildings or structures used in connection with the exploitation of the reserved mineral, oil and gas rights, shall not be placed on the surface of the Property. Nothing herein, however, restricts or prohibits the pooling or unitization of the portion of the mineral estate owned by City with land other than the Property; or the exploration or production of the oil, gas, and other minerals by means of wells that are drilled or mines that open on land other than the Property but enter or bottom under the Property, provided that these operations in no manner interfere with the surface or subsurface support of any improvements constructed or to be constructed on the Property. The foregoing reservation of minerals and City's waiver of surface rights set forth above shall be included in the special warranty deed.

14. **Additional Reservations.** In addition to the reservations of oil, gas, and mineral interests set forth in Section 13, above, City shall have the right to reserve at Closing for itself and its successors and assigns and the public such easements and rights-of-way shown on the final plat of the Property, the Survey, and/or the Title Commitment, which shall constitute Permitted Exceptions at Closing to the extent they affect the Property.

15. **Notices.** Notices must be in writing and may be hand delivered and/or mailed by certified mail with return receipt requested, or sent by facsimile transmission, to the addresses stated above. Notice given by delivery service shall be effective upon receipt at the address of the addressee; notice given by mail shall be effective upon earlier of actual receipt or three (3) days after placing the notice in a receptacle of the United States Postal Service, postage prepaid and properly addressed, and notice sent by facsimile transmission shall be effective upon electronic confirmation of receipt. In addition, copies of notices shall be provided to the party's attorney at the addresses indicated above.

16. **Miscellaneous.**

(a) ***Entire Agreement.*** This Agreement contains the entire agreement between City and Corporation, and there are no other terms, conditions, promises, undertakings, statements or representations, either written or oral or express or implied, concerning the sale contemplated by this Agreement.

(b) ***Modifications and Waiver.*** This Agreement may be amended only by an instrument in writing signed by both City and Corporation. This Agreement may be

terminated only in accordance with the terms of this Agreement or by an instrument in writing signed by both City and Corporation. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver.

(c) **Assignment.** Neither party may assign its rights under this Agreement without the prior written consent of the other party. Corporation shall be authorized to consent to an assignment of the Developer Sales Contract without consent of City, but only if the assignee of the Developer Sales Contract assumes all obligations of Developer under the Developer Sales Contract.

(d) **Time is of the Essence.** Time is of the essence with respect to the performance by the parties of their respective obligations hereunder.

(e) **Effective Date.** The Effective Date of this Agreement shall be the date on which the authorized representatives of the parties have signed this Agreement and the Title Company has acknowledged in writing its receipt of this Agreement as so signed.

(f) **Non-Business Day.** If the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday, or federal holiday, or a day on which either Party's main offices are not open for regular business, then the end of such period shall be extended to the next day that is not one of the foregoing described days.

(g) **Headings.** Section headings are for convenience of reference only and do not modify or restrict any provisions hereof and shall not be used to construe any provisions.

(h) **Brokers.** City and Corporation represent that no broker is involved in this Agreement and, to the extent allowed by law, each party indemnifies the other against brokerage or commission claims arising out of the indemnifying party's actions.

(i) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes and constitute one and the same instrument; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(j) **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 the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

(k) **Law Governing.** This Agreement shall be construed under and in accordance with the laws of the State of Texas; and venue for any action arising from this

Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

(1) ***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 Closing shall survive.

(signature page to follow)

SIGNED AND AGREED this the _____ day of _____, 2020.

City of Seagoville, Texas

By: _____
Patrick Stallings, City Manager

SIGNED AND AGREED this the _____ day of _____, 2020.

Seagoville Economic Development Corporation

By: _____
Jose Hernandez, Board Chairman

RECEIPT OF CONTRACT

Title Company acknowledges receipt of a copy of this Agreement executed by both Corporation and City on the ___ day of _____, 2020.

By: _____

Name: _____

Title: _____

Exhibit "B"

Restriction Agreement

Restriction Agreement

WHEN RECORDED RETURN TO:

Attention: City Manager
City of Seagoville
702 US-175 Frontage Road
Seagoville, Texas 75159

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

STATE OF TEXAS §
 § **RESTRICTION AGREEMENT**
COUNTY OF DALLAS §

This **RESTRICTION AGREEMENT** (“Agreement”) is made and entered into as of the Effective Date by and between the City of Seagoville, Texas, a Texas home-rule municipality (“City”), and TNM Properties, LLC d/b/a Golden Chick, a Texas limited liability company (“Builder”). City and Builder are collectively referred to herein as the “Parties” and individually as “Party.”

RECITALS

WHEREAS, as of the Effective Date, pursuant to the Purchase Agreement, Builder has purchased the Land from the Seagoville Economic Development Corporation (“SEDC”); and

WHEREAS, prior to or concurrent with the sale of the Land to Builder, SEDC purchased the Land from City pursuant to that certain Purchase and Sale Agreement effective _____, 2020, between City and SEDC (“the City Contract”) without City seeking sealed bids or conducting an auction prior to the sale of the Land to SEDC pursuant to the statutory exception to such requirements set forth in Texas Local Government Code §272.001(b)(4); and

WHEREAS, as a condition of the sale of the Land to SEDC and pursuant to Texas Local Government Code §272.001(b)(4), the City Contract requires that SEDC have the Land developed with the Improvements and used consistent with the Required Use; and

WHEREAS, SEDC has, as a condition of the conveyance of the Land to Builder, restricted the use of the Land and required Builder to develop the Land with the Improvements in accordance with the terms and conditions set forth herein; and

WHEREAS, as a condition to and in consideration of SEDC's conveyance of the Land to Builder, Builder has agreed to develop the Land in accordance with this Restriction Agreement; and

WHEREAS, Builder desires to grant City an option to repurchase the Land in the event Builder fails to cause Commencement of Construction or Completion of Construction (hereinafter defined) of the Improvements in accordance this Restriction Agreement, and a right of first refusal, subject to the terms and conditions hereafter set forth;

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Builder hereby agree as follows:

Article I Land Subject to Declaration

1.1 The Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Builder and any subsequent owners of all or any part of the Property, subject to the terms of this Restriction Agreement.

1.2 Builder shall, subject to events of Force Majeure, cause Commencement of Construction of the Improvements to occur on or before one hundred eighty (180) days after the Closing; and, subject to events of Force Majeure, cause Completion of Construction of Improvements to occur not later than thirteen (13) months after the Commencement of Construction.

1.3 Builder shall, by executing this Restriction Agreement and for the consideration stated hereinabove, and does hereby grant to City as owner of the parcel of land abutting the Land, and to City's successors and assigns, a right to access the Land and the Improvements thereon for the purpose of pedestrian and vehicular ingress and egress across, to, and from the Land and/or the abutting land and for the convenient and efficient flow of pedestrian and vehicular traffic for their customers and the public in general, with such route being open to the public and serving the adjacent business community and City's residents. This right of access may be terminated or amended only by filing in the Deed Records a revision to this Agreement approved by the City Council. This access agreement contained in this Section 1.3 shall be a covenant running with the Land. Builder agrees that this agreement shall bind its successors, heirs, and assigns, if any.

Article II Definitions

For purposes of this Agreement, the following words and phrases shall have the following meanings unless the context clearly indicates a different meaning:

"Builder" shall mean TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick.

"City" shall mean the City of Seagoville, a Texas a home rule municipality located in the County of Dallas, State of Texas.

“City Manager” shall mean the City Manager of City.

“Closing” shall mean the date Builder closes on the purchase of the Land from SEDC and title to the Land is conveyed to Builder pursuant to the Purchase and Sales Agreement.

“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 Improvements, (ii) all necessary permits for the construction of the Improvements have been issued by the applicable governmental authorities and (iii) grading of the Property or construction of the building elements of the Improvements (whether located above or below ground) has commenced.

“Completion of Construction” shall mean (i) substantial completion of the Improvements on the Property has occurred, and (ii) a certificate of occupancy or final inspection has been issued by City for occupancy or use of the Improvements for the Required Use by Builder.

“Effective Date” shall mean the date this Agreement is signed by all Parties.

“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, riot, civil commotion, insurrection, by the order of a court resulting from any litigation brought by a third party to prevent or delay Builder’s development, construction, or operation, City delay of permits or other approvals, government or de facto governmental action (unless caused by acts of omissions of the Party), pending referendum, fires, explosions or floods, strikes, slowdowns or work stoppages. Such extension shall be for a period equal to the actual length of such delay, together with any time reasonably required by Builder to re-mobilize for construction as a result of such delay.

“Improvements” shall mean construction on the Land of a concrete parking area and a concrete driveway, said driveway being not less than 25 feet in width and running the length of the Land from N. U.S. Highway No. 175 to its northernmost boundary, all designed and constructed in accordance with City standards and specifications and in conformance with all applicable laws and regulations, for the purpose of pedestrian and vehicular ingress and egress across, to, and from the Land and/or the abutting land in accordance with the access agreement set forth in section 1.3 herein.

“Improvement Value” shall mean the fair market value of all improvements constructed by Builder on the Land or portion thereof as determined by an appraiser selected by the Parties. In the event the Parties cannot agree upon an appraiser, each Party shall select an appraiser who, in turn, will select an appraiser who will determine the fair market value of such improvements, or portion constructed thereof.

“Land” shall mean the real property described as all of that certain 0.320 acre tract of land situated in the J.D. Merchant survey, Abstract No. 850, and being a portion of Lot 1, Block C, Farris Addition, an addition to the City of Seagoville, Dallas County, Texas, according to a plat thereof recorded in Volume 78074, Page 124, Plat Records, Dallas County, Texas, and being a portion of that certain tract of land as conveyed to the City of Seagoville by deed recorded in Volume 96047, Page 1049, said Official Public Records.

“Option Period” shall mean that period of time commencing on closing of the purchase of the Land by Builder and ending on the earlier of (a) Completion of Construction or (b) one year after the deadline for Completion of Construction of the Improvements].

“Option Price” shall mean the Purchase Price stated in the Purchase Agreement plus the Improvement Value less (i) all closing costs and expenses paid or incurred by SEDC pursuant to the Purchase Agreement and pursuant to the exercise of the Option and (ii) any amount constituting a grant provided by City to Builder to be credited to the Purchase Price under the Purchase Agreement.

“Property” shall collectively mean the Land, and any Improvements, or portion thereof, following construction thereof on the Land.

“Purchase Agreement” shall mean that certain Purchase and Sale Agreement effective _____, 2020, between SEDC and Builder setting forth their agreement regarding the sale of the Land by SEDC to Builder.

“Repurchase Price” shall mean the Purchase Price stated in the Purchase Agreement less (i) all closing costs and expenses paid or incurred by SEDC pursuant to the Purchase Agreement and pursuant to the exercise of the Option and (ii) any amount constituting a grant provided by City to Builder to be credited to the Purchase Price under the Purchase Agreement.

“Required Use” shall mean the development and use of the Land with the Improvements for use by Builder for vehicular parking area and by Builder and owner of abutting land and each of their successors and assigns as a mutual access driveway or route to allow for ingress and egress across, to, and from the Land and/or the abutting land and for the convenient and efficient flow of pedestrian and vehicular traffic for their customers and the public in general, with such route being open to the public and serving the adjacent business community and City’s residents, all in accordance with the access agreement of Builder set forth in section 1.3 of this Restriction Agreement.

“SEDC” shall mean the Seagoville Economic Development Corporation, a Texas non-profit corporation.

Article III Option to Repurchase

3.1 **Grant of Option.** In consideration of TEN AND NO/100 DOLLARS (\$10.00), in hand paid by City to Builder and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Builder, Builder hereby grants to City during the Option Period an option to repurchase the Land (the “Option”) for the Option Price.

3.2 **Time for Exercising Option.** Subject to Section 3.3, below, the Option may be exercised by City in its sole discretion by providing written notice to Builder upon the occurrence of the following:

(a) any time after 180 days after Closing, if Builder has failed to cause Commencement of Construction of the Improvements to occur on the Property on or before that date, provided Commencement of Construction has in fact still not occurred on the date of the exercise of the Option; or

(b) any time after the last day of the thirteenth (13th) month following Commencement of Construction of the Improvements, but before the end of the Option Period, if Commencement of Construction has occurred, but Builder has failed to cause Completion of Construction by said date, provided Completion of Construction has in fact still not occurred on the date of the exercise of the Option.

3.3 **Force Majeure.** In the event of Force Majeure, Builder shall have such additional time to cause Commencement of Construction or Completion of Construction, as the case may be, so long as Builder is diligently and faithfully pursuing the same. The termination of the Option Period shall be extended for the same number days that the performance of Builder with respect to Commencement of Construction or Completion of Construction is extended by Force Majeure.

3.4 **Sole Remedy.** City's sole and exclusive remedy for violation of the obligation of Builder for the Commencement of Construction of Construction and Completion of Construction shall be the exercise of the Option.

Article IV Right of First Refusal

4.1 **Grant.** Subject to the terms and conditions hereinabove and hereinafter set forth, Builder hereby agrees that City shall have, and hereby grants to City, during the period commencing upon the Effective Date and ending upon the Commencement of Construction ("the ROFR Period"), a right of first refusal (the "ROFR") to purchase the Land, or portion thereof, on the terms and conditions set forth herein. Notwithstanding the foregoing, the ROFR shall not apply to any sale or transfer of the Land to (i) any entity wholly owned by or under common control with Builder or (ii) by foreclosure or deed in lieu of foreclosure (collectively, an "Excluded Transfer"); provided, however, the ROFR shall survive any Excluded Transfer and shall be binding upon the party or parties acquiring title by way of such Excluded Transfer.

4.2 **Notice of Third-Party Offer.** If (i) Builder receives a bona fide offer for the purchase of any portion of Land that it intends to accept, or (ii) Builder receives any offer to purchase the Land or any portion thereof from any governmental exercise of the power of eminent domain with respect to the Land, Builder shall give notice thereof in writing to City (the "Third-Party Notice"). The Third-Party Notice shall include a copy of any offer to be made or any offer received by Builder, the proposed purchaser, whether the purchase price is to be paid in cash, securities or evidenced by promissory notes, and the other material terms and conditions of such offer.

4.3 **City's Exercise of ROFR.** For a period of thirty (30) days after receipt by City of the Third-Party Notice, City shall have the right to repurchase the Property or portion thereof which is the subject of the Third-Party Notice, upon the same terms and price as set forth in the Third-Party Notice or for the Repurchase Price, whichever is deemed by City to be more favorable to City (the "ROFR Price"). The ROFR may be exercised by City by providing written notice to

Builder not later than thirty (30) days after City's receipt of the Third-Party Notice. City's notice shall indicate acceptance of the terms set forth in the offer as recited in the Third-Party Notice, and whether or not the repurchase will be subject to the price set forth in the Third-Party Notice or the Repurchase Price.

4.4 **City Fails to Exercise ROFR.** In the event City does not elect to exercise the ROFR during the thirty (30) day period following its receipt of the Third-Party Notice:

(a) Builder may sell the Land, or portion thereof, at the price and on the terms and conditions described in the Third-Party Notice during the one hundred eighty (180) day period following the date of the Third-Party Notice; and

(b) City shall execute and deliver an acknowledgement, in recordable form, evidencing its waiver of its ROFR with respect to such sale. Builder agrees not to sell the Land, or portion thereof, during the ROFR Period at any price less than ninety-five percent (95%) of the price reflected in the Third-Party Notice, on any terms or conditions materially more favorable to the buyer than those set forth in the Third-Party Notice, or at any time after expiration of the one hundred eighty (180) day period described above, without first giving City the opportunity to exercise the ROFR at such different price, on such altered terms and conditions, or at such later time.

4.5 **No Release of Restrictions Required.** City's failure to exercise the ROFR shall not constitute a release of the Option, City's rights to repurchase the Land pursuant to the Option, or the obligations of any subsequent owner of the Land to comply with the obligations of this Restriction Agreement.

Article V

Terms of Sale Upon Exercise of Right

5.1 **Effect of Exercise of Right.** Upon any timely exercise of the Option or the ROFR (jointly and severally, the "Right") by City in accordance with the foregoing provisions, the conveyance of the Land or portion thereof to be conveyed to City shall be in accordance with the provisions in this Article V.

5.2. **Title, Survey, and Environmental Reports.**

(a) Not later than the fifteenth (15th) business day after the exercise of the Right, Builder shall, at Builder's expense, deliver to City:

(i) a current commitment for an Owner's Policy of Title Insurance from the Title Company for the portion of the Land to be conveyed to City, setting forth the state of title to the Land or portion thereof together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Land, together with all exceptions or conditions to such title;

(ii) legible copies of all documents referenced in the Title Commitment;

(iii) any environmental studies or reports that Builder may have in its possession with respect to the Land; and,

(iv) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years.

(b) Upon any exercise of the Right, City shall have the right, at its sole option, to cause a boundary or “as-built” survey of the Land to be made by a certified land surveyor selected by it. Such survey shall be made at the sole cost and expense of Builder

(c) City shall, not later than twenty (20) days after City’s receipt of the last of the Survey and Title Commitment, notify Builder and Title Company of any objections to the Survey or Title Commitment. If there are objections by City, Builder shall in good faith attempt to satisfy them prior to Closing. If Builder delivers written notice to City not later than the tenth (10th) calendar day after Builder’ receipt of City’s objections that Builder is unable to satisfy such objections, City may either waive such objections and accept title as Builder is able to convey or terminate the exercise of the Right by written notice to Builder and the Title Company.

5.3. **Closing.**

(a) The closing of the sale of the Land identified in the notice exercising the Right shall occur not later than sixty (60) calendar days following the date of exercise of the Right unless otherwise extended by written agreement of Builder and City.

(b) At the closing, Builder shall deliver to City:

(i) a special warranty deed, in form and substance substantially similar to the form used to convey the Land to Builder pursuant to the Purchase Agreement, conveying good and indefeasible title to the Land described in the notice exercising the Right and/or the survey obtained by City (whichever is the most accurate description) to City, free and clear of any and all encumbrances except the Permitted Exceptions, save and except such oil, gas, and other minerals as may have been reserved by prior grantors;

(ii) an owner’s policy of title insurance (or equivalent) in the amount of the Purchase Price, insuring such title to City; and

(iii) possession of the portion of the Land described in the notice of the exercise of the Option, free of parties in possession.

(c) At closing, City shall pay either the Option Price described in Article III or the ROFR Price described in Article IV, in either case less all Closing Costs and other costs and expenses to be paid by Builder pursuant to this Article.

5.4 **Taxes.** Ad valorem taxes, assessments, and any other charges against the Land and/or Improvements conveyed to City pursuant to this Article V shall be prorated as of the Closing Date for the current year, such that Builder will be responsible for all such items which accrue prior to the Closing Date, and City will be responsible for all such items which accrue on and after the Closing Date. Taxes and assessments for all prior years shall be paid by Builder.

5.5 **Closing Costs.**

(a) Builder will pay and be responsible for all closing costs relating to conveyance of the Land or portion thereof to City, including, but not limited to:

(i) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Land;

(ii) all fees and premiums for Basic Owner's Title Policy, and any endorsements to the Basic Owner's Title Policy;

(iii) the Title Company's escrow fees;

(iv) all recording fees;

(v) the cost of the Survey;

(vi) all costs and expenses incurred by or on behalf of Builder, including Builder's attorney's fees;

(vii) all costs related to obtaining any releases of liens on the portion of the Land conveyed relating to any loans secured by a deed of trust lien on said property; and

(viii) such other incidental costs and fees customarily paid by sellers of real property in Dallas County, Texas, for transactions of a similar nature to the transaction contemplated herein.

(b) City hereby agrees to pay and be responsible for City's attorneys' fees.

5.6. **Permitted Exceptions.** City acknowledges and agrees that the Land and Improvements, or portions thereof, conveyed pursuant to this Article V will be conveyed by Builder at closing subject only to such easements, conditions and restrictions as have been approved or deemed approved by City, including; (i) utility easements granted by subdivision plat or instrument subsequent to the purchase of the Land by Builder; and (ii) such other matters as City may waive.

5.7 **Conveyance As Is.** City acknowledges and agrees that the property and/or improvements conveyed pursuant to this Article V will be conveyed "AS IS" with all faults and defects, whether patent or latent, existing as of the Closing. Except with respect to the quality of the title being conveyed by Builder as set forth in the Special Warranty Deed, City acknowledges and agrees that Builder will be making no representations, warranties, guarantees, statements or information, express or implied, pertaining to the property or improvements conveyed, their condition, or any other matters whatsoever, made to or furnished to City by Builder or any employee or agent of Builder, except as specifically set forth in this Restriction Agreement.

Article VI Restrictions

6.1 **Use of Property; Buildings.** No portion of the Property shall be utilized for any use other than the Required Use. No building or infrastructure shall be constructed, reconstructed, erected, altered, or placed on any portion of the Property other than the Improvements or other structures that will be used in conformance with the Required Use.

6.2 **Term of Restrictions.** The restrictions set forth in Section 6.1, above, shall commence on the Effective Date and continue thereafter until the expiration of fifteen (15) years following the Completion of Construction of the Improvements. The access agreement set forth in Section 1.3 above shall not, however, terminate until a termination is filed in the Land Records as specified in and in accordance with the requirements of that Section 1.3.

6.3 **Plans and Specifications; Modifications.** The Improvements shall be constructed in accordance with plans and specifications approved by the City in writing prior to the Commencement of Construction. No modifications thereto shall be made during the term of these Restrictions without the written consent of the City.

Articles VII Miscellaneous

7.1 **Enforcement.** City shall have the right, but not the obligation, to enforce this Restriction Agreement and any covenants and restrictions contained herein, as the same may be amended as herein provided. Subject to the limitations set forth in Article VI, above, enforcement of the provisions set forth in Article VI contained herein may be exercised after failure of any person or persons violating or attempting to violate any covenants or restrictions to cure such violation or breach within two (2) thirty (30) day notice periods after receipt of written notice thereof, by proceeding at law or in equity, against any person or persons violating or attempting to violate any covenants or restrictions, to restrain violation or to recover damages, and failure to enforce any covenant, restriction or condition shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. This Restriction Agreement is not intended to restrict the rights of the City Council in the exercise of its legislative duties and powers insofar as the Property is concerned. For further remedy, Builder, for itself, its successors, and assigns agrees that City may withhold building permits, development approvals, certificates of occupancy and/or final inspection necessary for the lawful use of any portion of the Property not then in compliance with this Agreement. City's right to repurchase the Land pursuant to the exercise of the Right as set forth in Articles III and IV of this Restriction Agreement constitutes City's sole and exclusive remedy for any failure by Builder to cause Commencement of Construction or Completion of Construction of the Improvements on the Property. The rights of City under this Restriction Agreement may not be waived or released except pursuant to an amendment or termination approved in accordance with the provisions hereof, except by expiration of the Term.

7.2 **Amendment.** No amendment or any termination of this Restriction Agreement shall be effective unless and until approved by Builder and City; provided, however, City may, without the consent of Builder, terminate and release the restrictions set forth in Article VI. In the event

Builder, or a subsequent owner of the Property desires to change, amend or alter the covenants, conditions or restrictions as set forth herein, Builder, or the subsequent owner, as the case may be, shall file a written application for such change or amendment with City, which shall approve or deny such application in whole or in part within thirty (30) days after receipt of such application. Any change or amendment approved by City shall not be effective unless and until an instrument executed by the Mayor or City Manager is recorded in the Official Public Records in the office of the Dallas County Clerk in accordance with this Section.

