



**SEAGOVILLE, TEXAS  
CITY COUNCIL MEETING AGENDA  
MONDAY, DECEMBER 21, 2020**

**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**
- B. Receive presentation concerning manholes**

**Adjourn**

**REGULAR SESSION - 7:00 P.M.**

**ROUTINE ANNOUNCEMENTS, RECOGNITIONS, and PROCLAMATIONS**

**Call to Order**

**Invocation**

**Pledge of Allegiance**

**Presentation by the Seagoville Chamber of Commerce**

**Presentation - Certificate of Achievement for Excellence in Financial Reporting (CAFR)**

**Award**

**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.

- 1. Consider approving City Council Meeting minutes for December 7, 2020 (City Secretary)**

**REGULAR AGENDA-**

- 2. Appoint City Councilmembers to serve on the Finance Committee (Finance Director)**
- 3. Receive a presentation concerning the Financial Statements for the Fourth Quarter of FY 2020 (Finance Consultant)**
- 4. First Reading - Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas, approving the Economic Development Project between the Seagoville Economic Development Corporation and Seagoville Trinity Plaza, LLC as reflected in the terms and conditions of a Real Estate Purchase and Sale Agreement and an Economic Development Incentive Agreement between the parties; and providing an effective date (City Manager)**
- 5. Discuss and direct Staff concerning Council Meetings for January 18, 2021 and February 15, 2021 (City Secretary)**
- 6. Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas authorizing the City Manager to enter into a Service Agreement with Motorola Solutions (“Motorola”) approving the terms and conditions of the Agreement between the City of Seagoville and Motorola which is attached hereto as Exhibit “A”; repealing all Resolutions in conflict; providing an effective date (Police Support Services Manager)**
- 7. Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas, authorizing the City Manager to enter into an Annual Agreement (also referred to as the Work Order) attached hereto as Exhibit “A” with the City of Garland, Texas (“Garland”) in accordance with and governed by the Master Interlocal Radio Service Agreement between the City of Seagoville and Garland; repealing all Resolutions in conflict; providing an effective date (Police Support Services Manager)**
- 8. Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas, authorizing the City Manager to enter into a Master Interlocal Radio Service Agreement (the “Work Order”) with the City of Garland, Texas (“Garland”); attached hereto as Exhibit “A”; repealing all Resolutions in conflict; providing an effective date (Police Support Services Manager)**
- 9. Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas authorizing the City Manager to sign a Master Interlocal Agreement with Dallas County for participation in the Major Capital Improvement Projects (MCIP) for the purpose of transportation improvements on roads inside Dallas County that are in the Dallas County Mobility Plan, said agreement to be in substantially the form of that attached hereto as Exhibit “A”; providing for the repeal of any and all Resolutions in conflict; providing for a severability clause; and providing an effective date (Community Development Director)**

**10. Discuss and consider a Resolution of the City Council of the City of Seagoville, Texas, authorizing the City Manager to execute Work Order Authorization Agreement No. 3 with Halff Associates, Inc. for Professional Engineering Services on a Task Order Basis for Development Plan Review Assistance in an amount not to exceed Twenty Nine Thousand Five Hundred Dollars and No Cents (\$29,500.00); and providing an effective date (Community Development Director)**

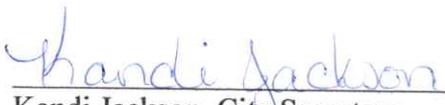
**11. Second Reading - Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas, approving the Economic Development Project between the Seagoville Economic Development Corporation and Seagoville Trinity Plaza, LLC as reflected in the terms and conditions of a Real Estate Purchase and Sale Agreement and an Economic Development Incentive Agreement between the parties; and providing an effective date (City Manager)**

**12. Receive Councilmember Reports/Items of Community Interest - as authorized by Section 551.0415 of the Texas Government Code.**

**13. 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.**

**Adjourn**

Posted Friday, December 18, 2020 by 5:00 P.M.

  
Kandi Jackson, City Secretary



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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, January 4, 2020 Regular City Council Meeting**

# *Consent Session Agenda Item: 1*

**Meeting Date: December 21, 2020**

**ITEM DESCRIPTION:**

Consider approving City Council Meeting minutes December 7, 2020.

**BACKGROUND OF ISSUE:**

Approve City Council Meeting minutes for December 7, 2020.

**FINANCIAL IMPACT:**

N/A

**RECOMMENDATION:**

N/A

**EXHIBITS:**

December 7, 2020 Work Session Meeting Minutes  
December 7, 2020 Regular Meeting Minutes



**MINUTES OF CITY COUNCIL  
WORK SESSION  
DECEMBER 7, 2020**

**The Work Session of the City Council of the City of Seagoville, Texas was called to order at 6:30 p.m. on Monday, January 9, 2020, at City Hall, 702 N. Hwy 175, Seagoville, Texas with a quorum present, to wit:**

Dennis Childress	Mayor	
Jon Epps	Mayor Pro Tem	
Jose Hernandez	Councilmember	Arrived 6:38 p.m.
Rick Howard	Councilmember	
Harold Magill	Councilmember	
Mike Fruin	Councilmember	

The following staff members were also present: City Manager Patrick Stallings, Police Chief Ray Calverley, Community Development Director Ladis Barr, Director of Health & Code Jimmy Stephens, and Director of Administrative Services Cindy Brown.

**A. Discuss regular session agenda items**

**1. Consider approving City Council Meeting minutes for November 16, 2020 and Joint Workshop with Planning & Zoning minutes for November 17, 2020 (City Secretary)**

*No questions.*

**2. Conduct interviews with Boards & Commissions Applicant for appointment (City Secretary)**

*City Manager Stallings stated this item will be discussed during Regular Session.*

**3. Discuss and consider approving a Resolution authorizing the creation of an Interlocal Agreement with the Cities of Balch Springs, Mesquite and The Town of Sunnyvale, Texas in a form to be approved by the City Attorney, for the purpose of creating the Eastern Dallas County Response Team; Authorizing the City Manager to execute all necessary documents for the submission by said Eastern Dallas County Response Team of a Grant Application for a New Directions For Public Safety Grant (City Manager)**

*City Manager Stallings stated this Resolutions authorized the creation of an Interlocal Agreement with the Cities of Balch Springs, Mesquite and The Town of Sunnyvale, Texas in a form to be approved by the City Attorney, for the purpose of creating the Eastern Dallas County Response Team.*

**4. Staff seeks City Council approval to locate the new Police Facility on the same five (5) acres of land where Fire Station Number 2 is located (City Manager)**

*City Manager Stallings stated this item will approve the location of the new Police Facility on the same five (5) acres of land where Fire Station Number 2 is located.*

**B. Receive an update concerning CoVID Relief Funds**

*Director of Health & Code Stephens provided an update concerning CoVID Relief Funds.*

**C. Receive an update concerning the Crestview Project**

*Community Development Director Barr provided an update concerning the Crestview Project.*

**Adjourned at 7:06 p.m.**

**APPROVED:**

\_\_\_\_\_  
Mayor Dennis K. Childress

**ATTEST:**

\_\_\_\_\_  
Kandi Jackson, City Secretary



**MINUTES OF CITY COUNCIL  
REGULAR SESSION  
DECEMBER 7, 2020**

**The Regular Session of the City Council of the City of Seagoville, Texas was called to order at 7:15 p.m. on Monday, December 7, 2020, at City Hall, 702 N. Hwy 175, Seagoville, Texas with a quorum present, to wit:**

Dennis Childress	Mayor
Jon Epps	Mayor Pro Tem
Jose Hernandez	Councilmember
Rick Howard	Councilmember
Harold Magill	Councilmember
Mike Fruin	Councilmember

The following staff members were also present: City Manager Patrick Stallings, Police Chief Ray Calverley, Community Development Director Ladis Barr, Police Captain Steve Davis, Director of Health & Code Jimmy Stephens, and Director of Administrative Services Cindy Brown.

**Invocation** – *Invocation was led by Mayor Childress.*

**Pledge of Allegiance** – *Mayor Childress led the Pledge of Allegiance.*

**Mayor’s Report** – *Mayor Childress wished everyone a Merry Christmas.*

**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.*

*None.*

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

- 1. Consider approving City Council Meeting minutes for November 16, 2020 and Joint Workshop with Planning & Zoning minutes for November 17, 2020 (City Secretary)**

*Motion to approve City Council Meeting minutes for November 16, 2020 and Joint Workshop with Planning & Zoning minutes for November 17, 2020 – Hernandez, seconded by Magill; motion passed with all ayes. 5/0*

**REGULAR AGENDA-**

**2. Conduct interviews with Boards & Commissions Applicant for appointment (City Secretary)**

*Motion to appoint Debra Haney to Place Seven (7) on the Planning & Zoning Commission – Hernandez, seconded Howard; motion passed with all ayes. 5/0*

**3. Discuss and consider approving a Resolution authorizing the creation of an Interlocal Agreement with the Cities of Balch Springs, Mesquite and The Town of Sunnyvale, Texas in a form to be approved by the City Attorney, for the purpose of creating the Eastern Dallas County Response Team; Authorizing the City Manager to execute all necessary documents for the submission by said Eastern Dallas County Response Team of a Grant Application for a New Directions For Public Safety Grant (City Manager)**

*Motion to approve a Resolution authorizing the creation of an Interlocal Agreement with the Cities of Balch Springs, Mesquite and The Town of Sunnyvale, Texas in a form to be approved by the City Attorney, for the purpose of creating the Eastern Dallas County Response Team; Authorizing the City Manager to execute all necessary documents for the submission by said Eastern Dallas County Response Team of a Grant Application for a New Directions For Public Safety Grant – Hernandez, seconded by Magill; motion passed with all ayes. 5/0*

**4. Staff seeks City Council approval to locate the new Police Facility on the same five (5) acres of land where Fire Station Number 2 is located (City Manager)**

*Motion to approve an exploratory investigation about placing the Police Department along with Fire Station Number 2 – Magill, seconded by Hernandez; motion passed. 4/1 (For- Hernandez, Magill, Fruin, and Epps; Against – Howard)*

**5. Receive Councilmember Reports/Items of Community Interest - as authorized by Section 551.0415 of the Texas Government Code.**

*Councilmember Hernandez expressed thanks for the personal protection equipment on behalf of the school nurses.*

**6. 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**

*Councilmember Howard stated he would like the option for citizens to participate virtually in the Council Meetings.*

**Adjourned at 7:21 p.m.**

**APPROVED:**

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Mayor Dennis K. Childress

**ATTEST:**

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Kandi Jackson, City Secretary

## *Regular Session Agenda Item: 2*

**Meeting Date:** December 21, 2020

**ITEM DESCRIPTION:**

Appoint City Councilmembers to serve on the Finance Committee.

**BACKGROUND OF ISSUE:**

The Finance Committee of the Seagoville City Council exists to assist the City Council in fulfilling its financial and compliance oversight responsibilities. It is to be the City Council's principal agent in ensuring the independence of the City's annual financial audit, the integrity of City management, and the adequacy of financial disclosures to the public. The Finance Committee serves as the focal point for communication between the City Council, the independent auditor, and City management. The current members of the Finance Committee are Councilmember Jose Hernandez and Councilmember Rick Howard.

**FINANCIAL IMPACT:**

None.

**ATTACHMENT:**

None.

## ***Regular Session Agenda Item: 3***

**Meeting Date: December 21, 2020**

**ITEM DESCRIPTION:**

Receive a presentation concerning the Financial Statements for the Fourth Quarter of FY 2020.