7.3 **Notices.** All notices, requests, demands or other communications required or permitted hereunder shall be in writing and shall be deemed to have been fully and completely made when given by hand, by confirmed facsimile transmission by overnight delivery by Federal Express or other reliable courier or the mailing of such by registered or certified mail, addressed as follows:

If intended for City, to:

City of Seagoville, Texas
Attn: Patrick Stallings
City Manager
702 US-175 Frontage Road
Seagoville, Texas 75159

With a copy to:

Victoria W. Thomas
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201
Fax: (214) 965-0010

If intended for Builder:

TNM Properties, LLC d/b/a Golden Chick
Attn: Tamer Kadah
1800 Windermere Drive
Plano, Texas 75093

Any Party may at any time and from time to time by notice in writing to the other Party change the name or address of the person to who notice is to be given as hereinbefore provided.

7.4 **Successors and Assigns.** This Restriction Agreement shall bind, and inure to the benefit of, the Parties and their respective successors and assigns.

7.5 **Governing Law.** This Restriction Agreement is entered and is intended to be performed in the State of Texas, and the validity, enforceability, interpretation and construction hereof shall be determined and governed by the laws (other than conflict of law provisions) of the State of Texas. Venue for any action shall be in the state district court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

7.6 **Recording.** The Parties agree that City may record this Restriction Agreement in the Official Public Records of Dallas County.

7.7 **Covenants Run with the Property.** This Restriction Agreement and the restrictions, covenants, agreements, and conditions set forth herein are for the purpose of protecting the value and desirability of the Property as well as to carry out compliance with Tex. Loc. Govt. Code §272.001(a)(4), as amended, and, consequently, shall run with the Property and be binding on Builder and all Parties having all right, title, or interest in the Property, in whole or in part, and their heirs, successors and assigns. These covenants, conditions, agreements, and restrictions shall be for the benefit of City. This Restriction Agreement is binding upon Builder and each and every subsequent owner, tenant, subtenant, licensee, manager, and occupant of all or any portion of the Property, but only during the term of such party's ownership, tenancy, license, management or occupancy of the Property, for which such party shall remain liable and shall be binding upon and inure to the benefit of City and its successors and assigns. It is expressly understood and agreed that acceptance of title to all or a portion of the Land shall automatically, and without further acknowledgement or confirmation from the owner, constitute such owner's assumption of the obligations of Builder hereunder.

7.8 **Severability.** Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way affect any other provisions, and all other provisions shall remain in full force and effect.

7.9 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and no statement, promise, representation or modification hereof by any person, if any, and whether oral or written, shall be binding upon any Party.

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

(signatures on following pages)

SIGNED AND AGREED on this _____ day of _____, 2020.

City of Seagoville, Texas,

By: _____
Patrick Stallings, City Manager

City's Acknowledgment

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Acknowledged before me, the undersigned authority, this _____ day of _____, 2020,
by Patrick Stallings, City Manager for the City of Seagoville, Texas, a Texas home rule
municipality, on behalf of such municipality.

Notary Public, State of Texas

My Commission expires: _____

SIGNED AND AGREED on this ____ day of _____, 2020.

TNM PROPERTIES, LLC, d/b/a GOLDEN CHICK

By: _____
Tamer Kadah, Manager

and

By: _____
Naim Tatari, Manager

Builder’s Acknowledgment

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the ____ day of _____, 2020, by Tamer Kadah and Naim Tatari, managers of TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick, and each of them acknowledged that they executed the foregoing Restriction Agreement on behalf of said TNM Properties, LLC as its act and deed after having first been duly authorized so to do.

Notary Public, State of Texas

My Commission expires: _____

Exhibit “C”

Purchase and Sale Agreement Between SEDC and Developer

PURCHASE AND SALE AGREEMENT

This **Purchase and Sales Agreement** (“Agreement”) to buy and sell real property is entered between Seagoville Economic Development Corporation (“SEDC” or “Corporation”) and TNM Properties, LLC d/b/a/ Golden Chick, a Texas limited liability company, and is effective on the date (“Effective Date”) of the last of the signatures by SEDC and TNM Properties, LLC d/b/a Golden Chick (each “Party” and collectively, the “Parties”) and the acknowledgement by the Title Company of receipt of this Agreement.

Seller: Seagoville Economic Development Corporation,
a Texas non-profit corporation

Seller’s Address: Attn: Jose Hernandez, Board Chairman
702 US-175 Frontage Road
Seagoville, Texas 75159

Phone: (972) 287-9944

Seller’s Attorney: Victoria W. Thomas
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201
Fax: (214) 965-0010
Phone: (214) 965-9900
E-mail: vthomas@njdhs.com

Seller’s Broker: None

Purchaser: TNM Properties, LLC d/b/a Golden Chick
a Texas limited liability company

Purchaser’s Address: Attn: Tamer Kadah
1800 Windermere Drive
Plano, Texas 75093
Phone: (469) 644-7027
E-mail: tamerk84@yahoo.com

Purchaser’s Attorney None.

**Purchaser's
Broker/Agent:**

None.

City:

City of Seagoville, Texas,
a home rule municipality

City's Address:

Attn: Patrick Stallings, City Manager
702 US-175 Frontage Road
Seagoville, Texas 75159

Phone: (972) 287-2050

E-mail: PStallings@seagoville.us

City's Attorney:

Victoria W. Thomas
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

Phone : (214) 965-9900

Fax : (214) 965-0100

E-mail : vthomas@njdhs.com

Property:

All of that certain 0.320 acre tract of land situated in the J.D. Merchant survey, Abstract No. 850, and being a portion of Lot 1, Block C, Farris Addition, an addition to the City of Seagoville, Dallas County, Texas, according to a plat thereof recorded in Volume 78074, Page 124, Plat Records, Dallas County, Texas, and being a portion of that certain tract of land as conveyed to the City of Seagoville by deed recorded in Volume 96047, Page 1049, said Official Public Records.

**Restriction
Agreement:**

That certain *Restriction Agreement* by and between City and Purchaser to be signed at Closing by City and Purchaser substantially in the form attached hereto as Exhibit "A" and incorporated herein by reference.

**Economic
Development
Agreement:**

That certain Economic Development Agreement by and between Seller and Purchaser to be signed at Closing substantially in the form attached hereto as Exhibit "B" and incorporated herein by reference.

Title Company: Town Square Title Company.
Attn: Jessica Barton, Escrow Officer
310 N. 9th Street, Suite A
Midlothian, Texas 76065

Phone: (972) 935-0800
Fax: (972) 938-1045
E-Mail: jbarton@townsquaretitle.com

Inspection Period: The period commencing on the Effective Date and ending thirty (30) days after the Effective Date, but subject to extension as provided hereon.

Earnest Money: \$100.00, to be delivered to the Title Company not later than the third (3rd) business day after the Effective Date, \$50 of which shall constitute the Option Fee.

Option Fee: \$50.00, which amount shall be the non-refundable portion of the Earnest Money (except as may be otherwise expressly provided in this Agreement) and will be distributed to Seller upon any termination of this Agreement as independent consideration for Seller's performance under this Agreement, and which shall be applied as a credit to the Purchase Price if Closing occurs.

Closing Date: On or before thirty (30) days after the end of the Inspection Period, or such other date mutually agreed to in writing by the parties.

Purchase Grant: An economic development incentive grant paid outside of closing by City on behalf of Purchaser in accordance with the City Sales Contract and to be credited to the Purchase Price at Closing, being an amount equal to (i) the fair market value of the Property as determined by an appraisal obtained by City in the amount of \$63,000.00.

City Sales Contract: That certain *Purchase and Sale Agreement* by and between City and Seller relating to the sale by City of the Property to Seller.

Purchase Price: An amount equal to the appraised market value of the Property consisting of \$63,000.00, less the Purchase Grant.

NOW, THEREFORE, in consideration of the sum of the payment of the Purchase Price and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and Purchaser agree as follows:

1. **Sale and Purchase.** Seller agrees to sell, and Purchaser agrees to purchase, the Property as provided in this Purchase and Sale Agreement (“Agreement”) for the Purchase Price and subject to additional consideration set forth in this Agreement.

2. **Title, Survey, and Environmental Reports.**

(a) Not later than ten (10) days after the Effective Date, Seller shall, at Seller’s expense, deliver to Purchaser:

(i) a current commitment for an Owner’s Policy of Title Insurance for the Property from the Title Company issued to Purchaser in the amount of the Purchase Price, setting forth the state of title to the Property together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Property, together with all exceptions or conditions to such title;

(ii) legible copies of all documents referenced in the Title Commitment;

(iii) any environmental or geotechnical studies or reports that Seller may have in its possession or that is available to Seller as of the Effective Date with respect to the Property;

(iv) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years;

(v) the most recent survey and plat of the Property that Seller has in its possession or that may be available to Seller;

(vi) notices or other documents regarding any uncured violation of applicable laws, rules, regulations, codes or ordinances regarding the Property, or relating to any actual or claimed existence, release or disposal of any toxic or hazardous substance or waste in, upon or affecting the Property, or relating to any pending or threatened litigation affecting the Property; and

(vii) any other documents or information in Seller’s possession relating to the Property which may be reasonably requested by Purchaser.

(b) Not later than fifteen (15) calendar days after the Effective Date, Purchaser may, at Purchaser’s expense and option, obtain an updated survey (the “Survey”) of the Property prepared by a duly licensed Texas Registered Public Land Surveyor. The Survey shall be staked on the ground, and the plat shall show the location of all improvements, highways, streets, roads, railroads, rivers, creeks, or other water courses, fences, easements, and rights-of-way on or adjacent to the Property, if any, and shall contain the surveyor's certification that there are no encroachments on the Property other than what are listed on the Title Commitment and shall set forth a metes and bounds description of the Property. If different than the platted description of the Property, the legal description contained in said Survey shall be used by the Parties as the legal description contained in the Special Warranty Deed.

(c) Purchaser shall, not later than ten (10) days after Purchaser's receipt of the last of the Survey and Title Commitment (or after the expiration of the period for obtaining the Survey, if a Survey is not obtained), notify Seller and Title Company of any objections to the Survey or Title Commitment related to the Property. If there are objections by Purchaser, Seller shall in good faith attempt to satisfy them prior to Closing, but Seller shall not be required to incur any cost to do so. If Seller delivers written notice to Purchaser not later than the fifth (5th) calendar day after Seller's receipt of Purchaser's objections that Seller is unable to satisfy such objections, Purchaser may either (i) waive such objections and accept title as Seller is able to convey or terminate this Agreement by written notice to Seller and the Title Company prior to the expiration of the Inspection Period or (ii) elect to extend the Closing Date, not to exceed an additional sixty (60) days, in order to provide Seller additional time to cure the objections. If Purchaser elects to extend the Closing Date, and Seller fails to cure the objection with such period, Purchaser may either waive the objection and proceed to Closing or terminate this Agreement without further liability to either Party.

3. **Inspection Period.**

(a) During the Inspection Period, Purchaser and its agents, contractors, representatives, consultants or employees shall have the right to enter upon the Property during regular business hours upon reasonable notice and conduct such inspections, tests and studies as they may deem necessary. If for any reason Purchaser determines not to purchase the Property, Purchaser may terminate this Agreement by notifying Seller and Title Company in writing prior to the expiration of the Inspection Period. In such event, neither Party shall have any further claim against the other under this Agreement, and Purchaser shall be entitled to a refund of the Earnest Money, but not the Option Fee. If Purchaser does not timely terminate this Agreement under this Section 3, it shall have no further right to do so under this Section 3; and Purchaser shall have waived its right to terminate this Agreement within the Inspection Period.

(b) Purchaser may enter the Property to conduct its inspection but shall be solely responsible for any damages caused thereby. **Purchaser shall repair any damage to the Property it causes or that is caused by its agents, contractors, representatives, consultants or employees, and shall indemnify and defend Seller and City and hold Seller and City harmless from and against any and all claims, liabilities or damages to the Property or against Seller or City caused by the intentional or negligent acts or omissions of Purchaser and/or Purchaser's authorized agents, contractors, representatives, consultants or employees during the Inspection Period or as a result of any inspection of the Property by such parties; provided, that no indemnity shall be required for Purchaser's discovery of any violations of any applicable law, statute, rule, regulation, code or ordinance during such inspection, or discovery of any preexisting conditions present at the Property.**

4. **Closing Date.**

The closing of the sale of the Property (the "Closing") shall occur on the Closing Date at the Title Company, or at such other time as may be agreeable to the parties.

5. **Closing Deliverables.**

(a) At the Closing, Seller shall deliver to the Title Company:

(i) a special warranty deed in form and substance reasonably acceptable to Seller and Purchaser, conveying good and indefeasible title to the Property to Purchaser, free and clear of any and all encumbrances except the Permitted Exceptions, excluding the mineral rights, such mineral rights being reserved by City;

(ii) such documents as may be reasonably required by Title Company in order to cause Title Company to issue a Texas owner's policy of title insurance (or equivalent) ("Title Policy") in the amount of the Purchase Price, insuring such title to the Purchaser, at Seller's expense;

(iii) the documents required to be executed as a condition of closing as set forth in Section 8, below; and

(iv) possession of the Property, free of parties in possession.

(b) At the Closing, Purchaser shall deliver to Seller through the Title Company:

(i) the Purchase Price;

(ii) the documents required to be executed as a condition of closing as set forth in Section 8, below; and

(iii) such other documents as may be reasonably required by Title Company to close the contemplated transaction.

With respect to the issuance of the Title Policy, Purchaser agrees to execute such documents as required by the Title Company to allow the cost of the Title Policy and any related endorsements that are required to be issued pursuant to the City Sales Contract regarding the Property are passed through to the sale of the Property by Seller to Purchaser, it being the intent of Purchaser and Seller that only one title policy be issued in favor of Purchaser following the concurrent closing of this transaction and the transaction between Seller and City.

6. **Taxes.**

Purchaser understands and acknowledges that the Property is presently exempt from the assessment of ad valorem taxes, which status will change upon conveyance of the Property to Purchaser. Seller shall not be responsible for payment of property taxes assessed against the Property for periods after the date of Closing, if any become due and payable.

7. **Closing Costs.**

Purchaser agrees to pay and be responsible for the all closing costs related to the Closing of the transaction contemplated by this Agreement, including, but not limited to:

- (i) all fees and costs for the Survey;
- (ii) the Title Company's escrow fees;
- (iii) all costs and expenses incurred by or on behalf of Purchaser, including Purchaser's attorneys' fees;
- (iv) all premiums and fees related to issuance of the Title Policy, including all endorsements, deletions, and amendments thereto, and all costs related to issuance of any Mortgagee's Title Policy, and/or Interim Construction Lender Endorsement, if any;
- (v) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Property;
- (vi) Recording fees for the special warranty deed conveying the Property to Purchaser, the special warranty deed conveying the Property from City to Seller, the Restriction Agreement, and any other documents that are required to be recorded granting any liens or security interests in the Property and/or any improvements constructed thereon; and
- (vii) such other incidental costs and fees customarily paid by purchasers of property in Dallas County, Texas, for transactions of a similar nature to the transaction contemplated herein.

Purchaser shall not be responsible for payment of Seller's or City's attorneys' fees.

8. **Conditions to Closing.**

Closing on the sale of the Property shall be conditioned upon and subject to the following:

- (a) Purchaser and City having executed the Restriction Agreement and the Economic Development Agreement; and
- (b) City having closed on the sale of the Property to Seller pursuant to the City Purchase Contract.

9. **Permitted Exceptions.**

(a) Purchaser acknowledges and agrees that the Property will be conveyed by Seller at closing subject to the Restriction Agreement, and that the Special Warranty Deed shall contain reference to same. The (i) lien for current taxes not yet due and payable, (ii) the Restriction Agreement, and (iii) other appropriate matters appearing on Schedule B of the Title Commitment that were not cured and to which Purchaser failed to object or otherwise waived objection, shall be deemed to be Permitted Exceptions. Notwithstanding anything to the contrary herein, as a condition of Closing, Seller must resolve at Seller's sole cost the items that are listed on Schedule

C of the Title Commitment which are by their nature Seller's responsibility, remove all liquidated liens, remove all exceptions that arise by, through or under Seller after the Effective Date of this Agreement, and use due diligence to cure the title and survey objections that Seller has agreed to cure.

(b) Purchaser understands, acknowledges, and agrees that all rights-of-ways and easements dedicated to City on behalf of the public and which appear on the final plat of the Property, the Survey, and/or the Title Commitment may be reserved by City at Closing for itself and its successors and assigns and the public, which reservations shall constitute Permitted Exceptions at Closing to the extent they affect the Property.

10. **Representations and Covenants.**

Seller represents and covenants that: (a) it has authority to enter into this Agreement, and that this Agreement represents the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms; (b) no other person has any interests in or claims against the Property (other than as reflected by the Title Commitment); (c) it has no knowledge of any uncured violation of applicable laws, rules, regulations, codes or ordinances with respect to the Property, nor of any existence, release or disposal of any toxic or hazardous substance or waste upon or affecting the Property, nor of any pending or threatened litigation affecting the Property; and (d) it will not hereafter encumber the Property, or take any other action with respect to the Property which Seller knows will materially adversely affect the development, lease or other transactions contemplated by this Agreement. Purchaser represents that it has authority to enter into this Agreement and that this Agreement represents the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms. The only representations made by any party concerning the Property and this Agreement are as set out in this Section 10. The representations set forth in this Section 10 shall survive Closing.

11. **Property Sold As Is.**

(a) Purchaser hereby acknowledges and agrees that the sale of the Property hereunder is and will be made on an "as is, where is and with all faults" basis. The occurrence of Closing shall constitute an acknowledgment by Purchaser that the Property was accepted without representation or warranty, express or implied (except as otherwise specifically set forth herein and except for the special warranties of title set forth in the special warranty deed, and the bill of sale and assignment).

(b) Except as otherwise specifically set forth in this Agreement and except for the special warranties of title set forth in the special warranty deed, Seller hereby specifically negates and disclaims any representations, warranties or guaranties of any kind or character, whether express or implied, oral or written, past, present, future or otherwise, of, as to, concerning or with respect to the Property, including without limitation (i) the nature and condition of the Property and the suitability thereof for any and all activities and uses which Purchaser may elect to conduct thereon, (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or any other matter relating in any way to the Property, (iii) the compliance of the Property or its operation with any laws, ordinances or regulations of any

government or other authority or body, (iv) the existence of any toxic or hazardous substance or waste in, on, under the surface of or about the Property, (v) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water and faulting, (vi) whether or not and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, flood prone area, floodplain, floodway or special flood hazard, (vii) drainage, (viii) zoning or land use restrictions rules and regulations to which the Property or any portion thereof may be subject, (ix) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas and electric and including the utility availability capacities allocated to the Property by the relevant governmental or regulatory authority, (x) usages of adjoining property, (xi) access to the Property or any portion thereof, (xii) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, durability, structural integrity, operation, leasing, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (xiii) the potential for further development of the Property, or (xiv) the merchantability of the Property or fitness of the Property for any particular purpose (Purchaser affirming that Purchaser has not relied on Seller's skill or judgment to select or furnish the Property for any particular purpose, and that Seller makes no warranty that the Property is fit for any particular purpose).

(c) Purchaser agrees that, prior to the expiration of the Inspection Period, it will have the opportunity to examine and investigate the Property and that, in purchasing the Property, Purchaser will rely solely upon its independent examination, study, inspection and knowledge of the Property, and Purchaser is relying solely upon its own examination, study, inspection, and, except for representations and warranties specifically set forth herein and, except for the special warranties of title set forth in the special warranty deed, and in the bill of sale and assignment, knowledge of the Property and Purchaser's determination of the value of the Property and uses to which the Property may be put, and not on any information provided or to be provided by Seller.

(d) The provisions of this Section 11 shall survive the termination of this Agreement and the Closing.

12. **Reservation of Minerals; Waiver of Surface Rights.**

Purchaser understands, acknowledges, and agrees that City, for itself and its successors and assigns, as their interests may appear, has reserved from its conveyance of the Property to Seller pursuant to the City Purchase Contract all oil, gas and other minerals owned by City located in and under and that may be produced from the Property to the extent not reserved by prior grantors; and that City, for itself and its successors and assigns has agreed (i) to waive all surface rights and other rights of ingress and egress in and to the Property, and (ii) that in conducting operations with respect to the exploration for and production, processing, transporting and marketing of oil, gas and other minerals from the Property, that no portion of the surface of the Property will be used, occupied or damaged and that fixtures, equipment, buildings or structures used in connection with the exploitation of the reserved mineral, oil and gas rights, shall not be placed on the surface of the Property. Purchaser further understands, acknowledges, and agrees that City shall not be restricted or prohibited from the pooling or unitization of the portion of the mineral estate owned by City

with land other than the Property; or the exploration or production of the oil, gas, and other minerals by means of wells that are drilled or mines that open on land other than the Property but enter or bottom under the Property, provided that such operations will in no manner interfere with the surface or subsurface support of any improvements constructed or to be constructed on the Property. The foregoing reservation of minerals and City's waiver of surface rights set forth above shall survive closing and be included in substance in the special warranty deed from City to Seller.

13. **Remedies.**

If Purchaser defaults, Seller's sole remedy shall be to terminate this Agreement and receive the Earnest Money as liquidated damages, thereby releasing both parties from this Agreement. If Seller defaults, Purchaser's sole remedy shall be to terminate this Agreement and receive a refund of the Earnest Money and the Option Fee, thereby releasing both parties from this Agreement. No termination shall occur pursuant to a default until the non-defaulting party has provided written notice of default not less than ten (10) days prior to the proposed date of termination and the defaulting party has failed to cure the default; provided, however, if all parties have fully performed and all conditions to Closing have been satisfied other than the signing of documents and closing on the sale of the Property and one party fails to perform such necessary acts to deliver funds and execute documents required for Closing on the date of Closing, then this Agreement shall terminate one (1) business day after demand is made to the non-performing party and the party continues to fail to close on the transaction.

14. **Notices.**

Notices must be in writing and may be hand delivered and/or mailed by certified mail with return receipt requested, or sent by facsimile transmission, to the addresses stated above. Notice given by delivery service shall be effective upon receipt at the address of the addressee; notice given by mail shall be effective upon earlier of actual receipt or three (3) days after placing the notice in a receptacle of the United States Postal Service, postage prepaid and properly addressed, and notice sent by facsimile transmission shall be effective upon electronic confirmation of receipt. In addition, copies of notices shall be provided to the party's attorney at the addresses indicated above.

15. **Sale Subject to Provisions of Tex. Loc. Govt. Code §272.001.**

Purchaser acknowledges having been advised that pursuant to the City Purchase Contract, City has contracted with Seller as an independent foundation to sell the Property without requiring an auction or solicitation of competitive bids subject to City's requirement that the Property be developed by Purchaser in accordance with the Restriction Agreement.

16. **Miscellaneous.** This Agreement is subject to the following additional provisions and conditions:

(a) *Entireties.* This Agreement contains the entire agreement of the parties pertaining to the purchase, sale, and development of the Property.

(b) *Modifications.* This Agreement may only be modified by a written document signed by both parties.

(c) *Assignment.* Purchaser may not assign its rights under this Agreement, except (i) to any entity controlling, controlled by, or under common control with, Purchaser, or (ii) to any person or entity with the express written consent of Seller (which consent shall not be unreasonably withheld); provided, however, the assignee pursuant to such assignment must agree in writing to assume all of the assignor's obligations under this Agreement.

(d) *Time is of the Essence.* Time is of the essence with respect to the performance by the parties of their respective obligations hereunder.

(e) *Effective Date.* The Effective Date of this Agreement shall be the last date on which the authorized representatives of all Parties have signed this Agreement, and the Title Company has acknowledged in writing its receipt of this Agreement as so signed.

(f) *Non-Business Day.* If the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday, or federal holiday, or a day on which Seller's main offices are not open for regular business, then the end of such period shall be extended to the next day that is not one of the foregoing described days.

(g) *Zoning.* Seller assumes no obligation to change the current zoning on the Property.

(h) *Brokers.* Purchaser and Seller represent that neither party has engaged a broker in this transaction and that no broker is involved in this Agreement. To the extent allowed by law, each party shall indemnify the other from any claim for brokers' commissions relative to the sale of the property and alleged to be due by, through or under the indemnifying party.

(i) *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes and constitute one and the same instrument; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(j) *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 the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

(k) *Law Governing.* This Agreement shall be construed under and in accordance with the laws of the State of Texas; and venue for any action arising from this Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court in any such action.

(l) *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.

(m) *Employment of Undocumented Workers.* Purchaser understands, acknowledges, and agrees that Seller is off-setting a portion of the Purchase Price with an economic development grant in the form of the Purchase Grant. During the term of this Agreement, and for a period of five (5) years after the Closing and conveyance of the Property to Purchaser, Purchaser agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Purchaser shall pay the amount of the Purchase Grant and any other funds received by Purchaser from Seller as of the date of such violation within 120 days after the date Purchaser is notified by Seller of such violation, plus interest at the rate of 4% compounded annually from the date of violation until paid. Purchaser is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Purchaser or by a person with whom Purchaser contracts. This Section 16(m) shall survive the Closing.

(signature page to follow)

SIGNED AND AGREED this the _____ day of _____, 2020.

Seagoville Economic Development Corporation

By: _____
Jose Hernandez, Board Chairman

SIGNED AND AGREED this the _____ day of _____, 2020.

Purchaser:

TNM Properties, LLC d/b/a Golden Chick

By: _____
Tamer Kadah, Manager

and

By: _____
Naim Tatari, Manager

RECEIPT OF CONTRACT

Title Company acknowledges receipt of a copy of this Agreement executed by both Seller and Purchaser on the ___ day of _____, 2020.

By: _____

Name: _____

Title: _____

**EXHIBIT “A”
Form of Restriction Agreement**

WHEN RECORDED RETURN TO:

Attention: City Manager
City of Seagoville
702 US-175 Frontage Road
Seagoville, Texas 75159

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER’S LICENSE NUMBER

**STATE OF TEXAS §
 § RESTRICTION AGREEMENT
COUNTY OF DALLAS §**

This **RESTRICTION AGREEMENT** (“Agreement”) is made and entered into as of the Effective Date by and between the City of Seagoville, Texas, a Texas home-rule municipality (“City”), and TNM Properties, LLC d/b/a Golden Chick, a Texas limited liability company (“Builder”). City and Builder are collectively referred to herein as the “Parties” and individually as “Party.”

RECITALS

WHEREAS, as of the Effective Date, pursuant to the Purchase Agreement, Builder has purchased the Land from the Seagoville Economic Development Corporation (“SEDC”); and

WHEREAS, prior to or concurrent with the sale of the Land to Builder, SEDC purchased the Land from City pursuant to that certain Purchase and Sale Agreement effective _____, 2020, between City and SEDC (“the City Contract”) without City seeking sealed bids or conducting an auction prior to the sale of the Land to SEDC pursuant to the statutory exception to such requirements set forth in Texas Local Government Code §272.001(b)(4); and

WHEREAS, as a condition of the sale of the Land to SEDC and pursuant to Texas Local Government Code §272.001(b)(4), the City Contract requires that SEDC have the Land developed with the Improvements and used consistent with the Required Use; and

WHEREAS, SEDC has, as a condition of the conveyance of the Land to Builder, restricted the use of the Land and required Builder to develop the Land with the Improvements in accordance with the terms and conditions set forth herein; and

WHEREAS, as a condition to and in consideration of SEDC's conveyance of the Land to Builder, Builder has agreed to develop the Land in accordance with this Restriction Agreement; and

WHEREAS, Builder desires to grant City an option to repurchase the Land in the event Builder fails to cause Commencement of Construction or Completion of Construction (hereinafter defined) of the Improvements in accordance this Restriction Agreement, and a right of first refusal, subject to the terms and conditions hereafter set forth;

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Builder hereby agree as follows:

Article I Land Subject to Declaration

1.1 The Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Builder and any subsequent owners of all or any part of the Property, subject to the terms of this Restriction Agreement.

1.2 Builder shall, subject to events of Force Majeure, cause Commencement of Construction of the Improvements to occur on or before one hundred eighty (180) days after the Closing; and, subject to events of Force Majeure, cause Completion of Construction of Improvements to occur not later than thirteen (13) months after the Commencement of Construction.

1.3 Builder shall, by executing this Restriction Agreement and for the consideration stated hereinabove, and does hereby grant to City as owner of the parcel of land abutting the Land, and to City's successors and assigns, a right to access the Land and the Improvements thereon for the purpose of pedestrian and vehicular ingress and egress across, to, and from the Land and/or the abutting land and for the convenient and efficient flow of pedestrian and vehicular traffic for their customers and the public in general, with such route being open to the public and serving the adjacent business community and City's residents. This right of access may be terminated or amended only by filing in the Deed Records a revision to this Agreement approved by the City Council. This access agreement contained in this Section 1.3 shall be a covenant running with the Land. Builder agrees that this agreement shall bind its successors, heirs, and assigns, if any.

Article II Definitions

For purposes of this Agreement, the following words and phrases shall have the following meanings unless the context clearly indicates a different meaning:

"Builder" shall mean TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick.

"City" shall mean the City of Seagoville, a Texas a home rule municipality located in the County of Dallas, State of Texas.

“City Manager” shall mean the City Manager of City.

“Closing” shall mean the date Builder closes on the purchase of the Land from SEDC and title to the Land is conveyed to Builder pursuant to the Purchase and Sales Agreement.

“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 Improvements, (ii) all necessary permits for the construction of the Improvements have been issued by the applicable governmental authorities and (iii) grading of the Property or construction of the building elements of the Improvements (whether located above or below ground) has commenced.

“Completion of Construction” shall mean (i) substantial completion of the Improvements on the Property has occurred, and (ii) a certificate of occupancy or final inspection has been issued by City for occupancy or use of the Improvements for the Required Use by Builder.

“Effective Date” shall mean the date this Agreement is signed by all Parties.

“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, riot, civil commotion, insurrection, by the order of a court resulting from any litigation brought by a third party to prevent or delay Builder’s development, construction, or operation, City delay of permits or other approvals, government or de facto governmental action (unless caused by acts of omissions of the Party), pending referendum, fires, explosions or floods, strikes, slowdowns or work stoppages. Such extension shall be for a period equal to the actual length of such delay, together with any time reasonably required by Builder to re-mobilize for construction as a result of such delay.

“Improvements” shall mean construction on the Land of a concrete parking area and a concrete driveway, said driveway being not less than 25 feet in width and running the length of the Land from N. U.S. Highway No. 175 to its northernmost boundary, all designed and constructed in accordance with City standards and specifications and in conformance with all applicable laws and regulations, for the purpose of pedestrian and vehicular ingress and egress across, to, and from the Land and/or the abutting land in accordance with the access agreement set forth in section 1.3 herein.

“Improvement Value” shall mean the fair market value of all improvements constructed by Builder on the Land or portion thereof as determined by an appraiser selected by the Parties. In the event the Parties cannot agree upon an appraiser, each Party shall select an appraiser who, in turn, will select an appraiser who will determine the fair market value of such improvements, or portion constructed thereof.

“Land” shall mean the real property described as all of that certain 0.320 acre tract of land situated in the J.D. Merchant survey, Abstract No. 850, and being a portion of Lot 1, Block C, Farris Addition, an addition to the City of Seagoville, Dallas County, Texas, according to a plat thereof recorded in Volume 78074, Page 124, Plat Records, Dallas County, Texas, and being a portion of that certain tract of land as conveyed to the City of Seagoville by deed recorded in Volume 96047, Page 1049, said Official Public Records.

“Option Period” shall mean that period of time commencing on closing of the purchase of the Land by Builder and ending on the earlier of (a) Completion of Construction or (b) one year after the deadline for Completion of Construction of the Improvements].

“Option Price” shall mean the Purchase Price stated in the Purchase Agreement plus the Improvement Value less (i) all closing costs and expenses paid or incurred by SEDC pursuant to the Purchase Agreement and pursuant to the exercise of the Option and (ii) any amount constituting a grant provided by City to Builder to be credited to the Purchase Price under the Purchase Agreement.

“Property” shall collectively mean the Land, and any Improvements, or portion thereof, following construction thereof on the Land.

“Purchase Agreement” shall mean that certain Purchase and Sale Agreement effective _____, 2020, between SEDC and Builder setting forth their agreement regarding the sale of the Land by SEDC to Builder.

“Repurchase Price” shall mean the Purchase Price stated in the Purchase Agreement less (i) all closing costs and expenses paid or incurred by SEDC pursuant to the Purchase Agreement and pursuant to the exercise of the Option and (ii) any amount constituting a grant provided by City to Builder to be credited to the Purchase Price under the Purchase Agreement.

“Required Use” shall mean the development and use of the Land with the Improvements for use by Builder for vehicular parking area and by Builder and owner of abutting land and each of their successors and assigns as a mutual access driveway or route to allow for ingress and egress across, to, and from the Land and/or the abutting land and for the convenient and efficient flow of pedestrian and vehicular traffic for their customers and the public in general, with such route being open to the public and serving the adjacent business community and City’s residents, all in accordance with the access agreement of Builder set forth in section 1.3 of this Restriction Agreement.

“SEDC” shall mean the Seagoville Economic Development Corporation, a Texas non-profit corporation.

Article III Option to Repurchase

3.1 **Grant of Option.** In consideration of TEN AND NO/100 DOLLARS (\$10.00), in hand paid by City to Builder and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Builder, Builder hereby grants to City during the Option Period an option to repurchase the Land (the “Option”) for the Option Price.

3.2 **Time for Exercising Option.** Subject to Section 3.3, below, the Option may be exercised by City in its sole discretion by providing written notice to Builder upon the occurrence of the following:

(a) any time after 180 days after Closing, if Builder has failed to cause Commencement of Construction of the Improvements to occur on the Property on or before that date, provided Commencement of Construction has in fact still not occurred on the date of the exercise of the Option; or

(b) any time after the last day of the thirteenth (13th) month following Commencement of Construction of the Improvements, but before the end of the Option Period, if Commencement of Construction has occurred, but Builder has failed to cause Completion of Construction by said date, provided Completion of Construction has in fact still not occurred on the date of the exercise of the Option.

3.3 **Force Majeure.** In the event of Force Majeure, Builder shall have such additional time to cause Commencement of Construction or Completion of Construction, as the case may be, so long as Builder is diligently and faithfully pursuing the same. The termination of the Option Period shall be extended for the same number days that the performance of Builder with respect to Commencement of Construction or Completion of Construction is extended by Force Majeure.

3.4 **Sole Remedy.** City's sole and exclusive remedy for violation of the obligation of Builder for the Commencement of Construction of Construction and Completion of Construction shall be the exercise of the Option.

Article IV Right of First Refusal

4.1 **Grant.** Subject to the terms and conditions hereinabove and hereinafter set forth, Builder hereby agrees that City shall have, and hereby grants to City, during the period commencing upon the Effective Date and ending upon the Commencement of Construction ("the ROFR Period"), a right of first refusal (the "ROFR") to purchase the Land, or portion thereof, on the terms and conditions set forth herein. Notwithstanding the foregoing, the ROFR shall not apply to any sale or transfer of the Land to (i) any entity wholly owned by or under common control with Builder or (ii) by foreclosure or deed in lieu of foreclosure (collectively, an "Excluded Transfer"); provided, however, the ROFR shall survive any Excluded Transfer and shall be binding upon the party or parties acquiring title by way of such Excluded Transfer.

4.2 **Notice of Third-Party Offer.** If (i) Builder receives a bona fide offer for the purchase of any portion of Land that it intends to accept, or (ii) Builder receives any offer to purchase the Land or any portion thereof from any governmental exercise of the power of eminent domain with respect to the Land, Builder shall give notice thereof in writing to City (the "Third-Party Notice"). The Third-Party Notice shall include a copy of any offer to be made or any offer received by Builder, the proposed purchaser, whether the purchase price is to be paid in cash, securities or evidenced by promissory notes, and the other material terms and conditions of such offer.

4.3 **City's Exercise of ROFR.** For a period of thirty (30) days after receipt by City of the Third-Party Notice, City shall have the right to repurchase the Property or portion thereof which is the subject of the Third-Party Notice, upon the same terms and price as set forth in the Third-Party Notice or for the Repurchase Price, whichever is deemed by City to be more favorable to City (the "ROFR Price"). The ROFR may be exercised by City by providing written notice to

Builder not later than thirty (30) days after City's receipt of the Third-Party Notice. City's notice shall indicate acceptance of the terms set forth in the offer as recited in the Third-Party Notice, and whether or not the repurchase will be subject to the price set forth in the Third-Party Notice or the Repurchase Price.

4.4 **City Fails to Exercise ROFR.** In the event City does not elect to exercise the ROFR during the thirty (30) day period following its receipt of the Third-Party Notice:

(a) Builder may sell the Land, or portion thereof, at the price and on the terms and conditions described in the Third-Party Notice during the one hundred eighty (180) day period following the date of the Third-Party Notice; and

(b) City shall execute and deliver an acknowledgement, in recordable form, evidencing its waiver of its ROFR with respect to such sale. Builder agrees not to sell the Land, or portion thereof, during the ROFR Period at any price less than ninety-five percent (95%) of the price reflected in the Third-Party Notice, on any terms or conditions materially more favorable to the buyer than those set forth in the Third-Party Notice, or at any time after expiration of the one hundred eighty (180) day period described above, without first giving City the opportunity to exercise the ROFR at such different price, on such altered terms and conditions, or at such later time.

4.5 **No Release of Restrictions Required.** City's failure to exercise the ROFR shall not constitute a release of the Option, City's rights to repurchase the Land pursuant to the Option, or the obligations of any subsequent owner of the Land to comply with the obligations of this Restriction Agreement.

Article V

Terms of Sale Upon Exercise of Right

5.1 **Effect of Exercise of Right.** Upon any timely exercise of the Option or the ROFR (jointly and severally, the "Right") by City in accordance with the foregoing provisions, the conveyance of the Land or portion thereof to be conveyed to City shall be in accordance with the provisions in this Article V.

5.2. **Title, Survey, and Environmental Reports.**

(a) Not later than the fifteenth (15th) business day after the exercise of the Right, Builder shall, at Builder's expense, deliver to City:

(i) a current commitment for an Owner's Policy of Title Insurance from the Title Company for the portion of the Land to be conveyed to City, setting forth the state of title to the Land or portion thereof together with any easements or restrictions (existing or created pursuant hereto) benefiting or burdening the Land, together with all exceptions or conditions to such title;

(ii) legible copies of all documents referenced in the Title Commitment;

(iii) any environmental studies or reports that Builder may have in its possession with respect to the Land; and,

(iv) tax certificate(s) regarding the payment of ad valorem taxes for current and prior years.

(b) Upon any exercise of the Right, City shall have the right, at its sole option, to cause a boundary or “as-built” survey of the Land to be made by a certified land surveyor selected by it. Such survey shall be made at the sole cost and expense of Builder

(c) City shall, not later than twenty (20) days after City’s receipt of the last of the Survey and Title Commitment, notify Builder and Title Company of any objections to the Survey or Title Commitment. If there are objections by City, Builder shall in good faith attempt to satisfy them prior to Closing. If Builder delivers written notice to City not later than the tenth (10th) calendar day after Builder’ receipt of City’s objections that Builder is unable to satisfy such objections, City may either waive such objections and accept title as Builder is able to convey or terminate the exercise of the Right by written notice to Builder and the Title Company.

5.3. **Closing.**

(a) The closing of the sale of the Land identified in the notice exercising the Right shall occur not later than sixty (60) calendar days following the date of exercise of the Right unless otherwise extended by written agreement of Builder and City.

(b) At the closing, Builder shall deliver to City:

(i) a special warranty deed, in form and substance substantially similar to the form used to convey the Land to Builder pursuant to the Purchase Agreement, conveying good and indefeasible title to the Land described in the notice exercising the Right and/or the survey obtained by City (whichever is the most accurate description) to City, free and clear of any and all encumbrances except the Permitted Exceptions, save and except such oil, gas, and other minerals as may have been reserved by prior grantors;

(ii) an owner’s policy of title insurance (or equivalent) in the amount of the Purchase Price, insuring such title to City; and

(iii) possession of the portion of the Land described in the notice of the exercise of the Option, free of parties in possession.

(c) At closing, City shall pay either the Option Price described in Article III or the ROFR Price described in Article IV, in either case less all Closing Costs and other costs and expenses to be paid by Builder pursuant to this Article.

5.4 **Taxes.** Ad valorem taxes, assessments, and any other charges against the Land and/or Improvements conveyed to City pursuant to this Article V shall be prorated as of the Closing Date for the current year, such that Builder will be responsible for all such items which accrue prior to the Closing Date, and City will be responsible for all such items which accrue on and after the Closing Date. Taxes and assessments for all prior years shall be paid by Builder.

5.5 **Closing Costs.**

(a) Builder will pay and be responsible for all closing costs relating to conveyance of the Land or portion thereof to City, including, but not limited to:

(i) the cost of all tax certificates relating to all taxes and other assessments incurred or arising in relation to the Land;

(ii) all fees and premiums for Basic Owner's Title Policy, and any endorsements to the Basic Owner's Title Policy;

(iii) the Title Company's escrow fees;

(iv) all recording fees;

(v) the cost of the Survey;

(vi) all costs and expenses incurred by or on behalf of Builder, including Builder's attorney's fees;

(vii) all costs related to obtaining any releases of liens on the portion of the Land conveyed relating to any loans secured by a deed of trust lien on said property; and

(viii) such other incidental costs and fees customarily paid by sellers of real property in Dallas County, Texas, for transactions of a similar nature to the transaction contemplated herein.

(b) City hereby agrees to pay and be responsible for City's attorneys' fees.

5.6. **Permitted Exceptions.** City acknowledges and agrees that the Land and Improvements, or portions thereof, conveyed pursuant to this Article V will be conveyed by Builder at closing subject only to such easements, conditions and restrictions as have been approved or deemed approved by City, including; (i) utility easements granted by subdivision plat or instrument subsequent to the purchase of the Land by Builder; and (ii) such other matters as City may waive.

5.7 **Conveyance As Is.** City acknowledges and agrees that the property and/or improvements conveyed pursuant to this Article V will be conveyed "AS IS" with all faults and defects, whether patent or latent, existing as of the Closing. Except with respect to the quality of the title being conveyed by Builder as set forth in the Special Warranty Deed, City acknowledges and agrees that Builder will be making no representations, warranties, guarantees, statements or information, express or implied, pertaining to the property or improvements conveyed, their condition, or any other matters whatsoever, made to or furnished to City by Builder or any employee or agent of Builder, except as specifically set forth in this Restriction Agreement.

Article VI Restrictions

6.1 **Use of Property; Buildings.** No portion of the Property shall be utilized for any use other than the Required Use. No building or infrastructure shall be constructed, reconstructed, erected, altered, or placed on any portion of the Property other than the Improvements or other structures that will be used in conformance with the Required Use.

6.2 **Term of Restrictions.** The restrictions set forth in Section 6.1, above, shall commence on the Effective Date and continue thereafter until the expiration of fifteen (15) years following the Completion of Construction of the Improvements. The access agreement set forth in Section 1.3 above shall not, however, terminate until a termination is filed in the Land Records as specified in and in accordance with the requirements of that Section 1.3.

6.3 **Plans and Specifications; Modifications.** The Improvements shall be constructed in accordance with plans and specifications approved by the City in writing prior to the Commencement of Construction. No modifications thereto shall be made during the term of these Restrictions without the written consent of the City.

Articles VII Miscellaneous

7.1 **Enforcement.** City shall have the right, but not the obligation, to enforce this Restriction Agreement and any covenants and restrictions contained herein, as the same may be amended as herein provided. Subject to the limitations set forth in Article VI, above, enforcement of the provisions set forth in Article VI contained herein may be exercised after failure of any person or persons violating or attempting to violate any covenants or restrictions to cure such violation or breach within two (2) thirty (30) day notice periods after receipt of written notice thereof, by proceeding at law or in equity, against any person or persons violating or attempting to violate any covenants or restrictions, to restrain violation or to recover damages, and failure to enforce any covenant, restriction or condition shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. This Restriction Agreement is not intended to restrict the rights of the City Council in the exercise of its legislative duties and powers insofar as the Property is concerned. For further remedy, Builder, for itself, its successors, and assigns agrees that City may withhold building permits, development approvals, certificates of occupancy and/or final inspection necessary for the lawful use of any portion of the Property not then in compliance with this Agreement. City's right to repurchase the Land pursuant to the exercise of the Right as set forth in Articles III and IV of this Restriction Agreement constitutes City's sole and exclusive remedy for any failure by Builder to cause Commencement of Construction or Completion of Construction of the Improvements on the Property. The rights of City under this Restriction Agreement may not be waived or released except pursuant to an amendment or termination approved in accordance with the provisions hereof, except by expiration of the Term.

7.2 **Amendment.** No amendment or any termination of this Restriction Agreement shall be effective unless and until approved by Builder and City; provided, however, City may, without the consent of Builder, terminate and release the restrictions set forth in Article VI. In the event

Builder, or a subsequent owner of the Property desires to change, amend or alter the covenants, conditions or restrictions as set forth herein, Builder, or the subsequent owner, as the case may be, shall file a written application for such change or amendment with City, which shall approve or deny such application in whole or in part within thirty (30) days after receipt of such application. Any change or amendment approved by City shall not be effective unless and until an instrument executed by the Mayor or City Manager is recorded in the Official Public Records in the office of the Dallas County Clerk in accordance with this Section.

7.3 **Notices.** All notices, requests, demands or other communications required or permitted hereunder shall be in writing and shall be deemed to have been fully and completely made when given by hand, by confirmed facsimile transmission by overnight delivery by Federal Express or other reliable courier or the mailing of such by registered or certified mail, addressed as follows:

If intended for City, to:

City of Seagoville, Texas
Attn: Patrick Stallings
City Manager
702 US-175 Frontage Road
Seagoville, Texas 75159

With a copy to:

Victoria W. Thomas
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201
Fax: (214) 965-0010

If intended for Builder:

TNM Properties, LLC d/b/a Golden Chick
Attn: Tamer Kadah
1800 Windermere Drive
Plano, Texas 75093

Any Party may at any time and from time to time by notice in writing to the other Party change the name or address of the person to who notice is to be given as hereinbefore provided.

7.4 **Successors and Assigns.** This Restriction Agreement shall bind, and inure to the benefit of, the Parties and their respective successors and assigns.

7.5 **Governing Law.** This Restriction Agreement is entered and is intended to be performed in the State of Texas, and the validity, enforceability, interpretation and construction hereof shall be determined and governed by the laws (other than conflict of law provisions) of the State of Texas. Venue for any action shall be in the state district court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

7.6 **Recording.** The Parties agree that City may record this Restriction Agreement in the Official Public Records of Dallas County.

7.7 **Covenants Run with the Property.** This Restriction Agreement and the restrictions, covenants, agreements, and conditions set forth herein are for the purpose of protecting the value and desirability of the Property as well as to carry out compliance with Tex. Loc. Govt. Code §272.001(a)(4), as amended, and, consequently, shall run with the Property and be binding on Builder and all Parties having all right, title, or interest in the Property, in whole or in part, and their heirs, successors and assigns. These covenants, conditions, agreements, and restrictions shall be for the benefit of City. This Restriction Agreement is binding upon Builder and each and every subsequent owner, tenant, subtenant, licensee, manager, and occupant of all or any portion of the Property, but only during the term of such party's ownership, tenancy, license, management or occupancy of the Property, for which such party shall remain liable and shall be binding upon and inure to the benefit of City and its successors and assigns. It is expressly understood and agreed that acceptance of title to all or a portion of the Land shall automatically, and without further acknowledgement or confirmation from the owner, constitute such owner's assumption of the obligations of Builder hereunder.