**BACKGROUND OF ISSUE:**

Patrick Harvey, Finance Director Emeritus and Present Financial Consultant, will present the Financial Statements for the Fourth Quarter of FY 2020

**FINANCIAL IMPACT:**

None

**RECOMMENDATION:**

None

**EXHIBITS:**

Financial Statements for the Fourth Quarter of FY 2020



# Memo

Date: December 11, 2019  
To: Pat Stallings, City Manager  
From: Patrick Harvey  
Subject: September 2020 Financial Reports

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This memo explains the September 2020 Financial Report for the City of Seagoville for FY2020. This is a preliminary version of the final financial report for the fiscal year and this memo explains where results vary.

## General Fund

**Revenues: General fund total revenues for the fiscal year is greater than budget (actual \$11,559,981 vs. expected \$10,840,273 (actual 106.6% vs. expected 100.0%))** The current year fiscal **Property tax** revenue collections are above last year's collection rate (102.4% vs. 100.0%). **Sales Tax** revenue collections are above budget expectations (**116.7%**). There was a concern earlier in the fiscal year with the initial advent of the COVID 19 pandemic that there could be an impact on sales tax revenue. Fortunately, sales tax remained strong. In **Franchise Fee** revenue, the comparative collection trend for FY 2019 vs. FY 2018 appears below:

Description	FY 2020 Amount	FY 2019 Amount	Increase (Decrease)
ONCOR	\$ 458,485	\$ 464,450	\$ (5,965)
ATMOS Gas	72,252	83,794	(11,543)
Suddenlink Cable	35,366	38,287	(2,920)
Telephone	27,627	37,420	(9,794)
Republic Services	71,195	61,908	9,287

**Franchise Fee** receipts in total are above budget for the fiscal year (104.1% vs. 100.0%).

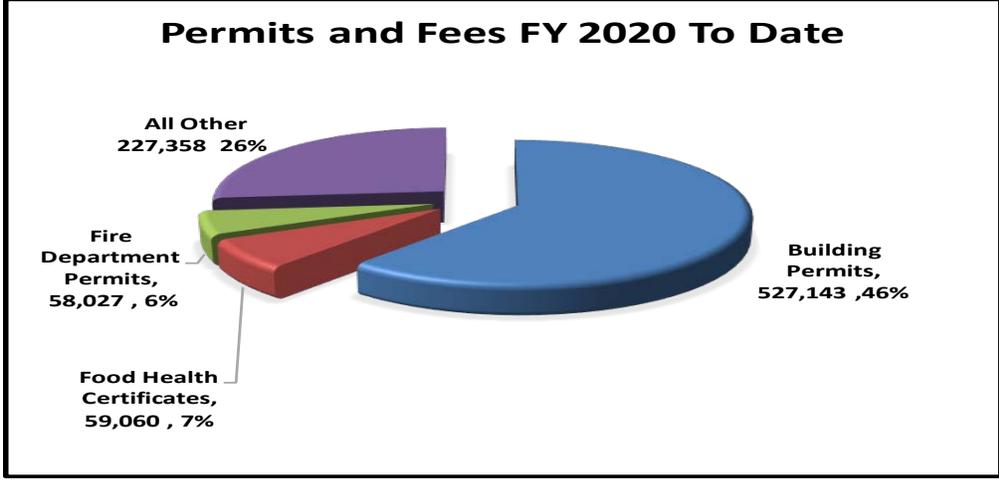
**Permits & Fees** During the fourth quarter of FY 2020, the City received \$129,965.25 for issuing 70 permits for Seagoville Farms subdivision and \$22,101.00 from issuing 11 permits in other parts of the City. This compares with the fourth quarter of FY 2019, when the City received \$64,443.75 for issuing 35 permits for Highland Meadows Phase 3 and \$278,979.81 in inspection fees for Seagoville Farms.

During the third quarter of FY 2020, the City received \$14,762.25 for issuing 6 permits in other parts of the City and \$1,611.00 for issuing a permit for Highland Meadows Phase III. Additionally, the City received \$11,567.40 in inspection fees from Wellington Farms and \$17,546.22 in inspection fees from Seagoville Farms. This compares with the third quarter of FY 2019, the City received \$1,486.55 for issuing a permit in Brook Valley #7 subdivision, \$1,178.55 for issuing a permit for the Super One renovation project, \$14,271.00 for issuing 11 permits in other parts of the City, \$7,534.65 for issuing 3 permits for Wal-Mart remodeling, and \$100,620.00 for issuing 69 permits for Highland Meadows Phase 3.

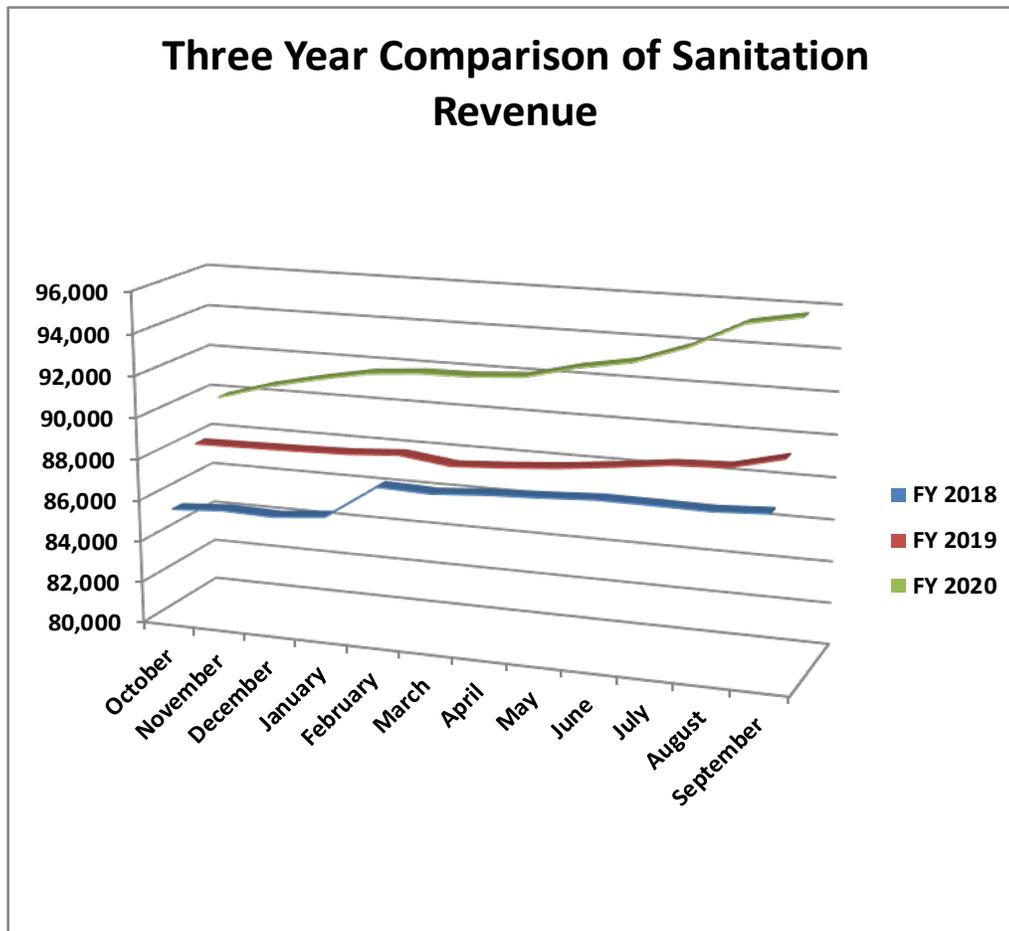
The second quarter of FY 2020, the City received \$138,984.00 for issuing 80 permits in the Highland Meadows Phase 3 subdivision, \$1,992.75 for a new dental office (1600 Creekstone), \$3,946.25 for the Panda Express building permit and \$14,847.97 for issuing 9 permits in other parts of the City. Additionally, the City received \$61,042.23 in inspection fees from Tredway Estates. This compares to the second quarter of FY 2019, the City received \$10,436.40 for issuing 8 permits in Brook Valley #7 subdivision, \$2,883.50 for issuing two permits for the Super One renovation project, \$2,858.55 for issuing a permit to Starbucks, \$9,510.50 for issuing 7 permits in other parts of the City, \$4,000.00 in plan review fees for Seagoville Farms, and \$73,729.90 for issuing 66 permits for Highland Meadows Phase 3.

The first quarter of FY 2020, the City received \$32,852.25 for issuing 19 permits in Highland Meadows Phase 3 subdivision and \$13,435.18 for issuing nine permits in other parts of the City for Building permits. This compares to the first quarter of FY 2019, the City received \$17,242.70 for issuing 10 permits in Brook Valley #7 subdivision and \$16,362.60 for issuing six permits in other parts of the City for Residential Building permits. The following is a comparison of FY 2020 revenue vs. FY 2019:

Description	FY 2020 Amount	FY 2019 Amount	Increase (Decrease)
Building Permits	\$ 527,143	\$ 456,532	\$ 70,611
Inspection Fees	124,684	282,280	(157,596)
Food Health Certificate:	59,060	73,865	(14,805)
Fire Department Permit	45,214	58,027	(12,813)
All Other	102,674	110,976	(8,302)



**Sanitation** revenue is within expectations compared to budget (99.2% actual vs. 100.0% expected). The FY 2020 revenue amount exceeds the FY 2019 revenue amount (\$1,109,135 vs. \$1,062,684).



**Expenditures: Total General Fund expenditures are at expectations (97.4% actual vs. 100.00% expected).**

**City Manager** is above expectations due to an in-year compensation adjustment.

**Planning** is above expectations due to an in-year compensation adjustment.

**Sanitation** is above expectations due to higher than anticipated residential activity.

**Streets** department is above budget expectations due to an increase in uniform purchases, minor equipment purchases such as LED lamps, tools and supplies for the sign shop, vehicle fuel costs and Other Contract Maintenance which includes Asphalt for Sunnyvale and Motor Grader for Elizabeth Lane and Tunnell St, pest control services for Bearden Park and concrete medians, providing asphalt for Central Park as well as street sweeping various streets.

**Emergency Medical Services** include a contractual cost of service increase not provided in the budget.

**Non departmental** is above expectations mainly due to the annual premium payment to TML for workers' compensation and property/casualty insurance. Postage, data processing supplies and memberships are also above budget expectations fiscal year to date. There was also an increase above budget in **Legal fees** for Nichols, Jackson, Dillard, Hager.

**Information and Technology** is above expectations due to the Annual Transfer to the Technology Replacement Fund and Civic Plus Annual Fees for Recurring Redesign fee increase and Custom Mobile App Annual Fee Renewal.

**Use of Fund Balance Projects** is above expectations due to the acquisition cost of the Kracker and Pothole Patcher Trailer exceeding budget expectations (total acquisition cost \$110,285.00 vs. \$104,630 budgeted). This is a list of the SEDC Quality of Life projects:

Description	Cost
LED Sign Bruce Park	\$104,950.00
Freedom Park playground structure	114,398.00
Christmas Tree	<u>36,454.69</u>
Total	\$255,802.69

### **Water and Sewer Fund (Fund 20)**

**Revenues: Total Water and Sewer Fund revenues exceed budget expectations (104.9% vs. 100.0%).** Virtually all increases in this fund are directly due to an increased residential and commercial customer base from the ongoing growth trend in the City. **Water and Sewer Tap Fees** reflect more development in the community. **Meter Installation Fees** reflect residential development activity in the City. **Penalties Interest and Reconnection Fees** show activity on late paying accounts.

**Expenditures: The year to date expenditure trend is within expectations (88.4% actual vs. 100.00% expected).**

**Utility Administration** was above expectation due to staff retirement.

**Customer Service** was above expectations due to customer payment processing costs exceeding expectations.

**Non departmental** is above expectations due to the annual premium payment to TML for workers' compensation and property/casualty insurance, and to the completion of the Water master plan by the City's consulting engineers.