7.8 **Severability.** Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way affect any other provisions, and all other provisions shall remain in full force and effect.

7.9 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and no statement, promise, representation or modification hereof by any person, if any, and whether oral or written, shall be binding upon any Party.

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

(signatures on following pages)

SIGNED AND AGREED on this _____ day of _____, 2020.

City of Seagoville, Texas,

By: _____
Patrick Stallings, City Manager

City's Acknowledgment

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Acknowledged before me, the undersigned authority, this _____ day of _____, 2020, by Patrick Stallings, City Manager for the City of Seagoville, Texas, a Texas home rule municipality, on behalf of such municipality.

Notary Public, State of Texas

My Commission expires: _____

SIGNED AND AGREED on this ____ day of _____, 2020.

TNM PROPERTIES, LLC, d/b/a GOLDEN CHICK

DO NOT SIGN – TO BE SIGNED AT CLOSING

By: _____
Tamer Kadah, Manager

and

DO NOT SIGN – TO BE SIGNED AT CLOSING

By: _____
Naim Tatari, Manager

Builder’s Acknowledgment

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2020, by Tamer Kadah and Naim Tatari, managers of TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick, and each of them acknowledged that they executed the foregoing Restriction Agreement on behalf of said TNM Properties, LLC as its act and deed after having first been duly authorized so to do.

Notary Public, State of Texas

My Commission expires: _____

EXHIBIT “B”
Form of Economic Development Incentive Agreement

STATE OF TEXAS §
 § **ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**
COUNTY OF DALLAS §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the Seagoville Economic Development Corporation (“SEDC”) and TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick (“Company”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, Company desires to purchase Land located at 550 N. Highway 175, Seagoville, Texas (the “Primary Land”) and an 0.320 acre parcel of land abutting the Land (the “Secondary Land”) (collectively the Primary Land and Secondary Land are referred to herein as the “Land”) and thereon to develop and construct a 2,200 square foot building within which it will operate a Golden Chick fast casual restaurant franchise, together with the required concrete parking lot and driveways and landscaping (collectively, the “Improvements”); and

WHEREAS, Tex. Loc. Gov’t Code §272.001 allows City to convey land it wants developed by contracting with an independent foundation without auction or soliciting competitive bids; and

WHEREAS, SEDC is a Texas non-profit corporation and qualifies as an independent foundation under Tex. Loc. Gov’t Code §272.001; and

WHEREAS, SEDC desires to purchase the Secondary Land from City for resale to Company pursuant to a purchase and sale agreement (the “City Purchase and Sale Agreement”) subject to the Restriction Agreement (hereinafter defined); and

WHEREAS, Company intends or is under contract to purchase the Secondary Land from SEDC pursuant to a purchase and sale agreement (hereinafter defined as the “SEDC Purchase and Sale Agreement”); and

WHEREAS, Company has advised SEDC that a contributing factor that would induce Company to construct the Improvements would be an agreement by SEDC to provide an economic development grant to Company to defray a portion of the costs of the Improvements; and

WHEREAS, SEDC has adopted programs for promoting economic development; and

WHEREAS, the Development Corporation Act, Chapters 501-505 of the Texas Local Government Code, as amended (the “Act”) authorizes SEDC to provide economic development grants for land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the SEDC’s board of directors to promote new or expanded business development; and

WHEREAS, SEDC has determined that the Grant (hereinafter defined) to be made hereunder is required or suitable to promote or develop new or expanded business enterprises and constitutes a “project”, as that term is defined in the Act; and

WHEREAS, SEDC has determined that making an economic development grant to Company in accordance with this Agreement will further the objectives of SEDC, will benefit City and City’s inhabitants and will promote local economic development and stimulate business and commercial activity within City’s corporate limits;

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:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of Company’s existence, insolvency, employment 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.

“Capital Investment” shall mean the total capitalized cost to Company for the acquisition of the Land, development and construction of the Improvements.

“City” shall mean the City of Seagoville, Texas, acting by and through its city manager, or designee.

“City Purchase and Sale Agreement” shall mean that certain Purchase and Sale Agreement by and between City and SEDC dated of approximate date herewith for the purchase of the Secondary Land by SEDC from City for the resale of the Secondary Land to Company, subject to the Restriction Agreement.

“Closing” shall mean the date Company closes on the purchase of the Secondary Land from SEDC and fee simple title to the Secondary Land is conveyed to Company pursuant to the SEDC Purchase and Sales Agreement.

“Commencement Date” shall mean the later of: (i) the date a certificate of occupancy is issued by City for the Improvements; and (ii) the date the Improvements are open for business as a Golden Chick franchise restaurant and serving City’s residents and visitors.

“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 construction of the Improvements; (ii) all necessary permits for the construction of the Improvements pursuant to the respective plans therefore have been issued by all the applicable governmental authorities; and (iii) grading of the Land or the construction of the vertical elements of the Improvements has commenced.

“Company” shall mean TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick.

“Completion of Construction” shall mean that: (i) the construction of the Improvements on the Land has been substantially completed; and (ii) a certificate of occupancy for the Improvements has been issued by the City and in the case of the Infrastructure portion of the Improvements, the City has conducted a final inspection and has accepted or approved said Infrastructure..

“Employment Positions” shall mean non-temporary full-time employment positions of the Company which are eligible for employee benefits and are created, maintained and filled at the Property.

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

“Expiration Date” shall mean the fifth (5th) anniversary date of the Commencement Date.

“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, riot, terrorism, civil commotion, insurrection, government or de facto governmental action or inaction (unless caused by acts of omissions of the Party), fires, explosions or floods, strikes, slowdown or work stoppages, but may not impact any payments to be made hereunder.

“Grant” shall mean an economic development grant in the amount equal to the actual costs incurred and paid by Company for the design and construction of the parking lot and driveway portion of the Improvements (“Infrastructure”), not to exceed Two Hundred Thousand Dollars (\$200,000.00), to offset a portion of the costs paid and incurred by Company for Infrastructure necessary for the Improvements, to be paid as set forth herein.

“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, authority on Company with respect to the Improvements or any property or any business owned by Company within City’s corporate limits.

“Improvements” shall mean a 2,200 square foot building within which Company will operate a Golden Chick fast casual restaurant franchise, together with the required concrete parking lot and driveways and landscaping.

“Infrastructure” shall mean that part of the Improvements consisting of the concrete parking lot and driveways on the Land.

“Land” shall mean, collectively, the real property located at 550 N. Highway 175, Seagoville, Texas (the “Primary Land”) and an 0.320 acre parcel of land abutting the Land described as all of that certain 0.320 acre tract of land situated in the J.D. Merchant survey, Abstract No. 850, and being a portion of Lot 1, Block C, Farris Addition, an addition to the City of Seagoville, Dallas County, Texas, according to a plat thereof recorded in Volume 78074, Page 124, Plat Records, Dallas County, Texas, and being a portion of that certain tract of land as conveyed to the City of Seagoville by deed recorded in Volume 96047, Page 1049, said Official Public Records (the “Secondary Land”) .

“Property” shall mean the Land and the Improvements following construction thereof.

“Related Agreement” shall mean any agreement (other than this Agreement) by and between Company and/or City and/or SEDC.

“Required Use” shall mean the development, use, and continued operation of the Improvements as a Golden Chick franchise restaurant in a building of not less than 2,200 square feet open to the public and serving the adjacent business community and City’s residents and including the provision of a concrete access driveway as specified in the Restriction Agreement to allow for ingress and egress across, to, and from the Property and/or the abutting land and for the convenient and efficient flow of pedestrian and vehicular traffic for the public.

“Restriction Agreement” shall mean that certain restriction agreement between City and Company restricting the development and use of the Secondary Land for the construction and operation of a portion of the Infrastructure, as more fully set forth in that Restriction Agreement. The Restriction Agreement shall require Company to cause Commencement of Construction and Completion of Construction of the concrete access driveway and parking area on the Secondary Land, the same being a portion of the Infrastructure in accordance with this Agreement, grant City a right of first refusal in the event Company offers to sell the Secondary Land to a third party prior to Commencement of Construction of the Improvements, and grant City an option to repurchase the Secondary Land in the event Company fails to comply with the deadline for Commencement of Construction and Completion of Construction of the Improvements set forth in the Restriction Agreement.

“SEDC” shall mean the Seagoville Economic Development Corporation.

“SEDC Purchase and Sale Agreement” shall mean that certain Purchase and Sale Agreement by and between SEDC and Company dated of even date herewith for the purchase of the Secondary Land by Company from SEDC, subject to the Restriction Agreement.

Article II

Term

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein.

Article III Improvements

3.1 Secondary Land Acquisition. SEDC intends to sell and convey, or cause to sell and convey, the Secondary Land to Company subject to the Restriction Agreement.

3.2 Construction Plans. Company shall cause all necessary permits and approvals required by City and any applicable governmental authorities to be issued for the construction of the Improvements. Prior to Commencement of Construction of the Improvements, Company shall submit the Construction Plans for approval by City. Company shall, subject to events of Force Majeure, cause the Construction Plans to be submitted to City for approval not later than thirty (30) days following the Closing.

3.3 Construction of Improvements. Company shall, subject to events of Force Majeure, cause Commencement of Construction of the Improvements to occur on or before one hundred twenty (120) days after the Effective Date; and, subject to events of Force Majeure, cause Completion of Construction of Improvements to occur not later than twelve (12) months after the Commencement of Construction.

3.4 Required Use. Beginning on the Commencement Date, and continuing thereafter until the Expiration Date, or earlier termination, the Improvements shall not be used for any purpose other than the Required Use and the Company shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than thirty (30) days, except in connection with and to the extent of an event of Casualty or Force Majeure.

Article IV Grant

4.1 Subject to the obligation of Company to repay the Grant pursuant to Section 6.2 herein, and the continued satisfaction of all the terms and conditions of this Agreement by Company, SEDC agrees to provide the Grant to the Company to be paid within thirty (30) days after the later of the closing on the Secondary Land at which Company receives fee simple title to the Secondary Land and execution of this Incentive Agreement and the Restriction Agreement.

4.2 Under no circumstances shall the obligations of SEDC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. SEDC 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 SEDC under this Agreement shall be pledged or otherwise encumbered by Company in favor of any commercial lender and/or similar financial institution.

4.3 The Grant made hereunder shall be paid solely from lawfully available funds that have been appropriated by SEDC. SEDC shall have no obligation or liability to provide any Grant

except as allowed by law. SEDC shall not be required to provide any of the Grant if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

Article V

Conditions to Economic Development Grant

The obligation of SEDC to pay the Grant to Company shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the following:

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

5.2 Commencement of Construction. Commencement of Construction, as that term is defined herein, shall occur not later than one hundred twenty (120) days after the Effective Date of this Agreement.

5.3 Completion of Construction. Subject to Force Majeure, Completion of Construction, as that term is defined herein, shall occur not later than twelve (12) months Commencement of Construction.

5.4 Capital Investment. Company's Capital Investment for the Infrastructure portion of the Improvements as of the Completion of Construction shall be not less than Two Hundred Thousand (\$200,000.00) Dollars. Company shall, not later than fifteen (15) calendar days after the date of Completion of Construction (as defined herein) of the Improvements, deliver to SEDC copies of all records, contracts, receipts, invoices, bills, proofs of payment, and such other information as SEDC may reasonably request to document compliance with the required Capital Investment. In the event the final total cost of the construction of the Infrastructure portion of the Improvements, as reasonably verified by SEDC, is less than Two Hundred Thousand (\$200,000.00) Dollars, the Company shall, within thirty (30) days of receipt by Company of written demand by SEDC, pay the SEDC the difference in value between \$200,000.00 and the final total cost of the construction of the Infrastructure portion of the Improvements as reasonably verified by SEDC.

5.5 Required Use. During the term of this Agreement following Completion of Construction and continuing thereafter until expiration of this Agreement or earlier termination Company shall continuously own and occupy the Property which shall not be used during the term of this Agreement for any purpose other than the Required Use. Further, during the term of this Agreement, such occupation and use shall not cease for more than thirty (30) days except in connection with, and to the extent of, an event of Force Majeure.

5.6 Employment Positions. Within thirty (30) days of Completion of Construction, Company shall create, fill and maintain a total of at least eight (8) Employment Positions for the term of this Agreement.

5.7 Continuous Ownership. During the term of this Agreement following the Effective Date and continuing thereafter until the Expiration Date, the Property shall be continuously owned and occupied by the Company.

5.8 Chamber of Commerce Membership. Company shall become a member of the Seagoville Chamber of Commerce, if not already a member, within thirty (30) days after the Effective Date and shall maintain such membership during the term of this Agreement, unless the Seagoville Chamber of Commerce shall cease to exist.

Article VI Termination

6.1 Termination. This Agreement shall terminate upon any one or more of the following:

- (a) by written agreement of the Parties;
- (b) on the Expiration Date;
- (c) upon written notice by either Party in the event the other Party 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 in accordance with this Agreement;
- (d) upon written notice by the SEDC, if the Company suffers an event of Bankruptcy or Insolvency;
- (e) upon written notice by SEDC, if any Impositions owed to City or the State of Texas by Company shall become delinquent after thirty (30) days written notice is delivered pursuant to this Agreement (provided, however, Company retains the right to timely and properly protest and contest any such Impositions); or
- (f) upon written notice by either Party, 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.

6.2 Repayment Due Upon Termination Due to Breach of Section 6.1(c). In the event the Agreement is terminated by SEDC pursuant to Section 6.1(c):

- (a) due to a breach of the obligation set forth in section 5.2 hereof, Company shall immediately refund to the SEDC an amount equal to the value of the Grant received by Company;
- (b) due to a breach of the obligation set forth in section 5.3 hereof, Company shall immediately refund to the SEDC an amount equal to eighty percent (80%) of the value of the Grant received by Company;
- (c) due to a breach of an obligation set forth in section 5.5, 5.6, and/or 5.7 hereof, Company shall immediately refund to the SEDC an amount equal to sixty percent (60%) of the Grant received by Company;
- (d) due to a breach of an obligation set forth in section 5.8 hereof, Company shall immediately refund to the SEDC an amount equal to forty percent (40%) of the Grant received by Company;
- (e) due to a breach of an obligation set forth in section 5.1 and not coming within any the obligations set forth in sections 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, and/or 5.8, and not constituting a breach covered by section 6.1(d), (e), and/or (f), Company shall immediately refund to the SEDC an amount equal to twenty percent (20%) of the Grant received by Company.

6.3 Repayment Due Upon Termination Due to Breach of Section 6.1(d), (e), and/or (f). In the event the Agreement is terminated by SEDC pursuant to Section 6.1(d), (e), and (f), Company shall immediately pay to SEDC an amount equal to the Grant previously paid by SEDC to Company as of the date of termination, plus interest at the rate 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 reasonably selected by SEDC) as its prime or base commercial lending rate, which shall accrue from the date of the Grant Payment until paid.

6.4 Right of Offset. SEDC may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City or SEDC 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 SEDC or City has been reduced to judgment by a court.

**Article VII
Miscellaneous**

7.1 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 without the prior written consent of SEDC.

7.2 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 SEDC assumes no responsibilities or liabilities to third parties in connection with these actions. Company agrees to indemnify and hold harmless SEDC 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.

7.3 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.

7.4 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 SEDC, to

Attn: Jose Hernandez, Board Chair
Seagoville Economic Development
Corporation
702 N. Highway 175
Seagoville, Texas 75115

With a copy to:

Victoria W. Thomas
Nichols, Jackson, Dillard, Hager &
Smith, LLP
1800 Ross Tower
100 N. Akard
Dallas, Texas 75201
214.965.0010 – facsimile

If intended for Company, to:

TNM Properties, LLC d/b/a Golden Chick
Attn: Tamer Kadah
1800 Windermere Drive
Plano, Texas 75093

7.5 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.

7.6 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 Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

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

7.8 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.

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

7.10 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.

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

7.12 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.

7.13 Employment of Undocumented Workers. 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 Grant and any other funds received by Company from SEDC as of the date of such violation within one hundred twenty (120) days after the date Company is notified by SEDC 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.

7.14 Conditions Precedent. The obligations of the Parties are expressly subject to and conditioned upon the following:

- (a) City and SEDC having entered into the City Sale and Purchase Agreement;
- (b) Company and SEDC having entered into the SEDC Sale and Purchase Agreement;
- (c) Company and City having entered into the Restriction Agreement; and

- (d) Company having closed on the purchase of the Primary Land and the Secondary Land.

(Signature Page to Follow)

EXECUTED on this _____ day of _____, 2020.

SEAGOVILLE ECONOMIC DEVELOPMENT CORPORATION

By: _____
Jose Hernandez, Board Chair

EXECUTED on this _____ day of _____, 2020.

TNM PROPERTIES, LLC, d/b/a GOLDEN CHICK

DO NOT SIGN – TO BE SIGNED AT CLOSING

By: _____
Tamer Kadah, Manager

and

DO NOT SIGN – TO BE SIGNED AT CLOSING

By: _____
Naim Tatari, Manager

Exhibit "D"

Incentive Agreement

Economic Development Incentive Agreement

STATE OF TEXAS §
 § **ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**
COUNTY OF DALLAS §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the Seagoville Economic Development Corporation (“SEDC”) and TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick (“Company”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, Company desires to purchase Land located at 550 N. Highway 175, Seagoville, Texas (the “Primary Land”) and an 0.320 acre parcel of land abutting the Land (the “Secondary Land”) (collectively the Primary Land and Secondary Land are referred to herein as the “Land”) and thereon to develop and construct a 2,200 square foot building within which it will operate a Golden Chick fast casual restaurant franchise, together with the required concrete parking lot and driveways and landscaping (collectively, the “Improvements”); and

WHEREAS, Tex. Loc. Gov’t Code §272.001 allows City to convey land it wants developed by contracting with an independent foundation without auction or soliciting competitive bids; and

WHEREAS, SEDC is a Texas non-profit corporation and qualifies as an independent foundation under Tex. Loc. Gov’t Code §272.001; and

WHEREAS, SEDC desires to purchase the Secondary Land from City for resale to Company pursuant to a purchase and sale agreement (the “City Purchase and Sale Agreement”) subject to the Restriction Agreement (hereinafter defined); and

WHEREAS, Company intends or is under contract to purchase the Secondary Land from SEDC pursuant to a purchase and sale agreement (hereinafter defined as the “SEDC Purchase and Sale Agreement”); and

WHEREAS, Company has advised SEDC that a contributing factor that would induce Company to construct the Improvements would be an agreement by SEDC to provide an economic development grant to Company to defray a portion of the costs of the Improvements; and

WHEREAS, SEDC has adopted programs for promoting economic development; and

WHEREAS, the Development Corporation Act, Chapters 501-505 of the Texas Local Government Code, as amended (the “Act”) authorizes SEDC to provide economic development grants for land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the SEDC’s board of directors to promote new or expanded business development; and

WHEREAS, SEDC has determined that the Grant (hereinafter defined) to be made hereunder is required or suitable to promote or develop new or expanded business enterprises and constitutes a “project”, as that term is defined in the Act; and

WHEREAS, SEDC has determined that making an economic development grant to Company in accordance with this Agreement will further the objectives of SEDC, will benefit City and City’s inhabitants and will promote local economic development and stimulate business and commercial activity within City’s corporate limits;

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:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of Company’s existence, insolvency, employment 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.

“Capital Investment” shall mean the total capitalized cost to Company for the acquisition of the Land, development and construction of the Improvements.

“City” shall mean the City of Seagoville, Texas, acting by and through its city manager, or designee.

“City Purchase and Sale Agreement” shall mean that certain Purchase and Sale Agreement by and between City and SEDC dated of approximate date herewith for the purchase of the Secondary Land by SEDC from City for the resale of the Secondary Land to Company, subject to the Restriction Agreement.

“Closing” shall mean the date Company closes on the purchase of the Secondary Land from SEDC and fee simple title to the Secondary Land is conveyed to Company pursuant to the SEDC Purchase and Sales Agreement.

“Commencement Date” shall mean the later of: (i) the date a certificate of occupancy is issued by City for the Improvements; and (ii) the date the Improvements are open for business as a Golden Chick franchise restaurant and serving City’s residents and visitors.

“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 construction of the Improvements; (ii) all necessary permits for the construction of the Improvements pursuant to the respective plans therefore have been issued by all the applicable governmental authorities; and (iii) grading of the Land or the construction of the vertical elements of the Improvements has commenced.

“Company” shall mean TNM Properties, LLC, a Texas limited liability company, d/b/a Golden Chick.

“Completion of Construction” shall mean that: (i) the construction of the Improvements on the Land has been substantially completed; and (ii) a certificate of occupancy for the Improvements has been issued by the City and in the case of the Infrastructure portion of the Improvements, the City has conducted a final inspection and has accepted or approved said Infrastructure..

“Employment Positions” shall mean non-temporary full-time employment positions of the Company which are eligible for employee benefits and are created, maintained and filled at the Property.

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

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“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, riot, terrorism, civil commotion, insurrection, government or de facto governmental action or inaction (unless caused by acts of omissions of the Party), fires, explosions or floods, strikes, slowdown or work stoppages, but may not impact any payments to be made hereunder.

“Grant” shall mean an economic development grant in the amount equal to the actual costs incurred and paid by Company for the design and construction of the parking lot and driveway portion of the Improvements (“Infrastructure”), not to exceed Two Hundred Thousand Dollars (\$200,000.00), to offset a portion of the costs paid and incurred by Company for Infrastructure necessary for the Improvements, to be paid as set forth herein.

“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, authority on Company with respect to the Improvements or any property or any business owned by Company within City’s corporate limits.

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“Property” shall mean the Land and the Improvements following construction thereof.

“Related Agreement” shall mean any agreement (other than this Agreement) by and between Company and/or City and/or SEDC.

“Required Use” shall mean the development, use, and continued operation of the Improvements as a Golden Chick franchise restaurant in a building of not less than 2,200 square feet open to the public and serving the adjacent business community and City’s residents and including the provision of a concrete access driveway as specified in the Restriction Agreement to allow for ingress and egress across, to, and from the Property and/or the abutting land and for the convenient and efficient flow of pedestrian and vehicular traffic for the public.

“Restriction Agreement” shall mean that certain restriction agreement between City and Company restricting the development and use of the Secondary Land for the construction and operation of a portion of the Infrastructure, as more fully set forth in that Restriction Agreement. The Restriction Agreement shall require Company to cause Commencement of Construction and Completion of Construction of the concrete access driveway and parking area on the Secondary Land, the same being a portion of the Infrastructure in accordance with this Agreement, grant City a right of first refusal in the event Company offers to sell the Secondary Land to a third party prior to Commencement of Construction of the Improvements, and grant City an option to repurchase the Secondary Land in the event Company fails to comply with the deadline for Commencement of Construction and Completion of Construction of the Improvements set forth in the Restriction Agreement.

“SEDC” shall mean the Seagoville Economic Development Corporation.

“SEDC Purchase and Sale Agreement” shall mean that certain Purchase and Sale Agreement by and between SEDC and Company dated of even date herewith for the purchase of the Secondary Land by Company from SEDC, subject to the Restriction Agreement.

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3.3 Construction of Improvements. Company shall, subject to events of Force Majeure, cause Commencement of Construction of the Improvements to occur on or before one hundred twenty (120) days after the Effective Date; and, subject to events of Force Majeure, cause Completion of Construction of Improvements to occur not later than twelve (12) months after the Commencement of Construction.

3.4 Required Use. Beginning on the Commencement Date, and continuing thereafter until the Expiration Date, or earlier termination, the Improvements shall not be used for any purpose other than the Required Use and the Company shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than thirty (30) days, except in connection with and to the extent of an event of Casualty or Force Majeure.