**Use of Financial Reserves** reflect the major repair of the sewer line in the vicinity of Ace Hardware and the Police Station. **Cityworks System Renewal payment plus** added 4 standard logins and web hooks to current licensing. This system represents a major element of compliance with the EPA's administrative order.

**Other Funds**  
**Debt Service (Fund 2)**

In the first six months of FY 2020, the City has made the following scheduled debt service payments:

<b>Description</b>	<b>Principal</b>	<b>Interest</b>	<b>Total</b>
Series 2017 Refunding Bonds	162,000.00	28,921.06	190,921.06
Paying Agent Fees			2,250.00
Series 2019 Bonds	60,000.00	239,693.35	<u>299,693.35</u>
			<u><u>492,864.41</u></u>

**W&S Debt Service** accounts for resources allocated and used to service the debt of the series 2015 and 2017 bonds.

**W&S Improvements (Fund 22)** Expenditures reflect progress payments on the installation of the water line for the new fire station (\$144,770.09), the Northern Basin Interceptor System (\$103,767.09), the continued installation of the AMI smart meter infrastructure (\$1,250,687.55) and Ard Road Pump Station Improvements (\$231,700.76).

**Storm Water (Fund 61)** accounts for drainage fees and related expenditures associated with the City’s compliance with the municipal drainage program and related drainage projects. This year expenditures included the final payment on the Woodside Drainage project (\$76,332.63)

**Park Maintenance (Fund 42)** revenue includes over \$187,420 in fees received from a local developer. These revenues provided resources for the installation of light poles at Casa Grande Park (\$12,402.50), the providing power to pole at Bruce Park (\$8,990.00), electrical work performed at Petty White Park (\$11,650.00), removal of wooden poles at Bruce Park (\$4,450.00), and concrete work at Freedom Park (\$77,377.50).

**Vehicle Replacement (Fund 47)** includes the acquisition of a fire engine (\$610,019.05) and a Police vehicle (\$39,577.00)

**2019 Street Projects (Fund 44).** This fund was established to account for the inflows and outflows of resources connected with the development of Crestview, Johnnie Row and other streets in the City identified in the FY 2020 budget. A list of FY 2020 project expenditures is as follows:

Crestview Engineering	\$94,838.43
Johnnie Row/Ross Engineering	166,714.70
Crestview/Malloy Construction	1,097,282.07
Johnnie Row/Ross Construction	701,100.96
Villas of Seagoville Sidewalk extension	20,900.00

**Emergency Communications System (Fund 65)**

The amount expended in this fund represent the acquisition of a new emergency communications system. The project is substantially complete at March 31, 2020.

**Street Maintenance (Fund 43)** the list of FY 2020 project expenditures appears below:

Central Park - South Approach	42,631.00	
Crestview Engineering	4,909.67	
Hall Sidewalks	16,054.50	
Shadybrook Project	66,418.20	
1315 Hall	6,514.36	
711 Shadybrook	5,464.00	
Georgia Lane Asphalt Repair	83,485.40	
Haven Hills Drainage Engineering	15,000.00	
Haven Hills Drainage Improvements	58,702.50	
Purchase of Solar Stop Sign	19,160.00	
Dollar Store Alley	4,387.70	
Shadybrook and Ross	16,912.24	
On Call Asphalt Engineering	4,984.79	
Simonds Road	131,400.30	
Curb for Ross	12,242.00	
412 W. Malloy Bridge	14,708.24	
Malloy Bridge/South Kaufman	3,600.00	
2708 Lexington	20,100.00	
Meyers Road Easements & Monumentation	16,059.86	
608/610 Oakbrook	8,672.72	
2020 Dallas County Striping of Streets	9,780.50	
Farmers Road Traffic Signs	3,500.00	
Crack Sealing	16,758.00	
Myers Sidewalk Easements	6,400.00	
E. Farmers Repair (Kaufman - Hwy 175)	168,289.65	
Seagoville Farms	2,500.00	
Hall St Concrete Repairs	24,953.65	
Bryan Sidewalk Repairs	10,038.80	
Minor Projects	8,276.99	
<b>Total Other Contract Maintenance</b>		<b>801,905.07</b>

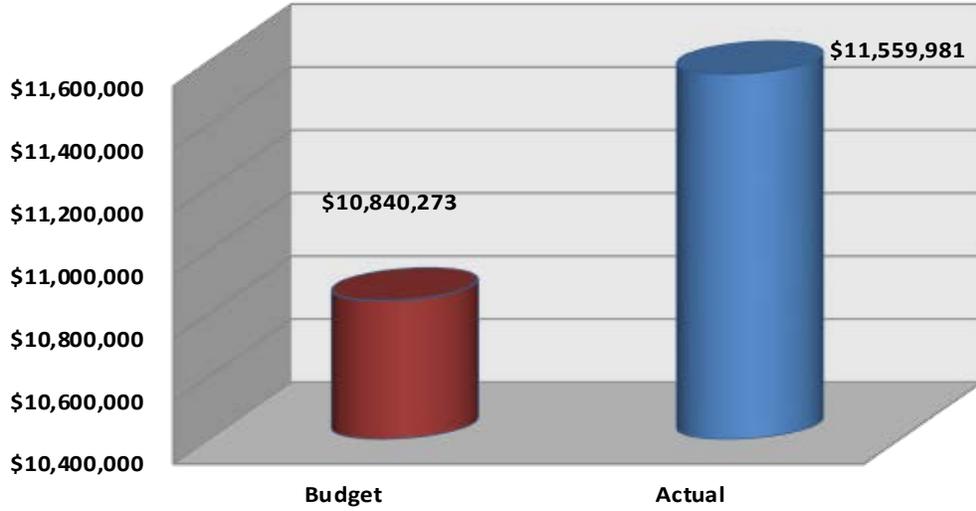
**GENERAL FUND  
SUMMARY OF REVENUES AND EXPENDITURES  
AS OF 9/30/20  
100% OF BUDGET YEAR**

	<b>Adopted Budget</b>	<b>Year to Date</b>	<b>% tage of Budget</b>
<b>REVENUES:</b>			
Property Taxes	\$5,107,374	\$5,229,018	102.4%
Sales Taxes	2,750,480	2,939,337	106.9%
Franchise Fees	657,950	685,033	104.1%
Sanitation	1,117,550	1,109,135	99.2%
All Other	<u>1,206,919</u>	<u>1,597,458</u>	132.4%
<b>TOTAL REVENUES</b>	<b>\$10,840,273</b>	<b>\$11,559,981</b>	<b>106.6%</b>
Transfers In:	379,904	379,904	100.0%
<b>EXPENDITURES:</b>			
Public Safety	\$5,593,695	\$5,383,744	96.2%
Community Development	1,593,018	1,504,030	94.4%
Community Services	1,480,843	1,496,654	101.1%
General Government	988,540	959,378	97.0%
Non departmental	<u>382,130</u>	<u>439,790</u>	115.1%
<b>TOTAL EXPENDITURES</b>	<b>\$10,038,226</b>	<b>\$9,783,596</b>	<b>97.5%</b>
One Time Use of Fund Balance	1,957,737	1,954,360	99.8%

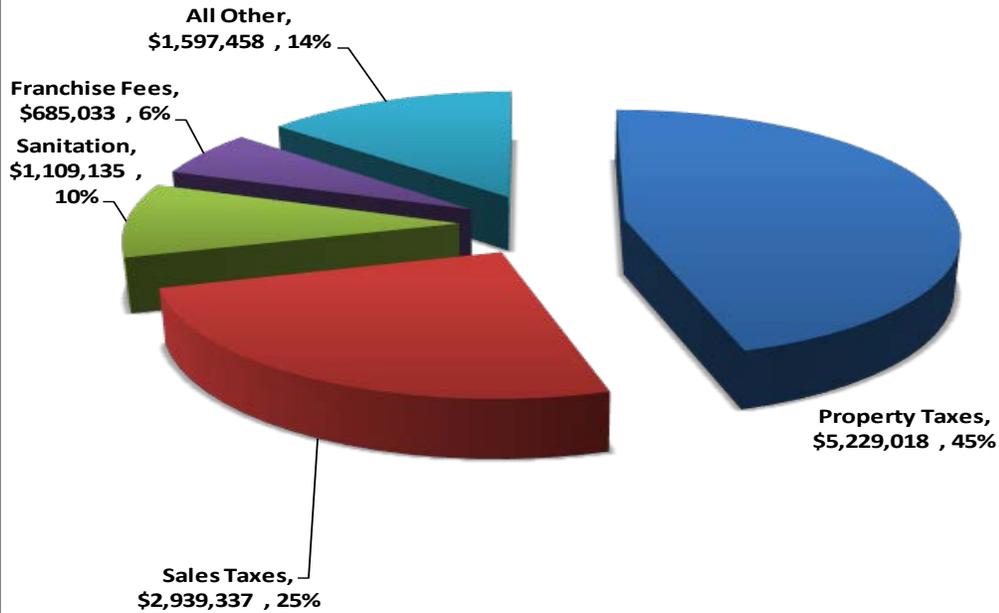
**GENERAL FUND  
SUMMARY OF REVENUES AND EXPENDITURES  
FOR FISCAL YEAR 2019-20  
AS OF 9/30/20  
100.00 % OF BUDGET YEAR**

	LAST YEAR			THIS YEAR		
	Annual Budget	Year-to-Date	% of Budget	Annual Budget	Year-to-Date	% of Budget
<b>Revenues:</b>						
Property Taxes	<b>\$4,745,438</b>	\$4,628,484	97.5%	<b>\$5,107,374</b>	\$5,229,018	102.4%
Sales Taxes	<b>\$2,447,978</b>	\$2,857,274	116.7%	<b>\$2,750,480</b>	\$2,939,337	106.9%
Franchise Fees	<b>\$614,525</b>	\$709,783	115.5%	<b>\$657,950</b>	\$685,033	104.1%
Permits & Fees	<b>\$368,595</b>	\$983,261	266.8%	<b>\$531,900</b>	\$858,776	161.5%
Sanitation	<b>\$954,350</b>	\$1,062,684	111.4%	<b>\$1,117,550</b>	\$1,109,135	99.2%
Senior Activities	<b>\$42,500</b>	\$57,320	134.9%	<b>\$47,500</b>	\$84,726	178.4%
Fines	<b>\$227,500</b>	\$288,148	126.7%	<b>\$233,125</b>	\$272,982	117.1%
Interest	<b>\$13,000</b>	\$40,775	313.7%	<b>\$25,000</b>	\$22,231	88.9%
SAFER Grant				<b>\$145,749</b>	\$63,036	43.2%
SEDC Capital Grant	<b>\$100,000</b>	\$142,425	142.4%	<b>\$200,000</b>	\$250,803	125.4%
Miscellaneous	<b>\$6,000</b>	11,606	193.4%	<b>\$23,645</b>	\$44,904	189.9%
<b>Total Revenues</b>	<b>\$9,519,886</b>	\$10,781,760	113.3%	<b>\$10,840,273</b>	\$11,559,981	106.6%

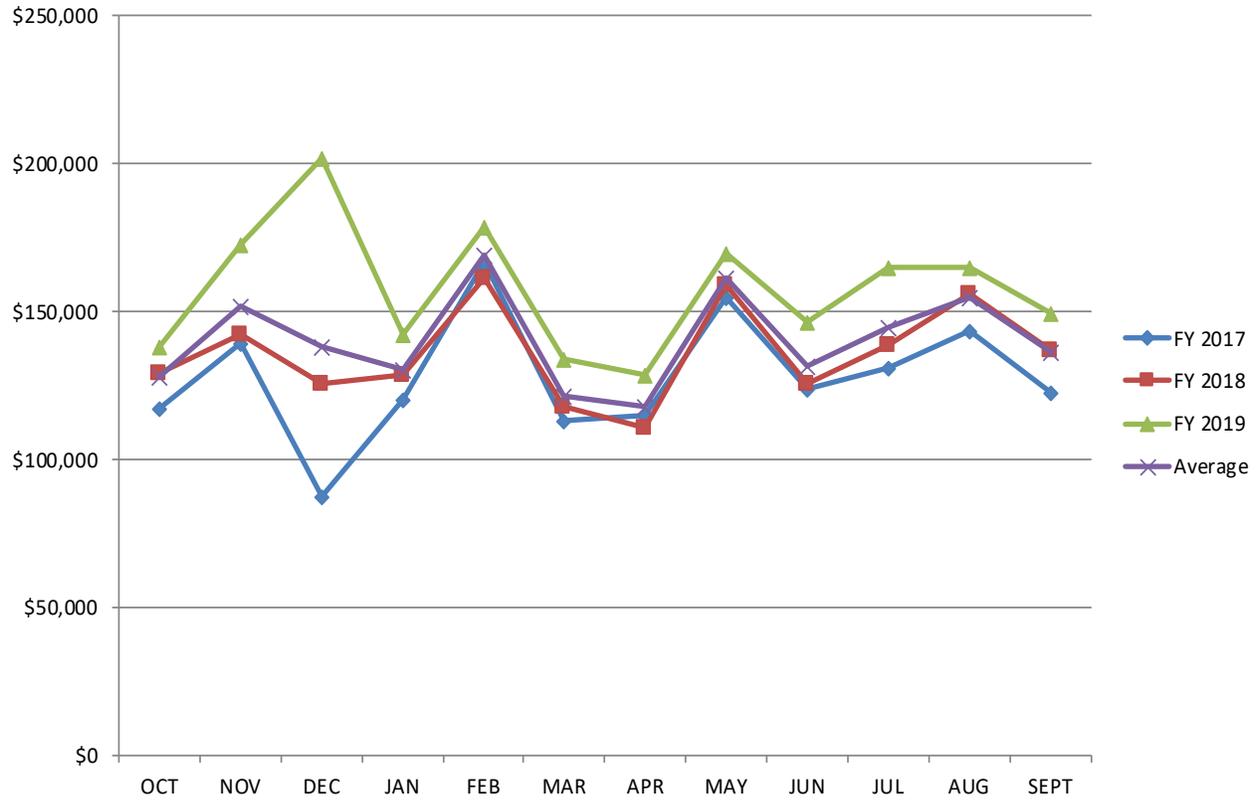
## Year to Date Revenue Comparison General Fund



## General Fund Revenues 4th Quarter, FY 2020 Total \$11,559,981

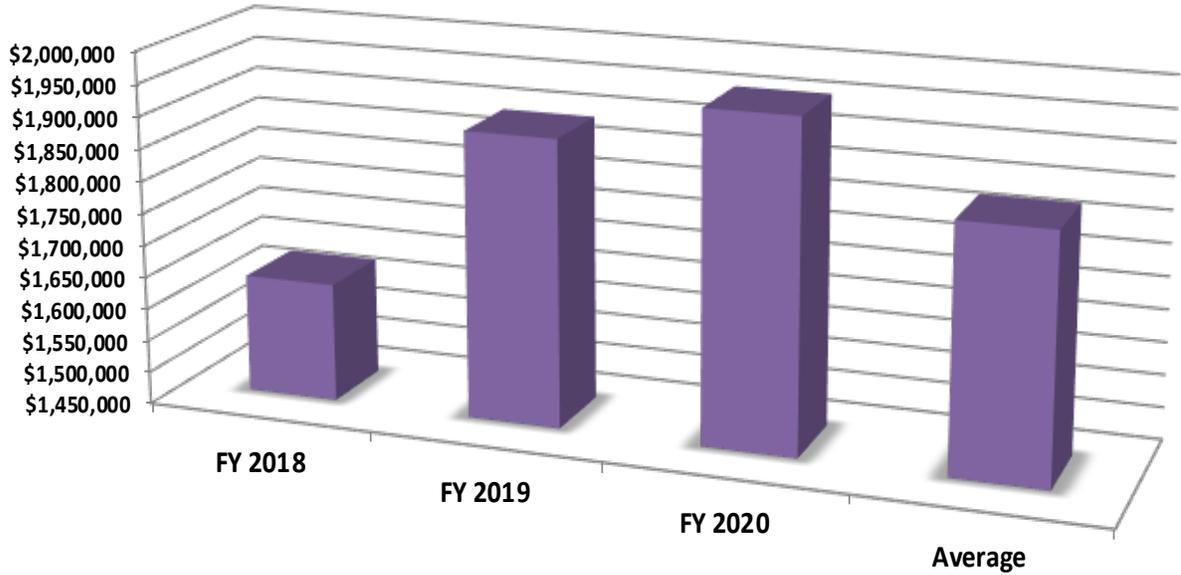


## General Fund Sales Tax Comparison



	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>Three Year Average</b>
OCT	117,255.97	129,581.47	138,378.74	128,405.39
NOV	139,335.95	142,707.74	173,057.45	151,700.38
DEC	87,836.00	125,490.04	201,730.66	138,352.23
JAN	120,436.32	128,533.63	142,638.91	130,536.28
FEB	167,079.94	161,739.81	178,469.13	169,096.29
MAR	113,468.05	117,942.89	134,151.31	121,854.08
APR	115,183.31	110,613.83	128,468.61	118,088.58
MAY	154,902.01	159,370.18	169,911.46	161,394.55
JUNE	123,730.29	125,678.24	146,585.42	131,997.98
JULY	131,020.10	138,665.29	164,879.75	144,855.05
AUG	143,683.22	155,884.05	165,213.27	154,926.85
SEPT	122,944.19	137,130.49	149,792.70	136,622.46

### Fiscal Year to Date Comparison - Sales Tax



	FY 2018	FY 2019	FY 2020	Three Year Average
Fiscal Year To Date	1,633,337.63	1,893,277.39	1,957,686.52	1,828,100.51



# Sales & Use Tax Monthly Summary General Fund

September, 2020

<b>History by Month</b>					
Month	FY 17-18	FY 18-19	FY 19-20	Inc/(Dec) From Last Year	Percent +/-
October	\$ 129,581.47	\$ 138,378.74	\$ 149,232.47	\$ 10,853.73	7.8%
November	\$ 142,707.74	\$ 173,057.45	\$ 171,421.83	\$ (1,635.62)	-0.9%
December	\$ 125,490.04	\$ 201,730.66	\$ 158,776.26	\$ (42,954.40)	-21.3%
January	\$ 128,533.63	\$ 142,638.91	\$ 135,551.38	\$ (7,087.52)	-5.0%
February	\$ 161,739.81	\$ 178,469.13	\$ 199,771.70	\$ 21,302.57	11.9%
March	\$ 117,942.89	\$ 134,151.31	\$ 134,785.46	\$ 634.15	0.5%
April	\$ 110,613.83	\$ 128,468.61	\$ 136,638.63	\$ 8,170.02	6.4%
May	\$ 159,370.18	\$ 169,911.46	\$ 170,986.48	\$ 1,075.03	0.6%
June	\$ 125,678.24	\$ 146,585.42	\$ 159,418.41	\$ 12,832.99	8.8%
July	\$ 138,665.29	\$ 164,879.75	\$ 178,499.43	\$ 13,619.68	8.3%
August	\$ 155,884.05	\$ 165,213.27	\$ 191,408.19	\$ 26,194.92	15.9%
September	\$ 137,130.49	\$ 149,792.70	\$ 171,196.30	\$ 21,403.60	14.3%
<b>Total General Fund</b>	<b>\$ 1,633,337.63</b>	<b>\$ 1,893,277.39</b>	<b>\$ 1,957,686.52</b>	<b>\$ 64,409.14</b>	<b>3.4%</b>

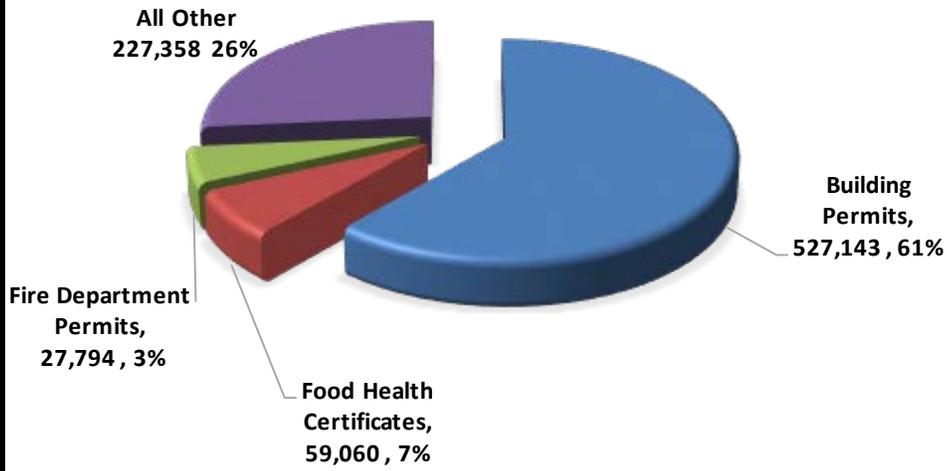
<b>Actual to Budget</b>					
<b>GF Budget FY 2020</b>				<b>\$ 1,830,655</b>	
	<u>PERCENT YTD</u>	<u>AMOUNT YTD</u>			
Target to Budget	100.00%	\$ 1,830,655.00			
Actual to Budget	106.94%	\$ 1,957,686.52			
Amount Over/(Under)		\$ 127,031.52			
Percent +/-		6.94%		<u>OVER/(UNDER)</u>	<u>% +/-</u>
September 30 Forecast			<b>\$ 1,957,687</b>	\$ 127,032	6.9%

<b>Actual to Actual</b>					
	FY 17-18	FY 18-19	FY 19-20	Inc/(Dec) From Last Year	Percent +/-
<b>Year to Date</b>	<b>\$ 1,633,337.63</b>	<b>\$ 1,893,277.39</b>	<b>\$ 1,957,686.52</b>	<b>\$ 64,409.13</b>	<b>3.4%</b>

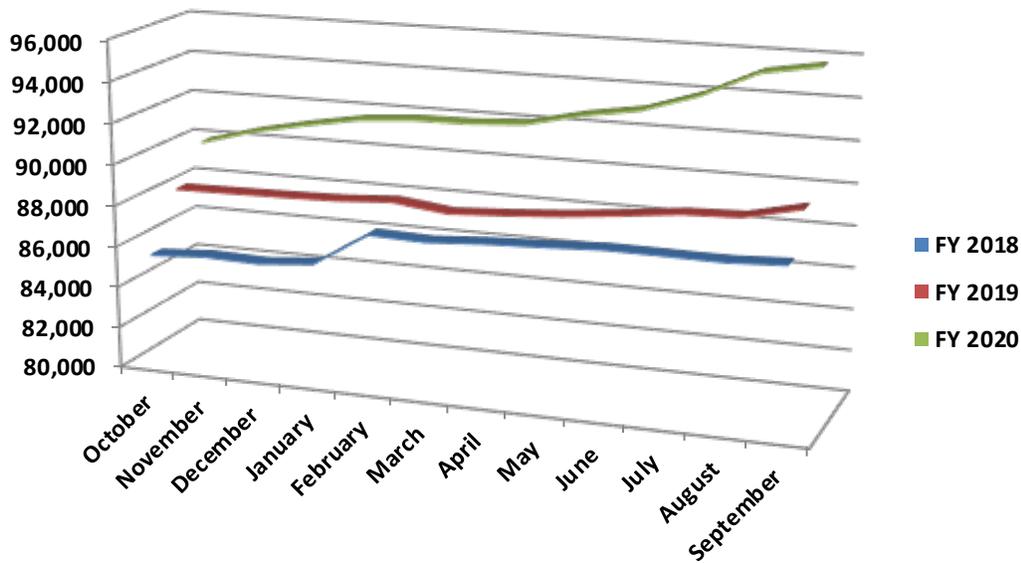
<b>Total Sales Tax &amp; Distribution</b>				
	General Fund	PTR	4B	Total
<b>This Month</b>	\$ 171,196.30	\$ 85,598.15	\$ 85,598.15	<b>\$ 342,392.60</b>
<b>Year to Date</b>	\$ 1,957,686.52	\$ 978,843.26	\$ 978,843.25	<b>\$ 3,915,373.04</b>

NOTE: SALES TAX IS RECEIVED FROM THE STATE TWO MONTHS AFTER THE ACTUAL SALE DATE.