Article IV Grant

4.1 Subject to the obligation of Company to repay the Grant pursuant to Section 6.2 herein, and the continued satisfaction of all the terms and conditions of this Agreement by Company, SEDC agrees to provide the Grant to the Company to be paid within thirty (30) days after the later of the closing on the Secondary Land at which Company receives fee simple title to the Secondary Land and execution of this Incentive Agreement and the Restriction Agreement.

4.2 Under no circumstances shall the obligations of SEDC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. SEDC 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 SEDC under this Agreement shall be pledged or otherwise encumbered by Company in favor of any commercial lender and/or similar financial institution.

4.3 The Grant made hereunder shall be paid solely from lawfully available funds that have been appropriated by SEDC. SEDC shall have no obligation or liability to provide any Grant

except as allowed by law. SEDC shall not be required to provide any of the Grant if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

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

5.2 Commencement of Construction. Commencement of Construction, as that term is defined herein, shall occur not later than one hundred twenty (120) days after the Effective Date of this Agreement.

5.3 Completion of Construction. Subject to Force Majeure, Completion of Construction, as that term is defined herein, shall occur not later than twelve (12) months Commencement of Construction.

5.4 Capital Investment. Company's Capital Investment for the Infrastructure portion of the Improvements as of the Completion of Construction shall be not less than Two Hundred Thousand (\$200,000.00) Dollars. Company shall, not later than fifteen (15) calendar days after the date of Completion of Construction (as defined herein) of the Improvements, deliver to SEDC copies of all records, contracts, receipts, invoices, bills, proofs of payment, and such other information as SEDC may reasonably request to document compliance with the required Capital Investment. In the event the final total cost of the construction of the Infrastructure portion of the Improvements, as reasonably verified by SEDC, is less than Two Hundred Thousand (\$200,000.00) Dollars, the Company shall, within thirty (30) days of receipt by Company of written demand by SEDC, pay the SEDC the difference in value between \$200,000.00 and the final total cost of the construction of the Infrastructure portion of the Improvements as reasonably verified by SEDC.

5.5 Required Use. During the term of this Agreement following Completion of Construction and continuing thereafter until expiration of this Agreement or earlier termination Company shall continuously own and occupy the Property which shall not be used during the term of this Agreement for any purpose other than the Required Use. Further, during the term of this Agreement, such occupation and use shall not cease for more than thirty (30) days except in connection with, and to the extent of, an event of Force Majeure.

5.6 Employment Positions. Within thirty (30) days of Completion of Construction, Company shall create, fill and maintain a total of at least eight (8) Employment Positions for the term of this Agreement.

5.7 Continuous Ownership. During the term of this Agreement following the Effective Date and continuing thereafter until the Expiration Date, the Property shall be continuously owned and occupied by the Company.

5.8 Chamber of Commerce Membership. Company shall become a member of the Seagoville Chamber of Commerce, if not already a member, within thirty (30) days after the Effective Date and shall maintain such membership during the term of this Agreement, unless the Seagoville Chamber of Commerce shall cease to exist.

Article VI Termination

6.1 Termination. This Agreement shall terminate upon any one or more of the following:

- (a) by written agreement of the Parties;
- (b) on the Expiration Date;
- (c) upon written notice by either Party in the event the other Party 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 in accordance with this Agreement;
- (d) upon written notice by the SEDC, if the Company suffers an event of Bankruptcy or Insolvency;
- (e) upon written notice by SEDC, if any Impositions owed to City or the State of Texas by Company shall become delinquent after thirty (30) days written notice is delivered pursuant to this Agreement (provided, however, Company retains the right to timely and properly protest and contest any such Impositions); or
- (f) upon written notice by either Party, 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.

6.2 Repayment Due Upon Termination Due to Breach of Section 6.1(c). In the event the Agreement is terminated by SEDC pursuant to Section 6.1(c):

- (a) due to a breach of the obligation set forth in section 5.2 hereof, Company shall immediately refund to the SEDC an amount equal to the value of the Grant received by Company;
- (b) due to a breach of the obligation set forth in section 5.3 hereof, Company shall immediately refund to the SEDC an amount equal to eighty percent (80%) of the value of the Grant received by Company;
- (c) due to a breach of an obligation set forth in section 5.5, 5.6, and/or 5.7 hereof, Company shall immediately refund to the SEDC an amount equal to sixty percent (60%) of the Grant received by Company;

- (d) due to a breach of an obligation set forth in section 5.8 hereof, Company shall immediately refund to the SEDC an amount equal to forty percent (40%) of the Grant received by Company;
- (e) due to a breach of an obligation set forth in section 5.1 and not coming within any the obligations set forth in sections 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, and/or 5.8, and not constituting a breach covered by section 6.1(d), (e), and/or (f), Company shall immediately refund to the SEDC an amount equal to twenty percent (20%) of the Grant received by Company.

6.3 Repayment Due Upon Termination Due to Breach of Section 6.1(d), (e), and/or (f). In the event the Agreement is terminated by SEDC pursuant to Section 6.1(d), (e), and (f), Company shall immediately pay to SEDC an amount equal to the Grant previously paid by SEDC to Company as of the date of termination, plus interest at the rate 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 reasonably selected by SEDC) as its prime or base commercial lending rate, which shall accrue from the date of the Grant Payment until paid.

6.4 Right of Offset. SEDC may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City or SEDC 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 SEDC or City has been reduced to judgment by a court.

Article VII Miscellaneous

7.1 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 without the prior written consent of SEDC.

7.2 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 SEDC assumes no responsibilities or liabilities to third parties in connection with these actions. Company agrees to indemnify and hold harmless SEDC 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.

7.3 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.

7.4 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 SEDC, to

Attn: Jose Hernandez, Board Chair
Seagoville Economic Development
Corporation
702 N. Highway 175
Seagoville, Texas 75115

With a copy to:

Victoria W. Thomas
Nichols, Jackson, Dillard, Hager &
Smith, LLP
1800 Ross Tower
100 N. Akard
Dallas, Texas 75201
214.965.0010 – facsimile

If intended for Company, to:

TNM Properties, LLC d/b/a Golden Chick
Attn: Tamer Kadah
1800 Windermere Drive
Plano, Texas 75093

7.5 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.

7.6 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 Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

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

7.8 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.

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

7.10 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.

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

7.12 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.

7.13 Employment of Undocumented Workers. 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 Grant and any other funds received by Company from SEDC as of the date of such violation within one hundred twenty (120) days after the date Company is notified by SEDC 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.

7.14 Conditions Precedent. The obligations of the Parties are expressly subject to and conditioned upon the following:

- (a) City and SEDC having entered into the City Sale and Purchase Agreement;
- (b) Company and SEDC having entered into the SEDC Sale and Purchase Agreement;
- (c) Company and City having entered into the Restriction Agreement; and
- (d) Company having closed on the purchase of the Primary Land and the Secondary Land.

(Signature Page to Follow)

EXECUTED on this _____ day of _____, 2020.

SEAGOVILLE ECONOMIC DEVELOPMENT CORPORATION

By: _____
Jose Hernandez, Board Chair

EXECUTED on this _____ day of _____, 2020.

TNM PROPERTIES, LLC, d/b/a GOLDEN CHICK

By: _____
Tamer Kadah, Manager

and

By: _____
Naim Tatari, Manager

Executive Session Agenda Item: 3

Meeting Date: February 3, 2020

ITEM DESCRIPTION:

Recess into Executive Session

Council and SEDC will recess into Executive Session in compliance with Texas Government Code:

A § 551.071. Consultation with City Attorney: receive legal advice related to John Bunker Sands Wetland Center Inc. Incentive Agreement

BACKGROUND OF ISSUE:

N/A

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

N/A

EXHIBITS:

N/A

Executive Session Agenda Item: 4

Meeting Date: February 3, 2020

ITEM DESCRIPTION:

Reconvene into Regular Session

Council and SEDC will reconvene into open session, and take action, if any, on matters discussed in Executive Session.

A. § 551.071. Consultation with City Attorney: receive legal advice related to John Bunker Sands Wetland Center Inc. Incentive Agreement

BACKGROUND OF ISSUE:

N/A

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

N/A

EXHIBITS:

N/A

Consent Session Agenda Item: 5

Meeting Date: February 3, 2020

ITEM DESCRIPTION:

Discuss and consider a Resolution of the City of Seagoville, Texas, authorizing continued participation with the Atmos Cities Steering Committee; and authorizing the payment of five cents per capita to the Atmos Cities Steering Committee to fund regulatory and related activities related to Atmos Energy Corporation; and requiring delivery of this resolution and approved assessment fee to legal counsel for the steering committee.

BACKGROUND OF ISSUE:

The City of Seagoville is a regulatory authority under the Gas Utility Regulatory Act (GURA) and has exclusive original jurisdiction over the rates and services of Atmos Energy Corporation, Mid-Tex Division (Atmos) within its municipal boundaries. Atmos Cities Steering Committee (ACSC) has historically intervened in Atmos rate proceedings and gas utility related rulemakings to protect the interests of municipalities and gas customers residing within the City. For ACSC to continue its participation in these activities which affects the provision of gas utility service and the rates to be charged, it must assess its members for such costs.

Most municipalities have retained original jurisdiction over gas utility rates and services within municipal limits. The Atmos Cities Steering Committee (“ACSC”) is composed of 178 municipalities in the service area of Atmos Energy Corporation, Mid-Tex Division that have retained original jurisdiction. Atmos is a monopoly provider of natural gas. Because Atmos has no competitors, regulation of the rates that it charges its customers is the only way that cities can ensure that natural gas rates are fair. Working as a coalition to review the rates charged by Atmos allows cities to accomplish more collectively than each city could do acting alone. Cities have more than 100 years experience in regulating natural gas rates in Texas.

ACSC is the largest coalition of cities served by Atmos Mid-Tex. There are 178 ACSC member cities, which represent more than 60 percent of the total load served by Atmos-Mid Tex. ACSC protects the authority of municipalities over the monopoly natural gas provider and defends the interests of residential and small commercial customers within the cities. Although many of the activities undertaken by ACSC are connected to rate cases (and therefore expenses are reimbursed by the utility), ACSC also undertakes additional activities on behalf of municipalities for which it needs funding support from its members.

FINANCIAL IMPACT:

\$843.90

RECOMMENDATION:

Staff recommends approval.

EXHIBITS

Resolution

THE CITY OF SEAGOVILLE, TEXAS

RESOLUTION NO. ___ - R - 2020

A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS, AUTHORIZING CONTINUED PARTICIPATION WITH THE ATMOS CITIES STEERING COMMITTEE; AND AUTHORIZING THE PAYMENT OF FIVE CENTS PER CAPITA TO THE ATMOS CITIES STEERING COMMITTEE TO FUND REGULATORY AND RELATED ACTIVITIES RELATED TO ATMOS ENERGY CORPORATION; AND REQUIRING DELIVERY OF THIS RESOLUTION AND APPROVED ASSESSMENT FEE TO LEGAL COUNSEL FOR THE STEERING COMMITTEE.

WHEREAS, the City of Seagoville is a regulatory authority under the Gas Utility Regulatory Act (GURA) and has exclusive original jurisdiction over the rates and services of Atmos Energy Corporation, Mid-Tex Division (Atmos) within the municipal boundaries of the city; and

WHEREAS, the Atmos Cities Steering Committee (ACSC) has historically intervened in Atmos rate proceedings and gas utility related rulemakings to protect the interests of municipalities and gas customers residing within municipal boundaries; and

WHEREAS, ACSC is participating in Railroad Commission dockets and projects, as well as court proceedings and legislative activities, affecting gas utility rates; and

WHEREAS, the City is a member of ACSC; and

WHEREAS, in order for ACSC to continue its participation in these activities which affects the provision of gas utility service and the rates to be charged, it must assess its members for such costs;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS:

SECTION 1. That the City is authorized to continue its membership with the Atmos Cities Steering Committee to protect the interests of the City of Seagoville and protect the interests of the customers of Atmos Energy Corporation, Mid-Tex Division residing and conducting business within the City limits.

SECTION 2. The City is further authorized to pay its 2020 assessment to the ACSC in the amount of five cents (\$0.05) per capita.

SECTION 3. A copy of this Resolution and approved assessment fee payable to “*Atmos Cities Steering Committee*” shall be sent to:

Brandi Stigler
Atmos Cities Steering Committee
c/o Arlington City Attorney’s Office, Mail Stop 63-0300
101 S. Mesquite St., Suite 300
Arlington, Texas 76010

PRESENTED AND PASSED on this the 3rd day of February, 2020, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Seagoville, Texas.

APPROVED:

Dennis K. Childress, Mayor

ATTEST:

Kandi Jackson, City Secretary

APPROVED AS TO FORM:

Victoria Thomas, City Attorney
(/cdb 01/28/2020)

City of Arlington, c/o Atmos Cities Steering Committee
 Attn: Brandi Stigler
 101 S. Mesquite St., Ste 300
 MS #63-0300
 Arlington, TX 76010

Invoice

Date	Invoice #
1/6/2020	20-136

Bill To
City of Seagoville

Item	Population	Per Capita	Amount
2020 Membership Assessment	16,878	0.05	843.90
Please make check payable to: Atmos Cities Steering Committee and mail to Atmos Cities Steering Committee, Attn: Brandi Stigler, Arlington City Attorney's Office, 101 S. Mesquite St., Ste 300, MS #63-0300, Arlington, Texas 76010			Total \$843.90

Regular Session Agenda Item: 6

Meeting Date: February 3, 2020

ITEM DESCRIPTION:

Discuss and consider an Ordinance of the City of Seagoville, Texas, amending Ordinance 29-2019 which adopted the operating budget for the fiscal year beginning October 1, 2019 and ending September 30, 2020; providing for the repeal of all Ordinances in conflict; providing a severability clause; and providing an effective date.

BACKGROUND OF ISSUE:

In the FY 2020 budget development process, an amount of \$95,000 was approved to provide resources for the annual mowing contract. Due to the relatively mild winter experienced so far, mowing efforts have continued during the winter season compared to expectations, when the temperatures would neutralize vegetation growth. Staff recommends increasing the FY 2020 appropriation from \$95,000 to \$215,000, an increase of \$120,000 to continue current level of mowing effort and also during the upcoming growing season.

FINANCIAL IMPACT:

Increases the FY 2020 expenditure budget by \$120,000, making the total expenditure budget \$215,000. Resources to be provided from the General Fund reserve fund balance.

EXHIBITS:

Ordinance

Exhibit A – City of Seagoville 2020 Budget Fund Expenditures

ORDINANCE NO. XX-20

AN ORDINANCE OF THE CITY OF SEAGOVILLE, TEXAS, AMENDING ORDINANCE 29-2019 WHICH ADOPTED THE OPERATING BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2019 AND ENDING SEPTEMBER 30, 2020; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Seagoville, Texas approved the fiscal year 2019-2020 Operating Budget for the City by Ordinance 29-2019 on September 12, 2019; and

WHEREAS, in that 2019-2020 Operating Budget, the City Council approved a \$95,000 expenditure budget in the General Fund for annual mowing; and

WHEREAS, mild winter temperatures have extended efforts for mowing beyond initial expectations, requiring additional resources to successfully complete the fiscal year; and

WHEREAS, the Texas Local Government Code § 102.010, “Changes in Budget for Municipal Purposes”, allows a municipality to amend their budgets as deemed necessary for municipal purposes; and

WHEREAS, the City Manager is submitting an amendment to the City’s FY 2019-2020 budget to increase the budgeted expenditure in the General Fund for annual mowing; and

WHEREAS, upon full consideration of the matter, the City Council finds that such amendment is warranted and in the best interest of the taxpayers of the City of;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS SUBJECT TO THE APPLICABLE STATE LAWS AND THE CITY CHARTER:

SECTION 1. That the City of Seagoville Budget for Fiscal Year 2019-2020, as previously adopted and amended, shall be and hereby is further amended to increase the General Fund budget by \$120,000.00 as follows:

	<u>Adopted</u>	<u>Amendment</u>	<u>Amended</u>
General Fund	\$ 11,066,463	\$ 120,000	\$11,186,463

SECTION 2. That all provisions of the ordinance of the City of Seagoville in conflict with provisions of this ordinance, be and the same are hereby repealed, and all other provisions of the

ordinances of the City of Seagoville not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. That should any sentence, paragraph, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same should not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal, or unconstitutional.

DULY PASSED by the City Council of the City of Seagoville, Texas, on 3rd day of February, 2020.

APPROVED:

DENNIS CHILDRESS MAYOR

ATTEST:

KANDI JACKSON, CITY SECRETARY

APPROVED AS TO FORM:

VICTORIA THOMAS, CITY ATTORNEY
TM113464 012920

**EXHIBIT A
CITY OF SEAGOVILLE
2020 BUDGET
FUND EXPENDITURES**

Description	Amended Amount	Second Amendment	Amended Amount
General	11,066,463	120,000	11,186,463
Debt Service	493,364	-	493,364
Water and Sewer Operations	8,607,354	-	8,607,354
Small Grants	1,150	-	1,150
Revenue Recycle	500	-	500
Municipal Court	7,972	-	7,972
Hotel/Motel	30,000	-	30,000
Street Maintenance	750,000	-	750,000
Animal Shelter Operations	3,000	-	3,000
Technology Replacement	17,500	-	17,500
TCLEOSE	1,000	-	1,000
2019 Street Projects	4,394,611	-	4,394,611
New Fire Station Construction	985,000	-	985,000
Storm Water	372,660	-	372,660
	<u>26,730,574</u>	<u>120,000</u>	<u>26,850,574</u>

Regular Session Agenda Item: 7

Meeting Date: February 3, 2020

ITEM DESCRIPTION:

Discuss and consider approving a Resolution ordering the General Election to be held May 2, 2020.

Discuta y considere aprobar una Resolución ordenando la Elección General que se celebrará el 2 de Mayo de 2020.

BACKGROUND OF ISSUE:

This year's General Election is on May 2, 2020 and includes the City Council Offices of Place 1, Place 3 and Place 5. The filing period for those interested in having their name on the official ballot is from Wednesday, January 15, 2020 through Friday, February 14, 2020 at 5:00 p.m. The Election Order contains pertinent dates and times for early voting, as well as locations. It also designates the Dallas County Elections Administrator as the Early Voting Clerk.

FINANCIAL IMPACT:

The financial impact will be determined when the contract with Dallas County is finalized.

RECOMMENDATION:

Staff recommends approval.

EXHIBITS:

Resolution – Calling General Election (English)

Resolution – Calling General Election (Spanish)

CITY OF SEAGOVILLE

RESOLUTION NO. XX-R-2020

A RESOLUTION AUTHORIZING A GENERAL MUNICIPAL ELECTION TO BE HELD ON MAY 2, 2020 FOR THE PURPOSE OF ELECTING PERSONS TO THE OFFICES OF COUNCILMEMBER PLACES 1, 3, AND 5; AUTHORIZING A JOINT ELECTION WITH OTHER DALLAS COUNTY POLITICAL SUBDIVISIONS; AUTHORIZING A CONTRACT FOR ELECTION SERVICES WITH DALLAS COUNTY; PROVIDING FOR A RUNOFF DATE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the general election for the City of Seagoville, as set forth by the Texas Election Code, is required to be held on May 2, 2020, at which time the voters will elect persons to the offices of City Council Places 1, 3, and 5; and

WHEREAS, in accordance with Section 271.002 of the Texas Election Code, the City election will be conducted jointly with other political subdivisions of Dallas County, Texas; and

WHEREAS, the City Council of the City of Seagoville finds it to be in the public interest to call the foregoing election and to enter into a contract with Dallas County to conduct said election jointly with other Dallas County government entities.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, THAT:

SECTION 1. A general municipal election is hereby ordered to be held on the 2nd day of May, 2020 for the purpose of allowing the qualified voters of the City of Seagoville to elect one Councilmember for Place 1 to serve a two (2) year term, one Councilmember for Place 3 to serve a two (2) year term, and one Councilmember for Place 5 to serve a two (2) year term.

SECTION 2. The election will be conducted jointly with other political subdivisions in Dallas County on May 2, 2020, pursuant to Chapters 31 and 271, Texas Election Code and a Joint Election Agreement and Election Services Contract by and between the City of Seagoville, Dallas County, and other political subdivisions (the "Joint Elections Agreement").

SECTION 3. The election precinct and polling place of said elections shall be as follows:

City Voting Precinct
Seagoville City Hall
702 N. Hwy 175
Seagoville, Texas 75159

Election polls shall open on Election Day at 7:00 a.m. and close at 7:00 p.m.

SECTION 4. Pursuant to the Joint Elections Agreement, Toni Pippins-Poole, the Dallas County Elections Administrator, shall serve as Election Administrator for the election.

SECTION 5. All election officials shall be the officials appointed to such positions by the Election Administrator from the list of proposed election judges listed in an attachment to the Joint

Elections Agreement or as otherwise selected pursuant to the terms of the Joint Elections Agreement, and to the extent required by law, those election officials are hereby so appointed.

SECTION 6. An Early Voting Ballot Board is hereby created pursuant to Section 87.001 of the Texas Election Code. The Early Voting Ballot Board shall be made up of members appointed in the manner stated in the Joint Elections Agreement and the Presiding Judge and Alternate Presiding Judge of the Early Voting Ballot Board shall be the election officials listed in the Joint Election Agreement.

SECTION 7. Early voting by personal appearance will be held jointly with other Dallas County public entities at Dallas County's Main Early Voting Site located at the George L. Allen Sr. Courts Building, 600 Commerce Street, Dallas, Texas 75202 beginning on Monday, April 20, 2020 and continuing through Tuesday, April 28, 2020 at the times set forth below:

<u>Early Election Dates</u>	<u>Times When Polls Are Open</u>
Monday through Saturday April 20, 2020 through April 25, 2020	8:00 a.m. until 5:00 p.m.
Sunday April 26, 2020	1:00 p.m. until 6:00 p.m.
Monday and Tuesday April 27, 2020 and April 28, 2020	7:00 a.m. until 7:00 p.m.

In addition, all qualified and registered voters may vote by early appearance at the Seagoville City Hall, 702 N. Hwy. 175, Seagoville, Texas 75159 at the dates and times set forth below:

**Seagoville City Hall
702 N. Hwy. 175
Seagoville, TX 75159**

<u>Early Election Dates</u>	<u>Time When Polls Are Open</u>
Monday through Saturday April 20, 2020 through April 25, 2020	8:00 a.m. until 5:00 p.m.
Sunday April 26, 2020	1:00 p.m. until 6:00 p.m.
Monday and Tuesday April 27, 2020 and April 28, 2020	7:00 a.m. until 7:00 p.m.

SECTION 8. Additional early voting locations will be determined per the Joint Election Agreement and Contract for Election Services with the Dallas County Election Administrator.

SECTION 9. The Dallas County Election Administrator is hereby appointed to serve as the Early Voting Clerk and the Election Administrator's permanent county employees are appointed as deputy early voting clerks.

Applications for early voting may be submitted by mail, carrier, delivery, fax, or email, and must be received by the Early Voting Clerk between January 1, 2020 and April 21, 2020.

Applications for ballot by mail shall be mailed to:

Toni Pippins-Poole, Early Voting Clerk
Dallas County Elections Department
Health and Human Services Building
2377 N. Stemmons Freeway, Suite 820
Dallas, TX 75207

Applications for ballots by mail must be received no later than the close of business on Tuesday, April 21, 2020.

Applications for early voting should be faxed to 214-819-6303.