## Permits and Fees FY 2020 To Date



## Three Year Comparison of Sanitation Revenue



**GENERAL FUND  
SUMMARY OF REVENUES AND EXPENDITURES  
FOR FISCAL YEAR 2019-20  
AS OF 9/30/20  
100.00 % OF BUDGET YEAR**

	LAST YEAR			THIS YEAR		
	Annual Budget	Year-to-Date	% of Budget	Annual Budget	Year-to-Date	% of Budget
<b>Expenditures:</b>						
City Council	\$9,450	\$1,234	13.1%	\$9,450	\$1,618	17.1%
City Manager	\$221,111	\$217,823	98.5%	\$225,364	\$228,223	101.3%
City Secretary	\$114,379	\$115,869	101.3%	\$115,846	\$100,993	87.2%
Finance	\$367,824	\$369,714	100.5%	\$383,922	\$377,288	98.3%
Animal Services	\$115,976	\$112,806	97.3%	\$118,076	\$112,608	95.4%
Code Enforcement	\$187,386	\$171,942	91.8%	\$194,790	\$194,726	100.0%
Bldg Inspection/Services	\$410,175	\$396,453	96.7%	\$449,533	\$389,463	86.6%
Health Inspection			0.0%	\$113,322	\$100,686	88.8%
Police	\$2,155,240	\$2,112,528	98.0%	\$2,386,782	\$2,308,003	96.7%
Planning	\$96,428	\$95,790	99.3%	\$102,041	\$103,456	101.4%
Fire	\$1,860,266	\$1,845,843	99.2%	\$2,133,885	\$2,055,970	96.3%
Municipal Court	\$170,800	\$169,700	99.4%	\$174,344	\$168,772	96.8%
Library	\$224,275	\$220,460	98.3%	\$227,567	\$226,513	99.5%
Senior Center	\$214,645	\$202,748	94.5%	\$210,219	\$206,483	98.2%
Streets	\$325,862	\$362,432	111.2%	\$373,413	\$400,730	107.3%
Sanitation	\$807,280	\$830,180	102.8%	\$868,713	\$894,885	103.0%
Support Services	\$754,373	\$673,593	89.3%	\$787,590	\$736,455	93.5%
Parks	\$257,165	\$254,177	98.8%	\$359,919	\$314,968	87.5%
Emergency Medical Service	\$167,362	\$167,362	100.0%	\$167,362	\$170,709	102.0%
Information Technology	\$121,294	\$117,784	97.1%	\$122,146	\$126,793	103.8%
Human Resources	\$128,244	\$125,185	97.6%	\$131,812	\$124,463	94.4%
Non Departmental	\$391,055	\$410,663	105.0%	\$382,130	\$434,552	113.7%
<b>Total Expenditures</b>	<b>\$9,100,590</b>	<b>\$8,974,283</b>	<b>98.6%</b>	<b>\$10,038,226</b>	<b>\$9,778,358</b>	<b>97.4%</b>
<b>Debt Payment (Quint)</b>	<b>\$72,000</b>	<b>\$68,210</b>	<b>94.7%</b>	<b>\$71,250</b>	<b>\$71,032</b>	<b>99.7%</b>
<b>PEG Reserves</b>				<b>\$11,500</b>	<b>\$5,239</b>	
<b>Transfers and Reserves</b>	<b>\$443,850</b>	<b>\$449,350</b>		<b>\$803,500</b>	<b>\$792,000</b>	<b>98.6%</b>
<b>Use of Fund Balance Projects</b>	<b>\$1,404,563</b>	<b>\$1,733,345</b>	<b>123.4%</b>	<b>1,082,987</b>	<b>\$1,091,328</b>	<b>100.8%</b>

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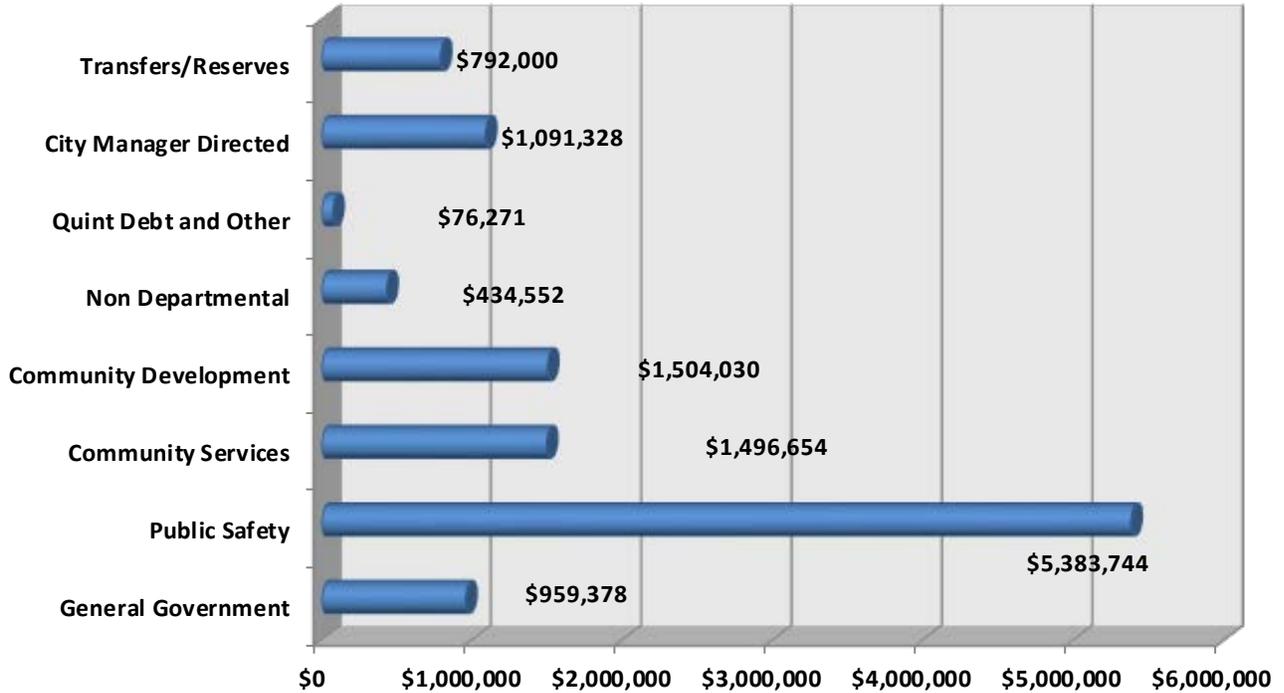
**General Fund  
Use of Fund Balance Projects  
FY 2020**

	<u>Budget</u>	<u>Actual</u>
Patrol Vehicle Purchases	126,246.00	125,709.43
Police Equipment	9,096.00	9,095.65
Animal Services Building Improvement	4,000.00	-
SEDC Quality of Life Projects	200,000.00	250,802.69
Replace Library Carpet	21,874.00	21,874.00
Firefighting Equipment	17,774.00	17,719.00
Capital Outlay - Other Equipment	149,694.00	155,348.12
Building Inspection & Services Vehicles	57,684.00	57,865.02
Emergency Siren Placement	25,000.00	-
Capital Outlay - A/C Units	50,119.00	50,119.00
Tuition Reimbursement Program	15,000.00	1,000.00
Park Facilities/Infrastructure	400,000.00	395,295.14
Transportation Shelter Concrete Pad	6,500.00	6,500.00
<b>Total</b>	<b><u>1,082,987.00</u></b>	<b><u>1,091,328.05</u></b>

**Capital Outlay - Other Equipment**

John Deere Bunker & Field Rake	14,198.00	14,197.41
BK Series Kracker	54,000.00	56,460.00
Asphalt Pothole Patcher Trailer	50,630.00	53,825.00
Stalker Radar	7,885.00	7,885.00
Code Enforcement Camera System	15,660.00	15,660.00
Dump Truck	7,321.00	7,320.71
	<u>149,694.00</u>	<u>155,348.12</u>

**General Fund Expenditures  
4th Quarter FY 2020  
Total \$11,737,957**



**General Government**

City Council, City Manager, City Secretary, Information Technology, Human Resources and Finance

**Community Development**

Building Services, Code Enforcement, Streets, Parks, Planning

**Community Services**

Municipal Court, Library, Senior Center, Sanitation

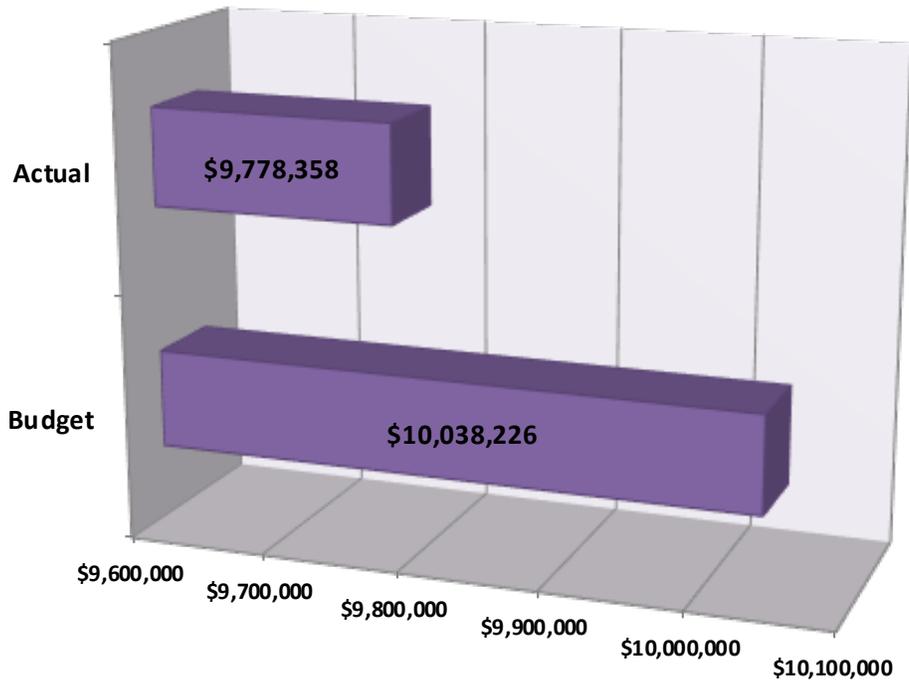
**Public Safety**

Police, Fire, Ambulance, Support Services, Animal Control

**Transfers/Reserves**

Transfers for Street Maintenance and Vehicle Replacement

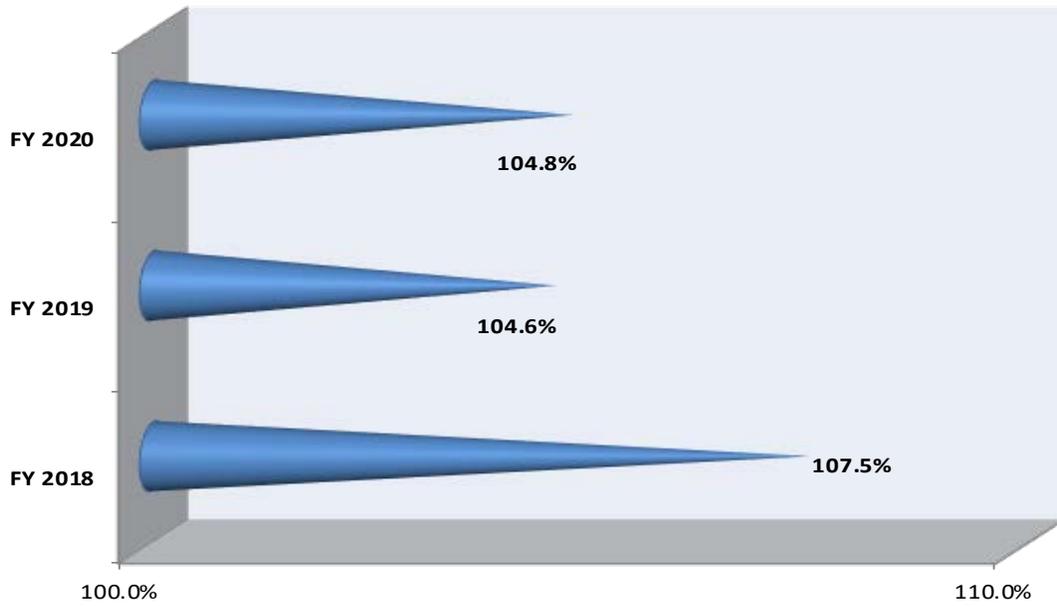
## Year to Date Expenditure Comparison General Fund



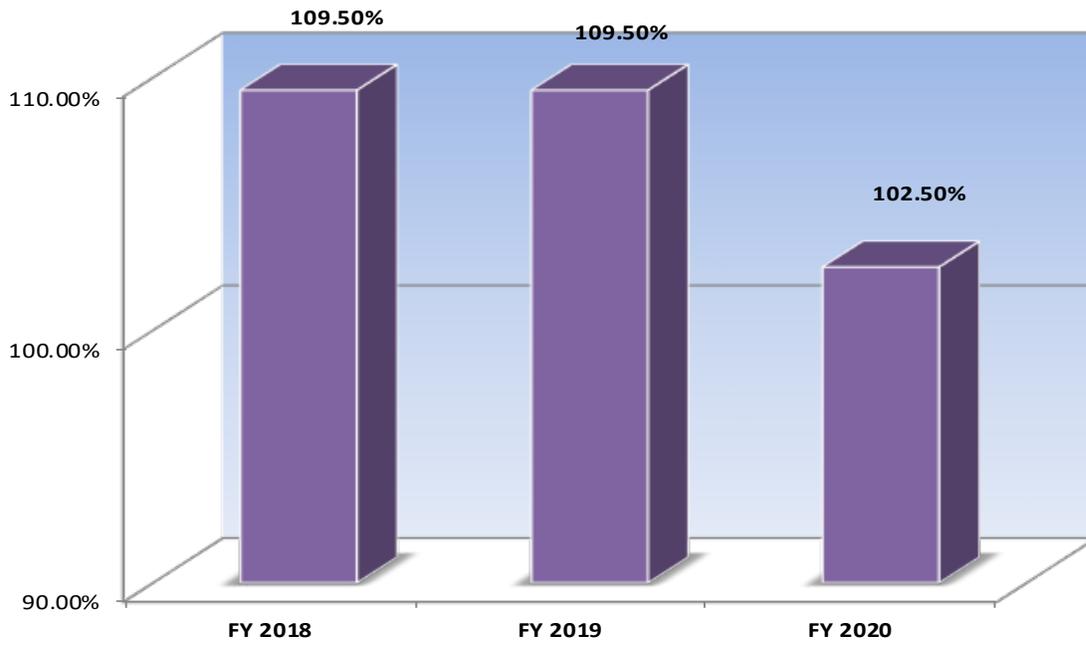
**WATER AND SEWER FUND  
SUMMARY OF REVENUES AND EXPENDITURES  
AS OF 9/30/20  
100% OF BUDGET YEAR**

	<b>Budget</b>	<b>Year to Date</b>	<b>% tage of Budget</b>
<b>REVENUES:</b>			
Water Sales	\$3,693,520	\$3,869,879	104.8%
Sewer Sales	3,276,490	3,357,740	102.5%
All Other	<u>270,888</u>	<u>365,610</u>	135.0%
<b>TOTAL REVENUES</b>	<b>\$7,240,898</b>	<b>\$7,593,228</b>	<b>104.9%</b>
<b>EXPENDITURES:</b>			
Water Services	\$2,316,951	\$2,276,479	98.3%
Sewer Services	2,545,735	2,429,071	95.4%
Debt Service Transfer	1,135,900	499,362	44.0%
Non Departmental	136,091	143,117	105.2%
All Other	<u>411,049</u>	<u>440,614</u>	107.2%
<b>TOTAL EXPENDITURES</b>	<b>\$6,545,726</b>	<b>\$5,788,643</b>	<b>88.4%</b>
Use of Reserve	\$2,061,628	\$513,852	24.9%
Transfers Out	352,304	352,304	100.0%

### Water Revenue as a % of Budget 100% of the Fiscal Year



### Sewer Revenue as a % of Budget 100% of the Fiscal Year



**WATER AND SEWER FUND  
SUMMARY OF REVENUES AND EXPENDITURES  
FOR FISCAL YEAR 2019-20  
AS OF 9/30/20  
100.00 % OF BUDGET YEAR**

	LAST YEAR			THIS YEAR		
	Annual Budget	Year-to-Date	% of Budget	Annual Budget	Year-to-Date	% of Budget
<b>Revenues:</b>						
Water Sales	\$3,517,634	\$3,681,169	104.6%	\$3,693,520	\$3,869,879	104.8%
Sewer Service	\$3,120,468	\$3,417,529	109.5%	\$3,276,490	\$3,357,740	102.5%
Outside Contractor Tap Fees		\$17,940	0.0%		\$43,100	0.0%
Penalties and Interest	\$110,000	\$169,172	153.8%	\$135,000	\$123,336	91.4%
Pretreatment Sewer Revenue	\$46,388	\$44,997	97.0%	\$49,888	\$50,870	102.0%
Reconnection Fees	\$35,000	\$62,745	179.3%	\$50,000	\$44,160	88.3%
Meter Installation	\$1,600	\$6,250	390.6%	\$5,000	\$4,725	94.5%
Online Payment Fee	\$4,500	\$6,755	150.1%	\$7,500	\$9,012	120.2%
Interest Earnings	\$10,000	\$37,984	379.8%	\$22,500	\$16,162	71.8%
Miscellaneous	\$625	\$6,084	973.4%	\$1,000	\$42,546	4254.6%
Bank and NSF Fees	\$1,012	\$1,579	156.0%	\$0	\$1,200	0.0%
Water Tap Fees	\$0	\$12,900	0.0%	\$0	\$16,800	0.0%
Sewer Tap Fees	\$0	\$6,000	0.0%	\$0	\$13,700	0.0%
Insurance Recovery	\$0	\$2,343				
Developer Contribution	\$0	\$733,382	0.0%	\$0	\$0	0.0%
<b>Total Revenues</b>	<b>\$6,847,227</b>	<b>\$8,206,830</b>	<b>119.9%</b>	<b>\$7,240,898</b>	<b>\$7,593,228</b>	<b>104.9%</b>
<b>Expenditures:</b>						
Utility Administration	\$172,809	\$192,778	111.6%	\$185,199	\$198,677	107.3%
Water Services	\$2,319,402	\$1,967,406	84.8%	\$2,316,951	\$2,276,479	98.3%
Sewer Services	\$2,422,788	\$2,205,834	91.0%	\$2,545,735	\$2,429,071	95.4%
Customer Services	\$222,500	\$231,530	104.1%	\$225,850	\$241,937	107.1%
Non Departmental	\$98,363	\$124,116	126.2%	\$136,091	\$143,117	105.2%
Debt Service Transfer	\$516,559	\$516,559	100.0%	\$1,135,900	\$499,362	44.0%
<b>Total Expenditures</b>	<b>\$5,752,421</b>	<b>\$5,238,223</b>	<b>91.1%</b>	<b>\$6,545,726</b>	<b>\$5,788,643</b>	<b>88.4%</b>
<b>Transfers Out</b>	<b>\$1,252,304</b>	<b>\$966,617</b>	<b>77.2%</b>	<b>\$352,304</b>	<b>\$352,304</b>	<b>100.0%</b>
Zero Turn Mower	\$16,435	\$16,435	0.0%	\$0	\$0	0.0%
Backhoe	\$84,255	\$84,255				
Cityworks System	\$15,250	\$17,844	117.0%	\$18,925	\$18,329	96.9%
Ace Hrdwr/Tractor Supply						
Sewer Maj Repair	\$0	\$120,313	0.0%	\$0	\$139,243	0.0%
Vehicles	\$48,000	\$43,003	89.6%	\$68,000	\$58,338	85.8%
Ard Road Pump Station						
Upgrades		\$0	0.0%	\$0	\$0	0.0%
Capital Projects		\$0	0.0%	\$1,845,808	\$248,733	13.5%
Lift Station Condition						
Assessment	\$103,895	\$96,954	0.0%	\$128,895	\$49,209	38.2%

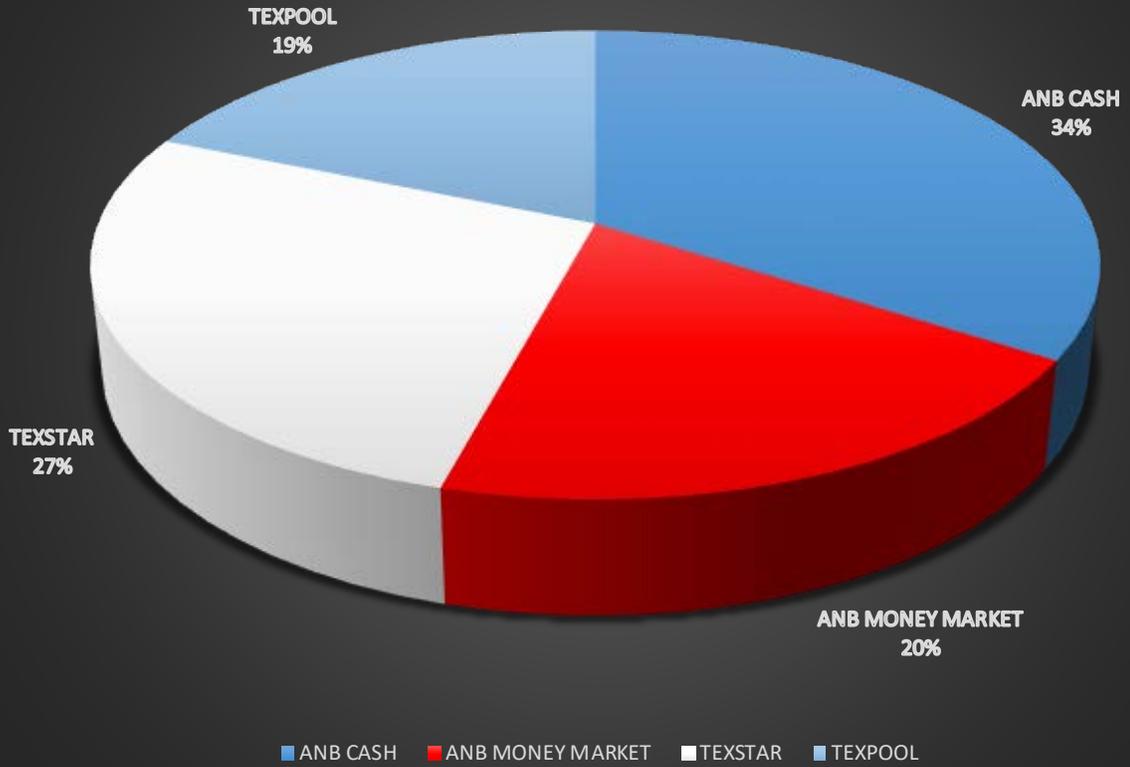
**OTHER FUNDS: FINANCIAL SUMMARY**  
**FOR FISCAL YEAR 2019-20**  
**AS OF 9/30/20**  
**100.00% of Budget Year**