Applications for early voting should be e-mailed to: evapplications@dallascounty.org

SECTION 10. Notice of the election shall be published once in the official newspaper of the City not earlier than the 30th day or later than the 10th day before Election Day and shall be posted on the front window used to publish notice of City Council meetings not later than the 21st day before Election Day. A copy of the published notice that contains the name of the newspaper and the date of publication shall be retained as a record of such notice and the person posting the notice shall make a record at the time of posting stating the date and place of posting.

SECTION 11. The election shall be conducted pursuant to the Charter of the City and the election laws of the State of Texas. The candidate for each office receiving a majority of all votes cast for all candidates shall be elected to serve such term of office or until his or her successor is duly elected and qualified.

SECTION 12. In the event no candidate for one of the offices to be elected in the foregoing election receives a majority of all votes cast for all the candidates for such office, a runoff election shall be called for such office as provided for by the Charter of the City and the State Election Code.

SECTION 13. This resolution shall be construed with any action of the Dallas County Commissioners Court providing for the conduct of a joint election with other public entities as herein contemplated.

SECTION 14. The City Manager is hereby authorized to negotiate and execute a contract for a joint election and election services with Dallas County as the authorized representative of the City.

SECTION 15. The City Secretary is hereby authorized and directed to file, publish and/or post, in the time and manner prescribed by law, all notices required to be so filed, published and/or posted in connection with the conduct of this election.

SECTION 16. This resolution shall be effective immediately upon adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS,
THIS THE 3rd DAY OF FEBRUARY 2020.**

APPROVED:

Dennis K. Childress, Mayor

ATTEST:

Kandi Jackson, City Secretary

APPROVED:

Victoria W. Thomas, City Attorney

CIUDAD DE SEAGOVILLE

RESOLUCION NO. _____

UNA RESOLUCIÓN QUE AUTORIZA UNA ELECCIÓN MUNICIPAL GENERAL QUE SE CELEBRARÁ EL 2 DE MAYO DE 2020 CON EL PROPÓSITO DE ELEGIR A LAS PERSONAS A LAS OFICINAS DE CONCEJALES LUGARES 1, 3 Y 5; AUTORIZAR UNA ELECCIÓN CONJUNTA CON OTRAS SUBDIVISIONES POLÍTICAS DEL CONDADO DE DALLAS; AUTORIZAR UN CONTRATO PARA SERVICIOS ELECTORALES CON EL CONDADO DE DALLAS; PROVISIÓN DE UNA FECHA DE ESCORA; Y PROPORCIONANDO UNA FECHA EFECTIVA

Considerando que, las elecciones generales para la Ciudad de Seagoville, según lo establecido por el Código Electoral de Texas, deben celebrarse el 2 de Mayo de 2020, momento en que los votantes elegirán a las personas a las oficinas del consejo Municipal lugares 1, 3, y 4; y

Considerando que, de acuerdo con la sección 271,002 del Código Elecciones de Texas, las elecciones municipales se llevarán a cabo conjuntamente con otras subdivisiones políticas del Condado de Dallas, Texas; Y

Considerando que, el Concejo Municipal de la Ciudad de Seagoville encuentra que es de interés público para llamar a la elección precedente y para celebrar un contrato con el Condado de Dallas para llevar a cabo dicha elección conjuntamente con otras entidades del gobierno del Condado de Dallas.

AHORA, POR LO TANTO, SER RESUELTO POR EL AYUNTAMIENTO DE LA CIUDAD DE SEAGOVILLE, TEXAS, QUE:

SECCIÓN 1. Se ordena a las elecciones municipales generales que se Celebrarán el 2 de Mayo, 2020 con el propósito de permitir que los votantes calificados de la ciudad de Seagoville elijan a un miembro para el lugar del consejo 1 para cumplir un periodo de dos (2) años, un miembro del consejo para el lugar 3 para cumplir un periodo de dos (2) años , y un miembro del consejo para el lugar 5 para cumplir un periodo de dos (2) años.

SECCIÓN 2. La elección se llevará a cabo conjuntamente con otras subdivisiones políticas en el Condado de Dallas el 2 de Mayo de 2020, de conformidad con los Capítulos 31 y 271, el Código electoral de Texas y un Acuerdo de elecciones conjunto y Contrato de Servicios Electorales por y entre la ciudad de Seagoville, Dallas Condado y otras subdivisiones políticas (el "Acuerdo Electoral Conjunto").

SECCIÓN 3. El recinto electoral y el lugar de votación de dichas elecciones serán los siguientes:

Seagoville Ayuntamiento
702 N. Hwy 175
Seagoville, Texas 75159

Las encuestas electorales se abrirán el día de las elecciones a las 7:00 a.m. y cierran a las 7:00 p.m.

SECCIÓN 4. De conformidad con el Acuerdo de Elecciones Conjunto, Toni Pippins-Poole, el Administrador de Elecciones del Condado de Dallas, servirá como administrador electoral para las elecciones.

SECCIÓN 5. Todos los funcionarios electorales serán los funcionarios designados a tales cargos por el Administrador Elecciones de la lista de los jueces electorales propuestos enumerados en un apego al Acuerdo de Electoral Conjunto o como de otra manera seleccionado de acuerdo con los términos de la Junta Acuerdo electoral, y en la medida requerida por la ley, esos funcionarios electorales son nombrados por el presente.

SECCIÓN 6. Por la presente se crea una boleta electoral de votación anticipada conforme a la sección 87,001 del Código Electoral de Texas. La Junta electoral de votación anticipada estará formada por miembros nombrados de la manera indicada en el acuerdo electoral conjunto y el Juez Presidente y el Juez Presidente Suplente de La Junta Electoral de Votación anticipada serán los funcionarios electorales enumerados en El Acuerdo de Elecciones Conjuntas.

SECCIÓN 7. La votación anticipada por apariencia personal se celebrará conjuntamente con otras entidades públicas del Condado de Dallas en el sitio principal de votación anticipada del Condado de Dallas ubicado en el edificio George L. Allen Sr. Courts, 600 Commerce Street, Dallas, Texas 75202 comenzando el Lunes, 20 de Abril, 2020 y continuando hasta el Martes, 28 de Abril de 2020 en los horarios expuestos a continuación:

Fechas de las elecciones tempranas cuando las encuestas están abiertas

Lunes a Sábado 8:00 a.m. hasta 5:00 p.m.
20 de Abril de 2020 al 25 de Abril de 2020

Domingo 1:00 p.m. hasta 6:00 p.m.
Abril 26, 2020 Lunes y Martes 7:00 a.m. hasta 7:00 p.m.
27 de Abril, 2020 y 28 de Abril de 2020

Además, todos los votantes calificados y registrados pueden votar por la aparición temprana en el Ayuntamiento de Seagoville, 702 N. Hwy. 175, Seagoville, Texas 75159 en las fechas y horas indicadas a continuación:

**Seagoville City Hall
702 N. Hwy. 175
Seagoville, TX 75159**

<u>Early Election Dates</u>	<u>Time When Polls Are Open</u>
De Lunes a Sabado Abril 20, 2020 through April 25, 2020	8:00 a.m. hasta 5:00 p.m.
Domingo Abril 26, 2020	1:00 p.m. hasta 6:00 p.m.
Lunes y Martes Abril 27, 2020 and April 28, 2020	7:00 a.m. hasta 7:00 p.m.

SECCIÓN 8. Los lugares de votación anticipada adicionales se determinarán según el Acuerdo Electoral Conjunto y el Contrato de Servicios Electorales con el Administrador Electoral del Condado de Dallas.

SECCIÓN 9. El Administrador Elecciones del Condado de Dallas es designado para servir como el Secretario de Votación Anticipada y los empleados del Condado permanente del Administrador de Elecciones se designen como secretarios adjuntos de votación anticipada.

Las solicitudes de votación anticipada pueden presentarse por correo, transportista, envío, fax o correo electrónico, y deben ser recibidas por el Secretario de votación anticipada entre el 1 de Enero de 2020 y el 21 de Abril de 2020.

Las solicitudes de votación por correo se enviarán a:
Toni Pippins-Poole, Early Voting Clerk
Dallas County Elections Department
Health and Human Services Building
2377 N. Stemmons Freeway, Suite 820
Dallas, TX 75207

Las solicitudes de boletas por correo deben recibirse a más tardar el cierre del negocio el Martes, 21 de Abril de 2020.

Las solicitudes de votación anticipada deben enviarse por fax a 214-819-6303.

Las solicitudes de votación anticipada deben enviarse por correo electrónico a: evapplications@dallascounty.org

SECCIÓN 10. El aviso de la elección se publicará una vez en el diario oficial de la Ciudad no antes del día 30 o más tarde del día 10 antes de la jornada electoral y se publicará en la ventana principal utilizada para publicar el aviso de las reuniones del Concejo Municipal a más tardar del día 21 antes del Día de las Elecciones. Una copia del aviso publicado que contenga el nombre del periódico y la fecha de publicación se conservará como un registro de dicha notificación y la persona que publique el aviso deberá hacer un registro en el momento de la publicación indicando la fecha y el lugar de la publicación.

SECCIÓN 11. La elección se realizará de acuerdo con la Carta de la Ciudad y las leyes electorales del Estado de Texas. El candidato para cada oficina que reciba la mayoría de todos los votos emitidos para todos los candidatos será elegido para servir a dicho mandato o hasta que su sucesor sea debidamente elegido y calificado.

SECCIÓN 12. En el caso de que ningún candidato a una de las oficinas que se elegirá en la elección precedente reciba la mayoría de todos los votos emitidos para todos los candidatos a tal cargo, se llamará a una elección de escurrido para tal oficina según lo previsto por la carta de la Ciudad y el Código Electoral de Estado.

SECCIÓN 13. Esta resolución se interpretará con cualquier acción del Tribunal de Comisionados del Condado de Dallas que proporcione la realización de una elección conjunta con otras entidades públicas como se contempla en el presente documento.

SECCIÓN 14. El Administrador de la Ciudad está autorizado para negociar y ejecutar un contrato para una elección conjunta y servicios electorales con el Condado de Dallas como el representante autorizado de la ciudad.

SECCIÓN 15. Por la presente, el Secretario de la Ciudad está autorizado y dirigido a presentar, publicar y/o publicar, en el tiempo y la manera prescrita por la ley, todos los avisos requeridos para ser presentados, publicados y/o publicados en relación con la conducta de esta elección.

SECCIÓN 16. Esta resolución entrará en vigor inmediatamente después de su adopción.

**APROBADA POR EL CONCEJO MUNICIPAL DE LA CIUDAD DE SEAGOVILLE, TEXAS,
ESTE EL DÍA 3 DE FEBRERO 2020.**

APROBADO:

Dennis K. Childress, Mayor

ATESTIGUAR:

Kandi Jackson, City Secretary

APROBADO:

Victoria W. Thomas, City Attorney

Regular Session Agenda Item: 8

Meeting Date: February 3, 2020

ITEM DESCRIPTION:

Discuss and consider a Resolution of the City Council of the City of Seagoville, Texas, approving an agreement by and between the City of Seagoville, Texas, and Good Earth Corporation in an amount not to exceed \$161,820.00 for mowing services; and providing for an effective date.

BACKGROUND OF ISSUE:

Staff advertised for and received bids for mowing services in certain city parks, and on medians and other rights-of-way, along with trash removal. Good Earth Corporation submitted the lowest qualified bid; therefore Staff recommends the bid be awarded to Good Earth Corporation. The contract allows for two (2) additional terms of one (1) year each if the City Manager determines such renewal is in the best interest of the City.

FINANCIAL IMPACT:

\$161,820.00, if approved

RECOMMENDATION:

Staff recommends approval.

EXHIBITS:

Resolution
Agreement
Bid Documents

RESOLUTION NO. XX-R-2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, APPROVING AN AGREEMENT BY AND BETWEEN THE CITY OF SEAGOVILLE, TEXAS, AND GOOD EARTH CORPORATION IN AN AMOUNT NOT TO EXCEED \$161,820.00 FOR MOWING SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, City Administration advertised for and received bids for mowing services in specific city properties, and on medians and other rights-of-way, along with trash removal; and

WHEREAS, City Administration has determined that Good Earth Corporation submitted the lowest qualified bid in an amount not to exceed \$161,820.00 and recommends the contract be awarded to Good Earth Corporation, and

WHEREAS, the City Council of the City of Seagoville finds it to be in the public interest to award the above-described contract to Good Earth Corporation as recommended.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS:

SECTION 1. That the City Manager is hereby authorized to execute the contract with Good Earth Corporation, attached hereto as Exhibit 1, including deletions determined to be necessary by the City Manager, in an amount not to exceed \$161,820.00 for mowing services (the "Contract").

SECTION 2. The City Manager is authorized to renew the Contract for two (2) additional terms of one (1) year each if the City Manager determines, in his discretion, that such renewal is in the best interest of the City and further provided funds have been budgeted for the costs related to such renewal(s) of the Contract for the fiscal year to which such renewal would apply.

SECTION 3. This Resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Seagoville, Texas, this the 3rd day of February, 2020.

APPROVED:

Dennis K. Childress, Mayor

ATTEST:

Kandi Jackson, City Secretary

APPROVED AS TO FORM:

Victoria Thomas, City Attorney

Sewer Lot (1330 E. Malloy Bridge Road)

**Article III
Schedule of Work**

Contractor agrees to commence services under this Agreement upon Notice to Proceed from City.

**Article IV
Compensation**

The City shall compensate Contractor as set forth in the Bid Documents attached as Exhibit “A, in a total amount not to exceed one hundred sixty-one thousand, eight hundred twenty dollars and no cents (\$161,820.00).

**Article V
Suspension of Work**

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

**Article VI
Availability of Funds**

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

**Article VII
Insurance**

Contractor shall provide and maintain for the duration of this Agreement and any subsequent renewals thereof, and for the benefit of the City, insurance coverage as set forth in the Bid Specifications, Exhibit “A” hereto. Contractor shall provide a signed Certificate of Insurance verifying that Contractor has obtained the required insurance coverage for the City prior to the Effective Date of this Agreement.

**Article VIII
Termination**

The City may terminate this Agreement, with or without cause, by giving Contractor thirty (30) days prior written notice of termination. In the event of such termination, Contractor shall be

entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

Article IX Indemnification

9.1 CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY; AND EACH OF ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES; FROM ANY AND ALL SUITS, ACTIONS, CLAIMS, LOSSES, OF DAMAGES OF ANY CHARACTER AND FROM ALL EXPENSES INCIDENTAL TO THE DEFENSE OF SUCH SUITS, ACTIONS OR CLAIMS BASED UPON, ALLEGED TO BE BASED UPON, OR ARISING OUT OF (1) ANY INJURY, DISEASE, SICKNESS, OR DEATH OF ANY PERSON OR PERSONS, (2) ANY DAMAGES TO ANY PROPERTY INCLUDING LOSS OF USE THEREOF, CAUSED BY ANY ACT OR OMISSION OF CONTRACTOR, OR ANY SUBCONTRACTOR OF THE CONTRACTOR, OR BY THEIR OFFICERS, AGENTS, SERVANTS, EMPLOYEES OR ANYONE ELSE UNDER CONTRACTOR'S DIRECTION AND CONTROL, AND ARISING OUT OF ANY PERSON OR PERSONS, (2) ANY DAMAGES TO ANY PROPERTY INCLUDING LOSS OF USE THEREOF, CAUSED BY ANY ACT OR OMISSION OF CONTRACTOR, OR ANY SUBCONTRACTOR OF THE CONTRACTOR, OR BY THEIR OFFICERS, AGENTS, SERVANTS, EMPLOYEES OR ANYONE ELSE UNDER THE CONTRACTOR'S DIRECTION AND CONTROL, AND ARISING OUT OR CAUSED BY THE PERFORMANCE OF ANY WORK OR SERVICES CALLED FOR BY THE CONTRACT OR FROM CONDITIONS CREATED BY THE PERFORMANCE OR NON-PERFORMANCE OF SAID WORK OR SERVICES, BUT NOT INCLUDING THE SOLE NEGLIGENCE OF ANY PARTY HEREIN INDEMNIFIED.

9.2 IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR OR ANY SUBCONTRACTOR UNDER WORKMAN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

Article X Miscellaneous

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

10.2 Assignment. Contractor may not assign this Agreement in whole or in part without the prior written consent of the City. In the event of an assignment by Contractor to which the

City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

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

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

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

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

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

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

If intended for City, to:

City of Seagoville, Texas
Attn: City Manager
702 N. Hwy 175
Seagoville, Texas 75159

With a copy to:

Victoria Thomas, City Attorney
Nichols, Jackson, Dillard, Hager &
Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

If intended for Contractor:

Good Earth Corporation
7922 Forney Road
Dallas, Texas 75227

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

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

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

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

10.13 Compliance with Federal, State & Local Laws. Contractor shall comply in performance of services under the terms of this Agreement with all applicable laws, ordinances and regulations, judicial decrees or administrative orders, ordinances, and codes of federal, state and local governments, including all applicable federal clauses.

10.14 Force Majeure. No Party will be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, acts of terrorism or any similar cause beyond the reasonable control of such party, provided that the non-performing party is without fault in causing such default or delay. The non-performing Party agrees to use commercially reasonable efforts to recommence performance as soon as possible.

(signature page to follow)

EXECUTED this _____ day of _____, 2020.

City of Seagoville, Texas

By: _____
Pat Stallings, City Manager

Approved as to form:

By: _____
Victoria Thomas, City Attorney TM113467

EXECUTED this _____ day of _____, 2020.

Good Earth Corporation

By: _____

Name: _____

Title: _____

EXHIBIT "A"
Bid Documents



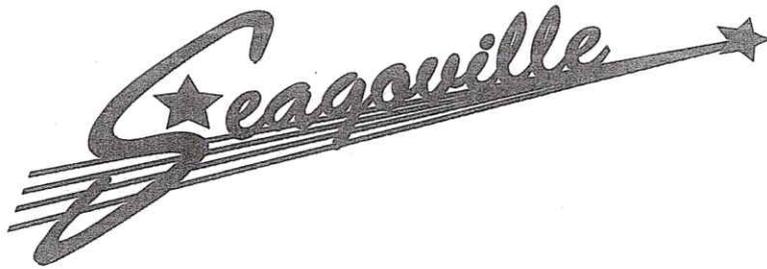
City of Seagoville
702 N. Highway 175
Seagoville, Texas 75159

January 22, 2020

City of Seagoville Bid #2020-01

GOOD EARTH LANDSCAPING & MANAGEMENT

7922 Forney Rd. Dallas, TX 75227 • (214) 381-5899 • kpoints@goodearth-inc.com



**CITY OF SEAGOVILLE
INVITATION TO BID
Bid Number 2020-01**

The City of Seagoville is accepting Competitive Sealed Bids for performing all work necessary for the mowing maintenance of city parks, city medians, city right-of-ways, TxDOT and Highway 175 right-of-ways, and other lots along with removal of all trash and litter prior to all mowing in the City of Seagoville, Dallas County, Texas. All pricing will remain fixed for a one (1) year term period and should be based upon the specifications and documents included in this bid. *Various official and unofficial sources were used to estimate quantities/acreage for this proposal. Every effort was made to ensure the accuracy of this data; however, no guarantee is given or implied as to the accuracy of said data.* Sealed bids addressed to the Honorable Mayor and City Council of the City of Seagoville, Texas will be received in the office of the City Secretary, at City Hall, 702 N. Highway 175, Seagoville, Texas, until 10:00 a.m. Local Time, Wednesday, January 22, 2020, and will be opened and read aloud in City Hall at that time. Any proposal received after the stated closing time will be returned unopened.

Plans, specifications, and bidding documents may be obtained from the City Secretary's Office at City Hall, beginning at 10:00 a.m. on Thursday, December 19, 2019

PRE-BID CONFERENCE: A pre-bid conference will be held Wednesday, January 8, 2020, 10:00 a.m. Local Time, City Hall, City Council Conference Room, 702 N. Highway 175, Seagoville, TX. 75159. Bidders are highly encouraged to attend.

SPECIFIC INTENT: The City of Seagoville, Texas wishes to enter into one (all or none bid) one-year (1 year) term bid for the mowing maintenance of:

CITY PARKS, CITY MEDIANS, CITY RIGHT-OF-WAYS, TxDOT AND HIGHWAY 175 RIGHT-OF-WAYS, AND OTHER LOTS ALONG WITH REMOVAL OF ALL TRASH AND LITTER PRIOR TO ALL MOWING AND TRIMMING OF TREES ALONG THE RIGHT-OF-WAY.

SPECIFICATION CONTACT: Any questions regarding these specifications or contracts may be directed to Ladis Barr, Community Development Director at (972) 287-6829 Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m. Questions, clarifications, and or requests for information will not be accepted after end of business day, Friday, January 10, 2020 (or within ten days of bid

opening if bid opening date is changed) for items directly and or indirectly related to this bid, its service or its contents.

CONTRACT PERIOD: The term of the bid shall be for one (1) year from when successful bidder is expected to be available to provide service which is February 24, 2020 or date of City Council award, if subsequent thereto, with options to renew at the end of the period. Renewal shall be based on an evaluation by the Community Development Department (hereinafter referred to as "the Department") of the contractor's performance during the previous period, budget requirements, etc.

Prices shall be fixed for the initial one-year period.

After completion of the initial one-year term, the City and the Contractor may, upon mutual consent, renew the term bid for two additional one (1) year periods. Increases in contract pricing during the renewal periods shall not exceed the consumer price index of the Dallas/Fort Worth standard metropolitan statistical area for the previous twelve (12) month period. The city reserves the right to cancel the term bid upon thirty (30) days written notice.

APPLICABLE LAW: This Contract is entered into subject to the Charter and ordinances of the City of Seagoville, as they may be amended from time to time, and is subject to and is to be constructed, governed, and enforced under all applicable City of Seagoville, County of Dallas, State of Texas and federal United States of America laws. The parties to this contract agree and covenant that for all purposes, including performance and execution, that this contract will be enforceable in Seagoville, Texas; the County of Dallas; the State of Texas and the United States of America; and that if legal action is necessary to enforce this contract, exclusive venue will lie in Dallas County, Texas. The Contractor shall give all notices and comply with all federal, state and local laws, ordinances rules and regulations, and lawful orders of any public authority bearing on the performances of the services. This agreement and the rights and obligations of the parties hereto shall be interpreted, construed and enforced in accordance with the laws of the City of Seagoville, County of Dallas, State of Texas and federal laws of the United States of America. The Contractor warrants and covenants to the City that all services will be performed in compliance with all applicable federal, state, county, and city health and safety codes, rules and ordinances including, but not limited to, the Texas Industrial Safety and Health Act, the Workers Right to Know Law, and the Immigration Reform and Control Act of 1986 (IRCA).

In submitting this proposal, all bidders shall have reviewed the storm water drainage ordinance and other applicable environmental ordinances of the city or state law requirements relative to the work to be performed under this proposal. A successful bidder shall be required to comply with all relevant requirements of said ordinance and statutes in the performance of its obligations under this proposal.

Additionally, this agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.

CONFLICT OF INTEREST: No public official shall have interest in this contract, in accordance with Vernon's Texas Codes Annotated, Local Government Code, Title 5, Subtitle C, Chapter 171.

**EMPLOYMENT ELIGIBILITY
VERIFICATION:**

The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for employers to knowingly hire or recruit immigrants who do not possess lawful work authorization and requires employers to verify their employees' work eligibility on a U.S. Department of Justice Form I-9. **THE CONTRATOR/CONTRACTOR WARRANTS THAT CONTRATOR/CONTRACTOR IS IN COMPLIANCE WITH IRCA AND WILL MAINTAIN COMPLIANCE WITH IRCA DURING THE TERM OF THE CONTRACT WITH THE CITY. CONTRACTOR/CONTRACTOR WARRANTS THAT CONTRACTOR/CONTRACTOR HAS INCLUDED OR WILL INCLUDE A SIMILAR PROVISION IN ALL WRITTEN AGGREMENTS WITH ANY SUBCONTRACTORS ENGAGED TO PERFORM SERVICES UNDER THIS CONTRACT.**

**CONTRACTOR
QUALIFICATIONS:**

Contractors submitting bids certify to the City that they possess all necessary equipment facilities, personnel and work experience to fulfill the terms of the Contract at the time of bid submission and be ready to proceed on the starting date for the initial contract period.

The Contractor(s) shall be required to keep sufficient equipment and labor on hand to do a complete mowing of the areas specified by contract, as often as may be specified, should the growing season demand.

Bidder must submit with each bid, a list of all equipment, giving year, model, and make of machines to be used and three (3) work references. The successful bidder will have modern, well-maintained equipment suitable for Park Maintenance. This equipment shall be of 2017 model year or newer (to help eliminate breakdowns and poor performance). All equipment shall be subject to inspection by City Representative.

GENERAL PROVISIONS:

By his acceptance of the contract, the successful Contractor(s) shall warrant that he is familiar with and understands all provisions herein and warrants that he shall comply with them.

All operations described in these specifications shall be conducted by the Contractor(s)'s personnel and the expense of all such operations shall be the Contractor(s)'s.

A. The Contractor(s) shall provide his/her own equipment, labor, fuel and any other materials necessary to complete the required work. The Contractor(s) shall be responsible for the maintenance and repair of his/her own equipment and the availability, presence and supervision of his/her own employees.

B. There shall be no subcontractor(s) used by the Contractor(s) to fulfill any items or conditions of the contract without prior written consent of the Department.

A failure to adhere to the provisions of this contract by the Contractor(s) shall be deemed a material breach.

BID AWARD CRITERIA:

Award: The City of Seagoville shall award the bid to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the City. In determining the "best value", the following criteria will be considered as amended in section 252.043 of the Texas Local Government Code:

- 1) the purchase price;
- 2) the reputation of the bidder and of the bidder's goods or services;
- 3) the quality of the bidder's goods or services;
- 4) the extent to which the goods or services meet the municipality's needs;
- 5) the bidder's past relationship with the municipality;
- 6) the impact on the ability of the municipality to comply with laws and rules relating to contracting with historical underutilized businesses and on-profit organizations employing persons with disabilities;
- 7) the long-term cost to the municipality to acquire the bidder's goods and services and;
- 8) Any relevant criteria specifically listed in the request for bids or proposals.

The evaluation of bids and the determination of conformity and acceptability shall be based on information furnished by the Contractor with his bid, as well as other information reasonably available to the City.

The City reserves the right to reject any and all bids and to award a contract based on the specifications to either the best value bidder or the lowest responsible bidder.

The City will enter into one distinct contract, to be awarded, each in its entirety, to either the best value bid or the lowest responsible bidder.

The evaluation of bids and the determination of conformity and acceptability shall be based on information furnished by the Contractor with his bid, as well as other information reasonably available to the City.

The City of Seagoville will award this entire bid whole and will not award the contract individually or as a group.

The successful bidder may not assign their rights and duties under this contract and award without written consent of the City. Such consent shall not relieve the assignor of liability in the event of default by their assignee.

GENERAL CONDITIONS:

The Contractor(s) will work under the direction of the Community Development Director or his representative (hereafter referred to as the "City Representative") who will determine the locations and frequency of the mowing, and the amount of the equipment necessary to carry on the work.

No payment, on any basis, will be made for unsatisfactory mowing and/or equipment. The determination of the City Representative shall be final on all work.

Contractor shall submit a detailed invoice at the end of each month reporting the number of mows per site and a total cost for the month. Payment by the City will be made each month within thirty (30) days of receipt of invoice.

The City of Seagoville reserves the right to delete areas from the contract without penalty at any given time.

DEFAULT OF CONTRACT:

Should the contractor be determined by the City Representative to be in breach of contract due to failure to perform to the specifications of the contract and/or non-performance of scheduled mowing, he shall have twenty-four (24) hours from receipt of written notice to man the job and perform as specified. If the contractor fails to meet these requirements it shall be the City's option to utilize another contractor to conduct the mowing operations at an hourly rate. The cost differential between the

contractor's price and the alternates hourly rate shall be deducted from any monies owed the contractor.

INSURANCE:

The successful bidder will be required to furnish a certificate of insurance to cover liability as follows:

- Liability (Aggregate) \$2,000,000 (Aggregate)
- Automobile Liability \$1,000,000 Combined Single Limit Coverage
- Performance Bond Full Amount of Annual Bid

Certificates of insurance in the amounts specified shall be delivered to the Community Development Director prior to commencement of any work per contract provisions.

An annual performance bond shall also be required for each subsequent year of the contract, and shall be presented not later than sixty (60) days prior to the anniversary date of the contract in each subsequent contract year, in the amount listed above.

Such performance bonds shall guarantee the performance of the Contractor(s) under the terms and conditions of the specifications contained herein and the contract for services between the parties.

**CONTRACTOR'S AND
SUBCONTRACTORS
INSURANCE:**

The Contractor shall not commence work under this contract until he has obtained, at his expense, all insurance required under the section of Federal Conditions and by the contractor documents, and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been obtained and approved. Such insurance shall remain in full force and effect on all phases of the work, whether or not the work is occupied or utilized by the City, until all work under the contract is completed and has been accepted by the City.

Nothing contained in the insurance requirements shall be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from his operations under the contract. Two (2) separate Accord Certificates of Insurance will be required showing all coverages naming the Texas Department of Transportation (TxDOT), and the City of Seagoville as "Additional Insured" parties. The Accord Certificate of Insurance will be required within fifteen (15) calendar days of receipt of notice request.

The Contractor shall obtain and maintain for the full period of the contract the following types of insurance in the form, minimum limits and amount herein specified or as may be otherwise required in the contract documents. The Contractor shall automatically renew any policy, which expires during the performance of this contract, and notify the City of such renewal prior to expiration date. The City of Seagoville, and TxDOT, shall be named as an "Additional Insured" on all of the below named insurance policies.

1. Workers' Compensation Insurance Coverage

A. Definitions:

Certificate of coverage ("certificate") – A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project – includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) – includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity, which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as

food/beverage Contractors, office supply deliveries, and delivery of portable toilets.

B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven (7) days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers'

Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage if the coverage period shown on the current certificate of coverage ends during the durations of the project;

(4) obtain from each other person with whom it contracts, and provide to the contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that

materially affects the provision of coverage of any person providing services of the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or civil actions.

K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within the (10) days after receipt of notice of breach from the governmental entity.

2. Public Liability and Property Damage Insurance (Note "Indemnity" clause hereinafter)

Before commencement of the work, the Contractor shall submit written evidence that he and all his subcontractors have obtained for the period of the contract full Comprehensive General Liability and Property Damage Insurance Coverage with a company licensed to do business in the State of Texas. This coverage shall protect the Contractor, the City, and each of the officers, agents and employees from claims for damages for bodily or personal injury, sickness or disease, including death, and from claims for damages to property, which may arise directly or indirectly out of, or in connection with the performance of work under this contract by the contractor, by any of his subcontractors, or by anyone directly or indirectly employed by either of them, or under the control of either of them, and the minimum amount of such insurance shall be as follows unless higher minimum amounts are otherwise required in the contract documents.

Public Liability Insurance in an amount not less than the Five Hundred Thousand Dollars (\$500,000) for damages arising out of bodily injury or personal injury, sickness or disease, or death of one person and subject to the same limit for each person and in an amount not less than Two Million Dollars (\$2,000,000) in any one occurrence and Property Damage Insurance in an amount not less than Five Hundred Thousand dollars (\$500,000) for all damages of others in any occurrence with an aggregate limit in the same amount.

The Property Damage portion of this coverage shall include, where applicable, explosion, collapse and underground exposure coverage. In addition, where completed Operations Insurance Coverage is applicable; such coverage will be maintained after completion and acceptance of the project for the full guarantee period.

3. Automobile Liability and Property Damage Insurance

Before commencement of the work, the Contractor shall submit written evidence that he and all his subcontractor(s) have obtained Automobile Liability and Property Damage Insurance Coverage on all self-propelled vehicles used in connection with the contract, whether owned, non-owned, or hired. The liability limits shall be not less than Five Hundred Thousand Dollars (\$500,000) for injury or death of one person and in an amount not less than One Million Dollars (\$1,000,000) in any one occurrence; and Property Damage limits of not less than Five Hundred Thousand Dollars (\$500,000) in any one occurrence.

4. Contractual Liability Coverage

Each and every policy for Liability Insurance carried by each Contractor and Subcontractor will include a "Contractual Liability Coverage" endorsement sufficiently broad to insure the provision titled "Indemnity" hereinafter set forth.

5. Indemnity

The Contractor shall defend, indemnify and hold harmless the City, and each of the officers, agents, servants and employees, from any and all suits, actions, claims, losses, or damages of any character and from all expenses incidental to the defense of such suits, actions or claims based upon, alleged to be based upon, or arising out of (1) any injury, disease, sickness, or death of any person or persons. (2) any damages to any property including loss of use thereof, caused by any act or omission of the Contractor, or any subcontractor of the Contractor, or by their officers, agents, servants, employees or anyone else under the Contractor's direction and control, and arising out of, occurring in

connection with, resulting from, or caused by the performance of any work or services called for by the contract or from conditions created by the performance of non-performance of said work or services, but not including the sole negligence of any party herein indemnified.

6. Evidence of Insurance Coverage

Before commencement of any work, the Contractor shall submit written evidence that he and all his subcontractors have obtained the minimum insurance required by the contract documents. Such written evidence shall be in the form of a Certificate of Insurance executed by the Contractor's insurance carrier showing such policies in force for the specified period or by furnishing a copy of the actual policy or policies. Each policy or certificate shall bear an endorsement or statement waiving right of cancellation or reduction in coverage without ten (10) days notice in writing to be delivered by registered mail to the City.

BID BOND: THERE WILL BE NO BID BOND/GUARANTY REQUIRED FOR THIS BID.

PERFORMANCE BOND: The Contractor(s) shall be required to furnish a performance bond in the amount of 100% of the contract price acceptable to the City only covering service periods of twelve (12) months at a time and the annual amount governing either the bid or renewal, whichever is applicable. The successful Contractor(s) shall have fifteen (15) days following notification from the City to provide such bond. The bond is not required with submission of bid but within fifteen (15) calendar days of bid award notice and should be prepared in the prescribed format herein attached.

An annual performance bond shall also be required for each subsequent year of the contract, and shall be presented not later than sixty (60) days prior to the anniversary date of the contract in each subsequent contract year, in amount listed above.

Such performance bonds shall guarantee the performance of the Contractor(s) under the terms and conditions of the specifications contained herein and the contract for services between the parties; bond must also be authorized by a surety agency authorized to do business in the State of Texas.

I. Requirements

a. GLOSSARY OF TERMS:

- I. Production schedule** shall mean the time periods established by the City for the project year within which all prescribed maintenance activities for each area shall be completed. If the Contractor expects to vary from the schedule, he/she shall notify the Community Development Director twenty-four (24) hours in advance, so work completion can be inspected in a timely manner. *Note: Failure to provide Community Development Director an accurate schedule in good faith may result in termination of contract.*
- II. Concurrent** shall refer to all mowing, trimming, edging, and litter removal on any given item being completed on the same day. Should a given area be too large to complete in a single day, any areas that have been mowed must be trimmed, edged, and litter removed on the same day the mowing occurs.
- III. Monthly Billing cycle** shall refer to each time period in the mowing schedule for the project year. Each time period is defined by a beginning and ending date, in which all prescribed maintenance activities for each area shall be completed.
- IV. Inclement weather** shall mean rainy weather or when the condition of the soil is such that the rutting of property will not allow cutting of grass to be accomplished satisfactorily.
- V. Trash and litter** shall mean any debris within the mowing project area such as paper, cans, bottles, limbs/brush, rocks, etc., which is not intended to be present as part of the landscape. Inclusive of entire project area including streets, sidewalks, curbs, hillsides, ditches, etc. (where tree/brush/shrub lines or mowing edge determines the area, the successful bidder will extract litter an additional three (3) feet, where tree/brush/shrub lines are in front of fence the fence will be the determining boundary). Removal of debris may require sweeping of hard surface areas such as sidewalks. **ALL TRASH AND LITTER IS TO BE REMOVED PRIOR TO ALL MOWING.**
- VI. Chemical trimming** shall refer to the use of a herbicide (such as Roundup and/or an approved equal) as an alternative to the physical removal or cutting of plant material from areas to be trimmed. **NOTE: CHEMICAL TRIMMING WILL NOT BE ACCEPTED FOR THE EDGING OF SIDEWALKS AND/OR CURBS.**
- VII. Clumped grass cuttings** shall refer to any accumulation of cut grass that on the day the mowing occurs exceeds 3" in height above surrounding surface of cut grass. Clumps are typically found in areas where mowing equipment has completed one row and has reversed direction. Property is to be re-mowed to remove clumped grass prior to leaving property.

VIII. Mowing project area shall refer to specific geographic area(s) of the City designated to receive specified mowing and related services.

IX. Trimming shall refer to the cutting or removal of all plant materials immediately adjacent to or under City structures, trees, poles, tables, signs, fences, shrub beds, or other structures.

X. Edging shall refer to the vertical removal of any and all plant material which encroaches over or onto sidewalks, curbs, steps, driveways and pavements. Edges shall be vertical, minimum depth of 1" and minimum width of 1/4". This task must be done neatly to present a clean, crisp appearance, having a smooth line. Line trimmer use is accepted along fences and poles.

XI. Scalping shall refer to any action which results in the mowing of any turf area below 1" height down to and including the soil. 2" height down to and including the soil for project areas designated on a fourteen (14) day mowing cycle.

XII. Mono-filament trimming shall refer to trimming grass around fences, building, tree wells and posts. Do not directly use around the trunks of trees.

b. GENERAL SPECIFICATIONS:

I. MAINTENACE CYCLES

1. The areas and maintenance function cycles to be provided are listed in **the Itemized Pricing List**. The quantities of cycles per site per year shall be estimates only and shall not constitute a guaranteed amount to be paid to the Contractor. Mowing, edging/trimming, and litter pickup are considered a singular maintenance cycle.
2. Contractors are cautioned not to submit their bid until specifications and sites have been carefully examined. Field observations are required to determine exact locations and boundaries of areas maintained. The Community Development Director is available to assist as needed to identify areas.

II. ADDITIONS/DELETIONS/SUBSTITUTIONS

1. The Community Development Director is designated as the Ordering Officer and will have the authority to add or delete work, subject to the Purchasing Procedures of the City of Seagoville.
2. All work added or deleted will be specified by location, Jointly, the Community Development Director and the Contractor shall examine areas added or deleted to determine the exact coverage. Such examinations shall be documented and signed by both representatives, and will be the basis for determining the final scope of work and payment due to the Contractor under the contract price.

3. All documentation pertaining to the additions or deletions to the work shall be maintained in a project file by the Community Development Director.
4. The Contractor shall advise the Community Development Director, in writing, if ANY changes that need to be made to the outlined maintenance program in this contract and shall not proceed with any work until such time as he has received written concurrence from the Community Development Director.

III. CITY CONTRACTS

1. This contract will be monitored by the City of Seagoville staff listed below.

Community Development Director Ladis Bar 972-567-9572

City Manager Pat Stallings 972-287-6807

IV. ACCOUNT MANAGER

1. The Contractor must assign a designated Account Manager whose primary duties should involve inspecting the work of subordinates in the field and ensuring contract compliance. He/she must also have effective written and oral communication skills. The account Manager's duties, experience, and percentage of time the bid expects him/her to commit to this contract should be designated in writing by successful Contractor and included with the final bid. The Account Manager **cannot** be involved in a substantial portion of the Contractor's maintenance or administrative duties.

V. COMPLETION TIME ALLOTMENTS

1. Upon receipt of a **NOTICE TO PROCEED**, the Contractor will be allotted five (5) days to complete their entire maintenance cycle (Monday through Friday). The work completion time allotment should be considered a maximum, there is no minimum. Weather and/or growth conditions may cause cancellation or delay of a mowing cycle which will be solely determined by Community Development Director. The Community Development Director also has sole discretion over whether soil/turf/ or weather conditions are appropriate for maintenance. Failure of the Contractor to abide by the Community Development Director's decision and direction may result in termination of contract.

VI. FAILURE TO MAINTAIN PRODUCTION SCHEDULE

1. Failure on the part of the Contractor to maintain the required production rate for a Project Area shall be sufficient reason for the Community Development Director to have the work in question or portions thereof completed by others if the Contractor shall not cure the default within twenty-four (24) hours of written notice of the default. If others complete work, any additional cost caused by a higher priced

Contractor will be deducted from the original contractor's next payment, if any. Failure to sustain the maintenance schedule shall be determined in the following manner:

- a. All Project Areas shall be maintained according to the production schedule assigned. Final assessment of each area may be made by the Inspector on the morning following the end of each maintenance cycle. If the Contractor fails to meet the contract specifications within the time limits of the schedule, then that portion of the work may be removed from his responsibility and may be reassigned to another contractor.
- b. Contractor shall correct any deficiencies in work within twenty-four (24) hours of written or verbal notification. In the event the Contractor fails to correct the default to the satisfaction of the City within the specified time, or such greater time as the City may permit, the City shall exercise all rights, including the right to terminate the Contract in whole or part. The Contractor shall pay all costs and attorney's fees incurred by the City in the enforcement of any provision herein or within this document.

VII. REMEDIES FOR NON-COMPLIANCE

1. Failure on the part of the Contractor during the term of this contract in one (1) or more area(s) would be reasonable cause for the Community Development Director or designee to issue a Notice-to-Cure (NTC) warning, in addition to liquidated damages as required. Area(s) can include, but not limited to:
 - a. Non-performance of service in accordance with the specifications herein.
 - b. Having more than two (2) failed inspections.
 - c. Failure to maintain work schedule.
 - d. Failure to show.
2. Furthermore, the Contractor shall conduct operations in a manner that reflects favorably on the City. Calls from citizens concerning poor performance will be verified and if deemed correct, the Contractor shall be notified. Continued performance issues will result in cancellation of the contract.

VIII. DAMAGES

1. Any damage to public or private property shall be reported immediately to the Community Development Director.
2. The City shall not be liable for any loss or damage sustained by the Contractor. The Contractor shall save the City whole and harmless from any and all claims for liability or damage of whatsoever nature and kind, including cost of court and attorney's fees, suffered or asserted to have been suffered by any person or to any property of any person whomsoever, growing out of or resulting from or in any way

connected with the performance of work under this agreement. The Contractor shall exercise every necessary precaution for the safety of work site and the protection of any and all persons and/or property located adjacent to or making passage through the work site.

3. The Contractor shall be responsible for any property damage caused by the use of vehicles or other equipment while engaged in this contract.
4. The Contractor will be responsible for any damages to the irrigation system due to negligence on the part of the Contractor or the Contractor's representative.

IX. SUPERVISION

1. The Contractor shall personally supervise all work as specified in the contract. If the Contractor cannot or will not personally supervise the work a competent account manager is to be assigned the responsibilities of supervision of all work in progress as specified in the contract.
2. The Contractor will be required to designate, in writing, to the City, the name and cell phone of the account manager. The designated account manager may not commence work duties until approved by the City.
3. The designated Account Manager will be given full authority and power to act for the Contractor on items pertaining to overall work performance, management, coordination, and supervision, whenever work specified herein is being performed.
4. The designated Account Manager may also serve as the Quality Control Inspector; provided that his/her job performance is maintained at an acceptable level to the City.
5. The Account Manager will be required to have a copy of the contract in their possession at all time work is in progress for referral concerning questions of contracting responsibility.
6. The Contractor/Account Manager shall provide supervision of all work crews at all times while performing work under this contract. Personal supervision is not required provided that communication equipment or other means are provided that enable the work crew to communicate with the Contractor at all times. Each work crew shall have a designated person on the work site that has the authority to respond to inquires about work details or priorities.
7. The Contractor shall provide to the City the percent of time the Contractor expects the field supervisor to commit to this contract in writing.

X. EMPLOYEES

1. Contractor will require all employees to report to work in clean uniforms in good conditions including shirt, pants, and OSHA approved safety vest. Uniforms shall have the Contractor's name in a manner clearly identifiable to the public. Contractor must ensure that all employees properly wear a shirt at all times.
2. Contractor's employees must be courteous to the public at all times while at the work site.
3. Contractor shall remove any personnel that is incompetent or endangers persons or property.
4. Contractor's employees will not consume/possess alcohol or use/possess any illegal drugs, or be under the influence of such while on City property and/or carrying on the requirement of this contract. The Contractor shall immediately remove any such employee from the work site.
5. Conflicts, or potential conflicts due to required work and public use of a location, shall be reported to the Community Development Director.
6. Notification to Contractor of complaints concerning the aforementioned shall be in writing if time and circumstance permits. Otherwise, notification shall be verbal or by telephone, and shall be confirmed in writing as soon as possible.

XI. EQUIPMENT

1. Insufficient and/or inadequate equipment as determined by the City of Seagoville is a cause for rejection of bid.
2. Contractor equipment must be maintained in good operating condition and in sufficient quantities to adequately perform all services. The equipment used in this contract must be year model 2017 or newer. Turf type tires will be mandatory on all mowing equipment so as to avoid turf damage and rutting.
3. The contractor is responsible for performing scheduled maintenance on all equipment used on the contract. As part of this bid the contractor must submit proof of an active Preventative Maintenance Equipment Program. Proof of an active successful Preventative Maintenance Program will be used in evaluation of this bid. Copy of program must be included in submittals.
4. Responses shall include a complete list of machinery & equipment available in **The City of Seagoville Equipment** to determine whether or not the Contractor can adequately perform the necessary work. All machinery & equipment the Contractor anticipates committing to this contract if awarded should be included in the listing.

5. The City of Seagoville reserves the right to inspect the Contractor's equipment prior to award of a contract.

XII. VEHICLES

1. All vehicles utilized under this contract will be clean, free of mud, dirt, and grime, without noticeable rust spots and faded paint serviceable, and shall comply with safety standards required by the State of Texas.
2. All vehicles used by the Contractor will be identified with company name or logo, conspicuously displayed on door panels. Professionally done hand lettering, magnetic signs, or pressure sensitive decals may be used to comply with this specification.
3. All vehicles operating from a public road shall have a rotating amber caution light mounted on the top of the vehicle.
4. Insufficient and/or inadequate vehicles as determined by the City of Seagoville is a cause for rejection of bid.
5. Responses shall include a complete list of vehicles available in **The City of Seagoville Equipment List** to determine whether or not the Contractor can adequately perform the necessary work. All vehicles the Contractor anticipates committing to this contract if awarded should be included in the listing.
6. The City of Seagoville reserves the right to inspect the Contractor's vehicles prior to award of a contract.

XIII. INSPECTIONS

1. The Contractor is responsible for establishing and maintaining an adequate quality control system to satisfactorily inspect and ensure that all work performed in each service is in full compliance with the contract.
2. The Contractor shall designate a Quality Control Inspector, whose main duty shall be to verify contract conformity of all work performed. They are expected to inspect each property listed in this bid package upon completion of maintenance.
3. The Community Development Director will make a quality inspection of completed areas within forty-eight (48) hours, following receipt of weekly form.
4. If completed areas do not meet contractual specifications:
 - a. The Community Development Director will contact the Contractor to rework areas.

- b. Community Development Director will then re-inspect areas within twenty-four (24) hours of notification of completion.
 - c. Areas requiring re-inspection MAY NOT be considered for payment for that billing cycle.
5. The City may inspect required equipment, supplies and safety items at any time when in use on City property. Any individual, crew or equipment found deficient shall be removed from service immediately until faulty conditions have been corrected and passed by the City. No such removal will reduce the Contractor's obligation to perform work required under this contract and within the time schedule.