FUND #	FUND NAME	FY 2019 ACTUAL YEAR-TO-DATE REVENUES	FY 2020 ANNUAL REVENUE BUDGET	FY 2020 ACTUAL YEAR-TO-DATE REVENUES	FY 2019 ACTUAL YEAR-TO-DATE EXPENDITURES	FY 2020 ANNUAL EXPENDITURE BUDGET	FY 2020 ACTUAL YEAR-TO-DATE EXPENDITURES
<b>ENTERPRISE FUNDS</b>					<b>ENTERPRISE FUNDS</b>		
21	W&S Debt Service	\$272,246	\$1,135,900	\$499,847	\$56,281	\$1,135,900	\$131,777
22	W&S Improvements		\$1,545,808	\$2,081,535	\$380,998	\$1,545,808	\$1,730,925
61	Storm Water	\$109,662	\$238,665	\$228,707	\$61,183	\$400,260	\$142,612
<b>SPECIAL REVENUE FUNDS</b>					<b>SPECIAL REVENUE FUNDS</b>		
32	Miscellaneous Grants	\$820	\$1,150	\$11,018	\$256	\$1,150	\$9,312
35	Recycle Revenue Fund	\$710	\$500	\$1,099	\$376	\$500	\$585
36	Municipal Court	\$6,289	\$9,500	\$13,411	\$6,717	\$7,972	\$8,515
38	Park Development	\$2,320	\$600		\$0		\$3,800
39	Hotel Motel Fund	\$19,386	\$30,000	\$20,853	\$13,829	\$30,000	\$15,383
42	Park Maintenance	\$137,210	\$2,000	\$187,420	\$0		\$114,870
45	Animal Shelter	\$1,400	\$3,000	\$4,001	\$0	\$3,000	
46	Animal Shelter Building	\$1	\$2	\$2	\$0	\$0	
47	Vehicle Replacement Fund	\$49,566	\$44,600	\$519,357	\$0	\$0	\$649,596
48	Technology Replacement	\$17,500	\$17,500	\$17,500	\$5,791	\$17,500	\$11,137
50	TLEOSE	\$2,053	\$2,000	\$1,963	\$80	\$1,000	\$225
75	COVID			\$217,801			\$203,213
<b>DEBT SERVICE FUND</b>					<b>DEBT SERVICE FUND</b>		
2	General Debt Service	\$232,696	\$470,049	\$495,059	\$35,512	\$493,364	\$492,864
<b>CAPITAL PROJECTS</b>					<b>CAPITAL PROJECTS</b>		
41	FY 2015 Street Projects				\$0		
43	Street Maintenance	\$444,987	\$752,500	\$751,907	\$192,745	\$750,000	\$801,905
44	2019 Street Projects		\$325,000	\$40,542		\$4,394,611	\$2,080,836
54	2nd Fire Station	\$0	\$0	\$0	\$0	\$985,000	\$564,949
65	Emergency Communication System	\$0	\$0	\$2,160	\$0	\$0	\$159,376

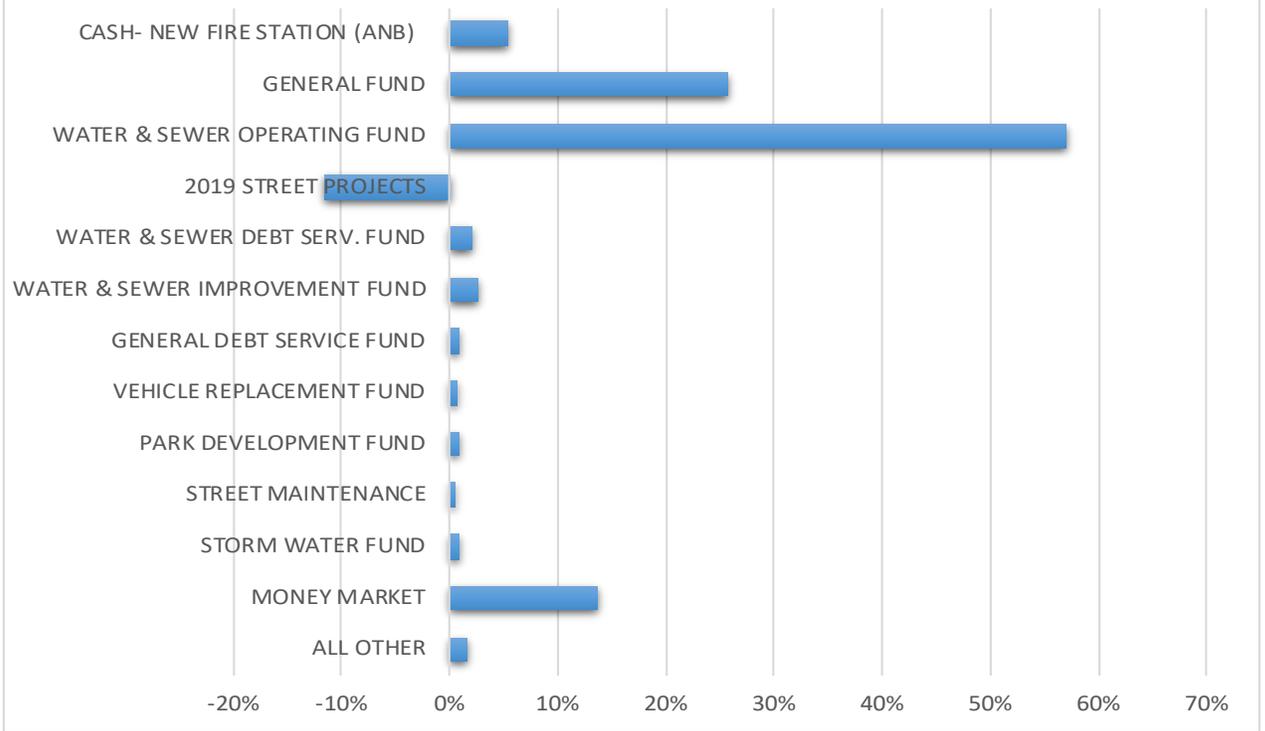
**CITY OF SEAGOVILLE  
CASH REPORT  
4th QUARTER FY 2020**

<b>Bank Acct#</b>	<b>Bank Account Name</b>	<b>ACCT BALANCE AS OF JUN 30, 2020</b>	<b>CHANGES</b>	<b>ACCT BALANCE AS OF SEPT 30, 2020</b>
4600543237	SMART METER ACCOUNT MONEY MKT	1,809,569.58	2,037.75	1,811,607.33
*5157	GENERAL FUND MONEY MARKET ACCT	752,731.54	851.77	753,583.31
*5181	W&S MONEY MARKET ACCT	1,003,642.06	1,135.69	1,004,777.75
800008997	ANB Group Insurance Trust Bank	77,137.01	(775.11)	76,361.90
800000838	ANB PAYROLL FUND	14,849.97	216,459.83	231,309.80
4600130068	ANB ROOF	32,697.13	4.11	32,701.24
4600016705	ANB PEG	100,850.20	12.67	100,862.87
800007205	ANB PRIMARY	8,185,540.52	(2,519,690.54)	5,665,849.98
800013104	ANB ANIMAL SHELTER OPERATIONS	4,496.24	0.57	4,496.81
<b>TOTALS</b>	<b>CASH ACCOUNTS</b>	<b>11,981,514.25</b>	<b>(2,299,963.26)</b>	<b>9,681,550.99</b>
572915620	TEXSTAR- FY 2015 BONDS	172,603.19	72.52	172,675.71
572920190	TEXSTAR- 2019 BONDS	4,577,718.59	1,922.60	4,579,641.19
572920191	TEXSTAR- 2019 EMERGENCY COM SYS	103,153.24	43.32	103,196.56
449/1291300001	TEXPOOL-GENERAL FUND	1,596,720.00	433.20	1,597,153.20
449/1291300003	TEXPOOL-WATER AND SEWER	1,351,347.35	605.54	1,351,952.89
449/1291300004	TEXPOOL-WATER DEPOSIT FUND	325,073.15	145.68	325,218.83
449/1291300006	TEXPOOL-GOVT DEBT SVC	11,751.72	5.30	11,757.02
449/1291300007	TEXPOOL-WATER AND SEWER DEBT SVC	53,753.87	24.14	53,778.01
<b>TOTALS</b>	<b>INVESTMENT ACCOUNTS</b>	<b>8,192,121.11</b>	<b>3,252.30</b>	<b>8,195,373.41</b>
<b>GRAND TOTAL</b>		<b>\$ 20,173,635.36</b>	<b>\$ (2,296,710.96)</b>	<b>\$ 17,876,924.40</b>

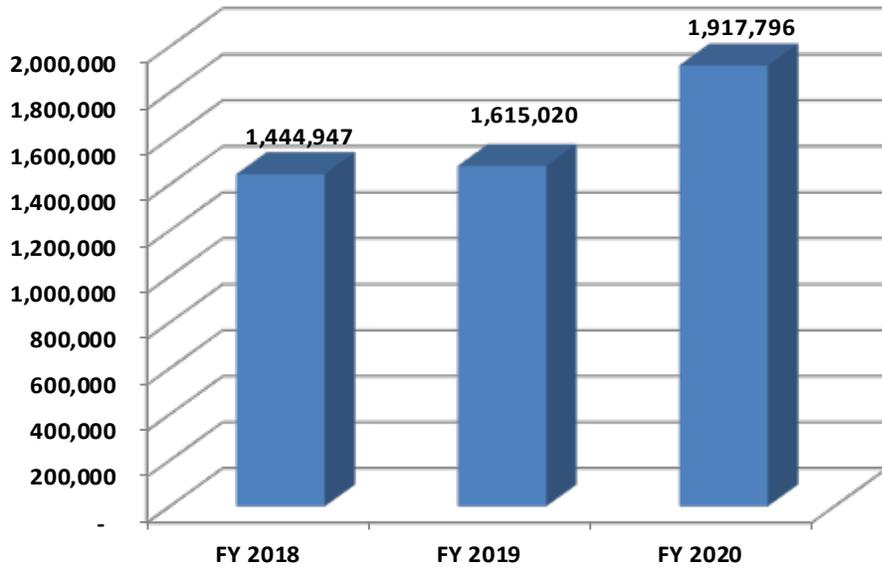
# % OF TOTAL CASH



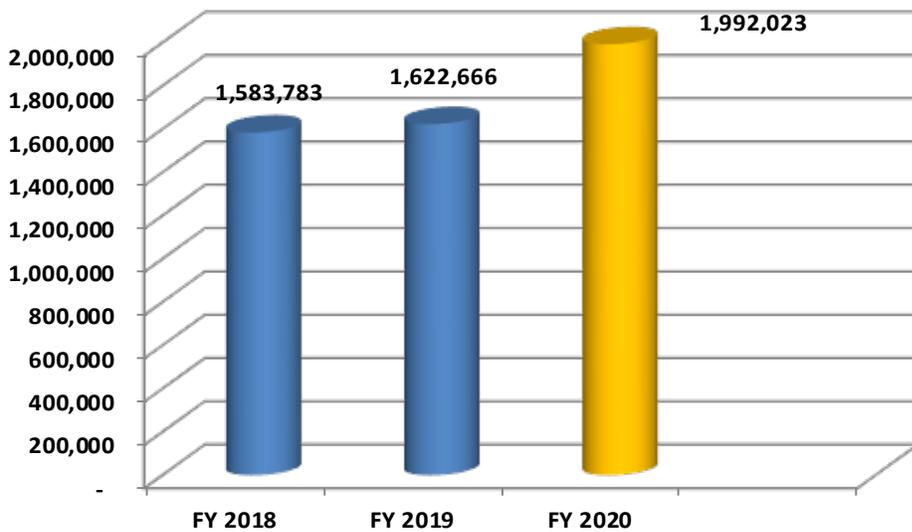
### % OF CASH BALANCE



### SEDC Cash Position



### SEDC Financial Reserve



## ***Regular Session Agenda Item: 4***

**Meeting Date: December 21, 2020**

### **ITEM DESCRIPTION:**

First Reading - Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas, approving the Economic Development Project between the Seagoville Economic Development Corporation and Seagoville Trinity Plaza, LLC as reflected in the terms and conditions of a Real Estate Purchase and Sale Agreement and an Economic Development Incentive Agreement between the parties; and providing an effective date.