XIV. PERFORMANCE EVALUATION MEETINGS

1. A "walk" of all properties will be conducted with Contractor and the Community Development Director. If the Community Development Director deems necessary the meeting may occur monthly, weekly, or as often as determined necessary to discuss performance.
2. A meeting shall be held not later than one (1) normal workday after a contract deficiency is noticed. Mutual effort will be made to resolve any and all problems identified.

XV. SAFETY

1. The following requirements apply to the services provided in this contract:
 - a. All employees shall have proper safety devices and equipment including hearing and eye protection, and safety vests. All personal protective equipment shall meet OSHA and TxDOT safety standards.
 - b. The Contractor shall exercise extreme caution while working on medians, road sides and high traffic areas. The latest Texas Manual on Uniform Traffic Control Devices standards for barricading and coning work areas must be followed at a minimum. At all locations, contractor shall provide "Mower Ahead" signs at each end of the work zone prior to commencement of work and remove signs upon completion.
 - c. Contractor will park vehicle and equipment off city streets where possible. Under no circumstances shall any vehicle or equipment be parked on the inside land of any street. Any vehicle or equipment parked in the far right lane of any street shall have safety flashers/directional light bars on and working properly. The area behind the parked unit must be coned off with safety cones spaced ten (10) feet apart and a minimum of one hundred (100) feet behind the unit. The

vehicles shall be clearly identified with the Contractor's company name and telephone number.

- d. Contractors discovered working without necessary safety devices or equipment in place will be required to stop all work in progress until adequate equipment has been obtained and approved by the Community Development Director.
- e. The Contractor must be licensed by the Texas Structural Pest Control Board and/or Texas Department of Agriculture. A copy of the license and a listing of the license numbers shall be submitted.
- f. Any hazardous condition or any damage to City property is to be immediately reported to the Community Development Director.

XVI. MOWING DAMAGE/SAFETY

- 1. The Contractor(s) shall be responsible for any damage to the property during the maintenance operation.
- 2. The Contractor shall be responsible for replacement of all trees, shrubs, ground covers, valve boxes, valve box lids, which are destroyed/damaged by the Contractor, employees or agents of the Contractor during the maintenance operation. They shall be replaced in seven (7) days, unless it is a safety hazard. Safety hazards must be handled ASAP.
- 3. Trees and shrubs must not be bumped or marked by mowing or edging equipment. Damage to trees to tree collars will be assessed at one hundred dollars (\$100) for each instance. If damage is severe tree/shrubs will be replaced based on the sole discretion of the Community Development Director.
- 4. Mulch rings shall be reshaped within twenty-four (24) hours when dislodged by mowing equipment.
- 5. Any hazardous conditions and/or damage to City property will be reported to the Community Development Director prior to leaving the work site.

XVII. OZONE ALERT DAYS

- 1. On ozone alert days, Contractors are required to refrain from mowing until after 10 a.m., unless diesel powered equipment is used. The North Central Texas Council of Governments offers current daily ozone conditions @ <http://www.nctcog.org/trans/air/ozone> This webpage can be checked daily for current ozone conditions. It is the responsibility of the Contractor to be aware of ozone alert conditions. It is the responsibility of the Contractor to be aware of ozone alert conditions. Failure to comply with these standards will be grounds for the following:

- a. First Offense: Verbal Warning
- b. Second Offense: Written Warning
- c. Third Offense: Contract Termination

XVIII. SPECIFICATIONS FOR LANDSCAPE SERVICES

1. Mowing:

- a. All turf areas will be mowed per the bid schedule. Mowing height shall be 2" unless otherwise directed by the Community Development Director.
- b. Bruising or rough cutting of the grass is not permitted. Mowers will be adjusted and operated so that the grass is cut at a uniform height.
- c. The turf will be cut in different directions to help prevent the grass from growing in one direction and becoming rutted.
- d. Mulching mowers are preferred to mowers that throw clippings into rows.
- e. Areas serviced will have a finished appearance with walks and curbs appearing to have been swept. The successful Contractor shall not blow litter, debris, leaves, clippings, etc. into the streets, drainage ways/drainage inlets, landscape beds, or other property.
- f. Removal of all litter from the entire property, and hauling such debris away.
- g. Litter must be removed from turf prior to mowing (1"x1" and larger). This includes, but not limited to bottles, cans, paper, brush, rocks, tree limbs, etc. which are not intended to be part of the landscape. Shredded litter must be removed the day of the complaint or a twenty-five dollars (\$25) penalty per day for each area identified per site will be deducted from the appropriate monthly billing. No separate pay item shall be allowed for litter control on sites that are being mowed.
- h. All concrete, asphalt areas, brick pavers, paved ends on medians, and or right-of-ways shall be weed/grass free and blown clean of debris after each cycle.
- i. Weeds/grass growing in the expansion joints, within two (2) feet of the edge of the paved surface, must be removed or treated with an approved herbicide as needed.
- j. All mowing is to be accomplished Monday through Friday, weather permitting. It will be considered a breach of the contract if the schedule is repeatedly missed.

- k. The Community Development Director reserves the right to cancel scheduled mowing cycles on a week-to-week basis, based upon need, prevailing weather conditions, and available funding.
2. Edging/Trimming:

Edging all turf along walks, curbs, plant beds, signs, poles, fire hydrants and other obstacles shall occur every time property is mowed. Trimming shall provide a sharp, clean definition between the turf and hard surface. All materials dislodged by edging must be removed from the site.
 3. Litter:
 - a. Litter is defined as all trash, 1"x1" and larger. This is to include trash, tires, brush (branches and small limbs), furniture and etc.
 - b. Where tree/brush/shrub lines or mowing edge determines the litter pick-up area, the Contractor will extract litter and additional three (3) feet.
 - c. Where tree/brush/shrub lines are in front of fence the fence will be the determining boundary.
 - d. Picked-up litter will be legally disposed of in accordance with all City, State, and Federal environmental guidelines.

XIX. SPECIAL SPECIFICATIONS:

1. Incidental items to this bid (No Extra Pay) are:
 - a. Weeds shall be removed from landscape areas at both City Entry Signs.
 - b. Weeds shall be removed from landscape areas at beds at City Hall, Police Stations and Veterans Park.
 - c. Weeds growing in expansion joints or concrete joints shall be removed from all walkways, parking lots at City Hall, Police Station and Veterans Park.
 - d. Weeds growing in expansion joints or concrete joints, and median paving areas shall be removed from the entire median limits on Seagoville Road and Malloy Bridge Road.
 - e. Weeds may be removed by an approved herbicide as needed, providing no threat to other landscape/turf exists.
 - f. Bushes and hedges at City Hall shall be trimmed two (2) times within the twelve (12) month contract period

TEXAS STATUTORY PERFORMANCE BOND

BOND NO. _____

KNOW ALL MEN BY THESE PRESENTS:

THAT,

(hereinafter called the Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____ licensed to do business in the State of Texas and admitted to write bonds, as surety, (hereinafter called the Surety), are held and firmly bound unto City of Seagoville, 702 N. Highway 175 Seagoville, TX 75159 (hereinafter called the Obligee), in the amount of _____ Dollars (\$) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain contract with the Obligee, dated the ____ day of _____, _____ for _____, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That _____ if the said Principal shall faithfully perform the work in accordance with the plans, specifications and contract documents, then this obligation shall be null and void; otherwise to remain in full force and effect;

PROVIDED. HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Chapter to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this ____ day of _____.

PRINCIPAL: _____

BY: _____

SURETY: _____

BY: _____

The Resident Agent of the Surety in Dallas County, Texas, for delivery of notice and service of the process is:

Name: _____

Address: _____

Surety: _____

Title: _____

NOTE: The Date of the Performance Bond **MUST BE** the date of the contract. If Resident Agent is not a corporation please give a person's name.

ADDENDUM

Parks and Street Mowing

City of Seagoville

Location	Frequency	Unit Price	Extend Price
City Hall/Police Station Veterans Park Approx. 5.0 Acres 702/600 N Highway 175	36	\$430.00	\$15,480.00
Inner Service Roads along Highway 175 East and West Bound City Limits to City Limits	16	\$5,375.00	\$86,000.00
Center and Outer Medians East and West Bound From City Limits to City Limits Including Entry Signs	16	\$1,030.00	\$16,480.00
Highway 175 Underpass Approx. 1.50 Acres Highway 175 @ Malloy Bridge Road	18	\$130.00	\$2,340.00
Highway 175 Underpass Approx. 1.50 Acres Highway 175 @ Hall Street	18	\$130.00	\$2,340.00
Highway 175 Underpass Approx. 1.50 Acres Highway 175 @ Seagoville Road	18	\$130.00	\$2,340.00
Malloy Bridge Road Medians Approx. 1 Acres Highway 175 to Cypress Street	16	\$90.00	\$1,440.00
Seagoville Road Medians Approx. 14.5 Acres Highway 175 to City Limits and Highway 175 To turn around in Kaufman County	16	\$1,245.00	\$19,920.00

Petty White Park Approx. 19 Acres 15601 Clover Hill Drive	36	\$ 430.00	\$15,480.00
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Additional Mowing as Needed Medians, Right-of-Ways, and /or Facilities per acre	15	\$ 85.00	\$ _____
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Tree and Shrub Pruning As needed Highway 175 @ Malloy Bridge Rd and Hall	1	\$ 45.00	\$ _____
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NAME: __ Good Earth Corporation	
ADDRESS: 7922 Forney Road Dallas Texas 75227	TOTAL \$161,820.00

NOTE: TRASH AND LITTER MUST BE REMOVED PRIOR TO ALL MOWINGS.



Good Earth
Landscaping, Management & Tree Service

Good Earth Resume

GOOD EARTH CORPORATION

7922 Forney Road Dallas, TX 75227 • (214) 381-5899 • kpoinits@goodearth-inc.com

A. City of Dallas BI1810 – [\$10,983,415.00]

- a. Grounds Maintenance & Litter services for Medians, Planters and Lots [1668 acres mowed every 14 days]
 - i. Good Earth currently is in the midst of their seventh consecutive 36-month service contract for grounds maintenance of private property and/or public median and rights-of-way for the City of Dallas.
 - 1. Jon Taylor-Brown - 214-670-8166 (office)
jon.taylorbrown@dallascityhall.com

B. City of Dallas BK19-00009791 - [\$4,519,022.00]

- a. Grounds Service Maintenance for Parks & Recreation [11000 acres]
 - i. Good Earth is currently performing weekly mowing, edging, trimming and Litter removal services at 109 different Dallas Park and Recreation properties.
 - 1. David Dixon 214-671-0417 (office)
david.dixon@dallascityhall.com

C. City of Mesquite Parks Maintenance NO.2019-77 - [\$1,529,298.00]

- a. Grounds Maintenance for City Parks and Special Areas [9084.15 acres]
 - i. Good Earth is currently performing weekly grounds maintenance at 91, parks, and lots in the City of Mesquite.
 - 1. Jack McLain- 972-286-477 ext. 207 (office)
 - a. jmclain@cityofmesquite.com

D. City of Duncanville IFB#19-004- [\$728,325.00]

- b. Grounds Maintenance for Parks, Athletic Fields, Water Lots and Highways
 - i. Good Earth is currently performing weekly grounds maintenance at several, parks, water lots and athletic fields in the City of Duncanville.
 - 1. David Codispoti- 972-707-3873 (office)
 - a. dcodispoti@duncanville.com



Good Earth
Landscaping, Management & Tree Service

Good Earth Equipment

GOOD EARTH CORPORATION

7922 Forney Road Dallas, TX 75227 • (214) 381-5899 • kpoints@godearth-inc.com

I. (3) Mowing Crews

- A. (2) Ground Masters-2017 Toro 4000D
- B. (4) Zero Turns- 2017-2019 John Deere Z930M/ZTrak
- C. (6) Weed Eaters – 2017-2019 Sthil FS11RX or Echo SM2620
- D. (6) Edgers- 2016-2019 Sthil FC91 or Echo PE280
- E. (6) Blowers- 2017-2019 REDMAX BZ7500
- F. (3) Trucks (Ford F150 or Ford F250)

II. (2) Tractor Crew

- A. (2) 2017 John Deere 5100E
- B. (2) 2017 John Deere CX15 Rotary Decks

III. (2) Litter Crews

- A. 2 Truck (Ford F250) equipped with a cage on the back for all trash
- B. 2 Trailers (when needed)

* additional equipment will be provided when deemed necessary.

** Preventive Maintenance is preformed year-round by our full-time mechanics. Maintenance is scheduled based on manufactures recommendations and additional repairs and tune ups are done as needed. We have 6 full time shop employees who are available if any issue arise.

Regular Session Agenda Item: 9

Meeting Date: February 3, 2020

ITEM DESCRIPTION:

Discuss and consider approving a Resolution of the City of Seagoville, Texas, approving an agreement for professional engineering services on a defined scope of services basis (“Agreement”) with Halff Associates, Inc. for the East Malloy Bridge Road sidewalk extension, north of Highway 175 and Crestview Lane from the existing sidewalk to the Villas of Seagoville, which is attached hereto as Exhibit “A”, in an amount not to exceed \$25,500.00; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.

BACKGROUND OF ISSUE:

Halff Associates, Inc. will provide engineering services to install a five (5’) foot sidewalk adjoining the existing sidewalk at Corners III located on the south side of East Malloy Bridge Road, North of U.S. Highway 175 and Crestview Lane, and will extend along the Service Road near the property line of the Villas of Seagoville, a “55 and better” apartment complex. It will show a footing and an ADA handrail along the sidewalk where required for our citizens.

Due to lack of sidewalks, our senior citizens are forced onto the roadway creating unsafe conditions for our citizens, as well as vehicles traveling on East Malloy Bridge Road. Staff feels that extending the existing sidewalk along the right-of-way from the end of Corners III to the entryway of Villas of Seagoville is necessary for the safety of our citizens.

FINANCIAL IMPACT:

\$25,000.00

RECOMMENDATION:

Staff recommends approving the scope of work with Halff Associates, Inc.

EXHIBITS

Resolution (2 Pages)

Exhibit A- Engineering Agreement with Halff Associates, Inc (5 Pages)

THE CITY OF SEAGOVILLE, TEXAS

RESOLUTION NO. ___ - R - 2020

A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS, APPROVING AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES ON A DEFINED SCOPE OF SERVICES BASIS ("AGREEMENT") WITH HALFF ASSOCIATES, INC. FOR THE EAST MALLOY BRIDGE ROAD SIDEWALK EXTENSION, NORTH OF HIGHWAY 175 AND CRESTVIEW LANE FROM THE EXISTING SIDEWALK TO THE VILLAS OF SEAGOVILLE, WHICH AGREEMENT IS ATTACHED HERETO AS EXHIBIT "A", IN AN AMOUNT NOT TO EXCEED \$25,500.00; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Halff Associates, Inc., ("Engineer") provides professional engineering services to the City of Seagoville ("City") on an "as needed" or "task order" basis as determined by the City; and

WHEREAS, the existing sidewalk located on the south side of East Malloy Bridge Road, north of U.S. Highway 175 and Crestview Lane, extends from the Service Road to the property line of the Villas of Seagoville, a "55 and better" apartment complex; and

WHEREAS, as a result of not having the sidewalk extend to the entryway of Villas of Seagoville, pedestrians are forced onto the roadway creating unsafe conditions for pedestrians, as well as for those vehicles traveling East Malloy Bridge Road; and

WHEREAS, staff has determined that extending the existing sidewalk along the right-of-way from the end of Corners III to the entryway of Villas of Seagoville would increase the safety of pedestrians and vehicular traffic traveling East Malloy Bridge Road in this area; and

WHEREAS, Engineer has provided a proposal for professional engineering services for a defined scope of services to accomplish this extension of the existing sidewalk (the "Project") as set forth in Exhibit "A"; and

WHEREAS, the City Council for the City of Seagoville, Texas finds it to be in the best interest of the City to approve the Professional Services Agreement with Halff Associates, Inc. for engineering services on the East Malloy Bridge Road Sidewalk Extension, north of Highway 175 and Crestview Lane from the existing sidewalk to the Villas of Seagoville, which is attached hereto as Exhibit "A", in an amount not to exceed Twenty Five Thousand Five Hundred Dollars and no cents (\$25,500.00), and authorizes the City Manager to execute the same;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS:

Section 1. The City Council hereby approves the agreement for Professional Engineering Services on a defined scope of services basis with Halff Associates, Inc. for engineering services on the East Malloy Bridge Road Sidewalk Extension, north of Highway 175 and Crestview Lane from the existing sidewalk to the entryway of the Villas of Seagoville, which agreement is attached hereto and incorporated herein as Exhibit "A", in an amount not to exceed Twenty Five Thousand Five Hundred Dollars and no cents (\$25,500.00), and hereby authorizes the City Manager to execute said Agreement.

Section 2. That any prior Resolutions of the City Council of the City of Seagoville, Texas, in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

Section 3. That if any article, paragraph, subdivision, clause or provision of this Resolution, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such judgement or holding shall not affect the validity of this Resolution as a whole or any part or provision thereof, as amended hereby, other than the part so declared to be invalid or unconstitutional.

Section 4. This resolution shall take effect immediately from and after its passage and it is accordingly so resolved.

PASSED AND APPROVED by the City Council of the City of Seagoville, Texas this 3rd day of February, 2020.

APPROVED:

Dennis K. Childress, Mayor

ATTEST:

Kandi Jackson, City Secretary

APPROVED AS TO FORM:

Victoria Thomas, City Attorney

(/cdb 01/23/2020 TM113468)

**EXHIBIT “A”
SCOPE OF SERVICES**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN CITY OF SEAGOVILLE, TEXAS, AND HALFF ASSOCIATES, INC.
E MALLOY BRIDGE ROAD SIDEWALK EXTENSION
(AT VILLAS OF SEAGOVILLE)**

I. PROJECT DESCRIPTIONS

E Malloy Bridge Road Sidewalk Extension (At Villas of Seagoville)

The project involves extending an existing sidewalk along the south side of E Malloy Bridge Road at the Villas of Seagoville location, north of SH 175 and Crestview Lane. The project also includes new concrete paving for the sidewalk, including any drainage and erosion control needed.

Services provided by the Engineer include preparation of construction documents for the aforementioned improvements and topographical surveying.

II. TASK SUMMARY

Task 1 – Survey.

- Survey for Design: Halff will provide topographic surveying services along the designated area, including surveys of existing fences, trees, pavement and other above ground features. Property corners will be tied. Boundary surveys and legal exhibit preparations are excluded from this scope of work.

Task 2 – Engineering

- Pre-final Construction Plans: Prepare conceptual construction plans including a 1”=40’ scale drawings (22 inch x 34 inch, reproducible to half-size) including paving plan with typical sections (concrete construction), drainage area map, and probable construction costs. Plans will include any needed structural details and fence/rail details
- Final Construction Plan: Address the City’s comments from the Concept Plan Submittal; prepare pre-final design plans a combined paving, grading and removal plan, a typical section, drainage area map, and standard details.
- Prepare Draft Construction Contract Documents and Specifications for review at Pre-Final and Final submittals.
- Engineer’s Opinion of Probable Construction Cost for each submittal

Task 3 – Construction Administration and Record Drawings

- Construction Site Visits – 1 site visits per month for a 2-month construction duration by Project Engineer.
- Review and recommendation to the City of Contractor Submittals
- Coordination with the City during construction for design modifications
- Meetings with the City and Contractor as requested
- Electronic Record Plan Set: Incorporate the Contractor, City Inspector, and Engineer’s as-built mark-ups; Prepare PDF and AutoCAD files of the record drawings for the City

- Total man-hours for Construction Administration tasks shall not exceed 40 hours without fee adjustment.

III. ADDITIONAL SERVICES

Any items requested that are not outlined in the above scope will be considered additional services and will be provided as requested and authorized by City of Seagoville. Halff Associates Inc. can provide the following services; however, these services are excluded from the scope of this agreement:

- Changes to plans due to City design criteria changes after the 90% plan review and notice to proceed on the 100% plans.
- Submittal, Review, Platting, and Permitting Fees or other Fees associated with adjacent commercial and/or residential development.
- Franchise utility infrastructure design.
- Legal Descriptions for vacation of utility easements and/or ROW.
- Right-of-Way appraisal and acquisition services.
- Construction Inspection and Resident Engineering services not specifically included in the scope.
- Construction Material Testing services.
- CLOMR/LOMR studies and/or applications and field survey for as-built verification.
- Individual Section 404 Permitting and site specific mitigation plans.
- Preparation of Construction related SWPPP, NOI, NOT, etc.
- Construction layout staking.
- Hazardous material site assessment.
- Traffic Control plans
- Full-Time Construction Inspection.
- Items not specifically included in the Scope of Services.

IV. DELIVERABLES

Deliverables are for each project part.

Task	Deliverables
Task 1 – Survey	<ul style="list-style-type: none">• none
Task 2 – Engineering	<ul style="list-style-type: none">• Two (2) of 22” x 34” Construction plans at concept, pre-final, and final submittals• Two (2) Sets of 11” x 17” Construction plans at concept, pre-final, and final submittals• PDF copies of all deliverables
Task 3 – Construction Administration and Record Drawings	<ul style="list-style-type: none">• Copies of Site Visit Reports• Copies of Submittal Reviews• One (1) 22”x34” bond copy of the record drawings• One (1) PDF copy of each sheet of the record drawings

**COMPENSATION SCHEDULE
TO EXHIBIT "A"**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN CITY OF SEAGOVILLE, TEXAS, AND HALFF ASSOCIATES, INC.
E MALLOY BRIDGE ROAD SIDEWALK EXTENSION
(AT VILLAS OF SEAGOVILLE)**

**I. COMPENSATION SCHEDULE – E MALLOY BRIDGE ROAD SIDEWALK
EXTENSION**

Task	Completion Schedule	Compensation Schedule
Notice-to-Proceed	February 2020	
Task 1 – Survey	February 2020	\$6,500
Task 2 – Engineering	March 2020	\$16,000
Task 3 – Construction Administration and Record Drawings	May 2020	\$3,000
Total Compensation		\$25,500

II. COMPENSATION SUMMARY – E MALLOY BRIDGE ROAD SIDEWALK EXTENSION

Basic & Special Engineering Services (Lump Sum)	Amount
Task 1 – Survey	\$6,500
Task 2 – Engineering	\$16,000
Total Basic & Special Engineering Services:	\$22,500

Special Construction Services (Hourly Not-to-Exceed)	Amount
Task 3 – Construction Administration & Record Drawings	\$3,000
Total Special Construction Services:	\$3,000

Regular Session Agenda Item: 10

Meeting Date: February 3, 2020

ITEM DESCRIPTION:

Receive Councilmember Reports/ Items of Community Interest

BACKGROUND OF ISSUE:

Section 551.0415 of the Texas Government Code authorizes a quorum of the governing body of a municipality or county to receive reports about items of community interest during a meeting without having given notice of the subject of the report if no action is taken. Section 551.0415 defines an “item of community interest” to include:

- (1) expressions of thanks, congratulations, or condolence;
- (2) information regarding holiday schedules;
- (3) an honorary or salutory recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in status of a person’s public office or public employment is not an honorary or salutory recognition for purposes of this subdivision;
- (4) a reminder about an upcoming event organized or sponsored by the governing body;
- (5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and
- (6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

N/A

EXHIBITS:

N/A

Regular Session Agenda Item: 11

Meeting Date: February 3, 2020

ITEM DESCRIPTION:

Future Agenda Items

BACKGROUND OF ISSUE:

Council provides direction to staff regarding future agenda items. These items will not be discussed and no action will be taken at this meeting.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

N/A

EXHIBITS:

N/A