### **BACKGROUND OF ISSUE:**

The Seagoville Economic Development Corporation ("SEDC") is authorized by the *Development Corporation Act*, Chapters 501-505, TEXAS LOCAL GOVERNMENT CODE (the "Act"), to provide funding for projects which will promote new and expanding business enterprises within the City.

On or about September 24, 2020, the SEDC Board of Directors voted to purchase the property and the improvements located thereon, located at 1880 N. Highway 175 and known as Trinity Plaza (hereinafter, "the Property"). On October 5, 2020, the City Council approved said expenditure of the SEDC. The SEDC became legal owners of the Property by Special Warranty Deed dated November 25, 2020.

Seagoville Trinity Plaza, LLC., *d/b/a Starwood Café*, desires to purchase the Property from the SEDC for the purposes of opening a restaurant. Approval of the Real Estate Purchase Agreement will promote new and expanded business enterprises within the City of Seagoville.

The SEDC Board of Director's approval of the Resolution approving Real Estate Purchase Agreement and the Economic Development Incentive will allow the Property to be developed and utilized in the manner intended.

### **FINANCIAL IMPACT:**

Positive to the SEDC

### **EXHIBITS:**

Resolution  
Real Estate Purchase Agreement  
Economic Development Incentive Agreement  
Special Warranty Deed (for informational purposes only)  
Deed of Trust (for informational purposes only)

**CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS**

**RESOLUTION NO. \_\_-R-2020**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, APPROVING THE ECONOMIC DEVELOPMENT PROJECT BETWEEN THE SEAGOVILLE ECONOMIC DEVELOPMENT CORPORATION AND SEAGOVILLE TRINITY PLAZA, LLC AS REFLECTED IN THE TERMS AND CONDITIONS OF A REAL ESTATE PURCHASE AND SALE AGREEMENT AND AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN THE PARTIES; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Seagoville Economic Development Corporation (“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 promote new and expanding business enterprises within the City; and

**WHEREAS**, the SEDC has negotiated and intends to undertake a project which will promote new and expanded business enterprises within the City with Seagoville Trinity Plaza, LLC, a Texas limited liability company, under the terms and conditions set forth in a Real Estate Purchase Agreement, attached hereto as Exhibit “A” and an Economic Development Incentive Agreement, attached hereto as Exhibit “B” (collectively, the “Project”) and

**WHEREAS**, section 505.158 mandates that the SEDC may not undertake a project that requires an expenditure of more than \$10,000 until the governing body of the corporation’s authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings; and

**WHEREAS**, the City Council has determined that the Project contemplated by SEDC and Seagoville Trinity Plaza, LLC under the terms and conditions set forth in the Real Estate Purchase and Sale Agreement and Economic Development Incentive Agreement will promote new and expanded business enterprises within the City of Seagoville; and

**WHEREAS**, the City Council finds that the expenditure of funds or the provision of an equivalent economic benefit in the form of an interest-free loan by SEDC in undertaking the Project is authorized by the Act and that the Project should be approved and authorized; and

**WHEREAS**, the City Council has conducted two (2) readings of this resolution;

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

**Section 1.** The City Council hereby approves and authorizes the Project between the Seagoville Economic Development Corporation and Seagoville Trinity Plaza, LLC, a Texas limited liability company, under the terms and conditions set forth in a Real Estate Purchase and Sale Agreement in substantially the form attached hereto as Exhibit “A” and an Economic Development Incentive Agreement in substantially the form attached hereto as Exhibit “B.”

**Section 2.** The City Council authorizes the SEDC to enter into any additional agreements necessary to undertake the Project in accordance with the terms and conditions set forth in the Real Estate Purchase and Sale Agreement and the Economic Development Incentive Agreement.

**Section 3.** This resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

**DULY RESOLVED AND ADOPTED First Reading and Second Reading** of the City Council of the City of Seagoville, Texas, this the 21<sup>st</sup> day of December 2020.

**APPROVED:**

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Dennis K. Childress, Mayor

**ATTEST:**

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Kandi Jackson, City Secretary

**APPROVED AS TO FORM:**

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Victoria Thomas, City Attorney  
(121120vwtTM119652)

**Exhibit "A"**  
**Real Estate Purchase and Sale Agreement**  
**(to be attached)**

**Exhibit "B"**  
**Economic Development Incentive Agreement**  
**(to be attached)**

## REAL ESTATE PURCHASE AGREEMENT

This **Real Estate Purchase Agreement** (“Agreement”) to buy and sell real property is entered between Seller and Purchaser as of the Effective Date as determined in Section 14(d), below.

**Seller:** Seagoville Economic Development Corporation  
702 US-175 Frontage Road  
Seagoville, Texas 75159  
Telephone: (469) 383-4888  
Email: [PStallings@seagoville.us](mailto:PStallings@seagoville.us)

**Seller’s Attorney:** Victoria W. Thomas  
Nichols Jackson Dillard Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard Street  
Dallas, Texas 75201  
Telephone: (214) 965-9900  
Email: [ythomas@njdhs.com](mailto:ythomas@njdhs.com)

**Purchaser:** Seagoville Trinity Plaza, LLC  
15331 Viburnum Road  
Frisco, Texas 75035  
Telephone: 214-449-3377  
E-mail: [Starwoodcare@gmail.com](mailto:Starwoodcare@gmail.com)

**Purchaser’s Attorney:** None

**Title Company:** Town Square Title Company  
310 N. 9<sup>th</sup> Street, Suite A  
Midlothian, Texas 76065  
Telephone: (972) 935-0800  
Fax: (972) 938-1045  
Email: [jbarton@townsquaretitle.com](mailto:jbarton@townsquaretitle.com)

**Property:** An approximately 0.9853 acre tract being Lot 3, Block A of Best Western/Seagoville Addition, an addition to the City of Seagoville, Dallas County, Texas, according to the map thereof recorded in Volume 99125, Page 40, of the Map Records of Dallas County, Texas the boundaries of which are determined by the survey attached hereto and incorporated herein by reference as Exhibit "A"; together with all right, title and interest of Seller, if any, in and to any (i) buildings, improvements and fixtures; (ii) rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores and rights-of-way (iii) land lying in or under the bed of adjacent streets, alleys, roads or rights of way, (iv) easements or rights of way appurtenant to or otherwise benefitting said tract, (v) all permits and approvals relating to said tract, (vi) all development rights relating to said tract, (vii) all reversionary rights related to said tract, and (viii) all other rights and appurtenances of any kind related to said tract (the "Property").

**Inspection Period:** The period commencing on the Effective Date and ending on the thirtieth (30<sup>th</sup>) day after the Effective Date.

**Closing Date:** Not later than forty-five (45) days after the end of the Inspection Period, or other date mutually agreed to by the parties in writing.

**Earnest Money:** \$3,314.00, to be delivered to the Title Company not later than the fifth (5<sup>th</sup>) day after the Effective Date, which amount shall be applied to the Purchase Price at and contingent upon Closing, and which amount shall become non-refundable upon the expiration of the Inspection Period, except as otherwise expressly provided in this Agreement. If Purchaser fails to timely deposit the Earnest Money, Seller may, at Seller's option, terminate this Agreement by delivering a written termination notice to Purchaser before Purchaser deposits the Earnest Money, whereupon neither party shall have any further rights or obligations hereunder except as to those rights or obligations which are stated to expressly survive the termination of this Agreement.

**Option Fee:** \$3,314.00, being the non-refundable portion of the Earnest Money (which amount shall be non-refundable, except as otherwise expressly provided in this Agreement), but which shall be applied to the Purchase Price at and contingent upon Closing.

**Purchase Price:** \$603,314.00 to be paid to Seller in accordance with terms of the Note, the form of which shall be agreed by the parties in accordance with Section 13, below.

**NOW, THEREFORE**, in consideration of the payment of the Purchase Price 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.** Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, and Purchaser agrees to purchase the Property as provided in this Agreement, including any and all improvements located thereon.

2. **Title and Survey.**

(a) Not later than the tenth (10th) day after the Effective Date, Purchaser will, at Purchaser's expense, cause the Title Company to issue, with respect to the Property, the following:

(i) a current commitment for an Owner's Policy of Title Insurance for the Property from the Title Company, 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) best available copies of all documents referenced in the Title Commitment; and

(iii) tax certificate(s) regarding the payment of ad valorem taxes showing no delinquent taxes on the Property.

(b) The Parties agree that the survey (the "Survey") of the Property prepared by a duly licensed Texas Registered Public Land Surveyor, a true and correct copy of which is attached hereto as Exhibit "A" is accepted by the Parties and the Parties waive all objection thereto. The legal description contained in said Survey shall be used by the parties as the legal description contained in the Special Warranty Deed and all other documents related to this Agreement without the necessity of amending this Agreement.

(c) Purchaser shall, not later than ten (10) days after Purchaser's receipt of the Title Commitment, notify Seller and Title Company in writing of any objections to the Title Commitment related to the Property. If there are any timely written objections made by Purchaser in accordance with this Section 2(c), Seller may, but shall be under no obligation to, attempt to satisfy same prior to Closing. Seller shall not be required to incur any cost to cure any of Purchaser's objections. If Seller delivers written notice to Purchaser not later than the fifth (5<sup>th</sup>) business day after Seller's receipt of Purchaser's objections that Seller is unwilling or unable to satisfy such objections, Purchaser may, as its sole and exclusive remedy, either (i) waive such objections and accept such title as Seller is able to convey, or (ii) terminate this Agreement by written notice to Seller and the Title Company prior to the expiration of the Inspection Period, whereupon the Earnest Money (save and except the Option Fee) shall be refunded to Purchaser and neither party shall have any further rights or obligations hereunder except as to those rights or obligations which are stated to expressly survive the termination of this Agreement. Any exceptions to title to which Purchaser does not timely object in accordance with this Section 2(c) or to which Purchaser objects but are subsequently waived by Purchaser shall be deemed to be Permitted Exceptions.

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 to conduct such non-invasive inspections, tests and studies as they may deem necessary; provided, however, that the costs and expenses of Purchaser's investigation shall be borne solely by Purchaser, Purchaser shall use its best efforts to avoid damage to the Property, and no inspection shall be undertaken without twenty-four (24) hours' prior notice to Seller (which notice may be by telephone). If for any reason Purchaser determines not to purchase the Property, Purchaser may, as its sole and exclusive remedy under this Section 3(a), terminate this Agreement by notifying Seller and Title Company in writing prior to the end of the Inspection Period, in which event, neither party hereto shall have any further claim against the other under this Agreement, except as otherwise provided herein, 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(a), it shall have no further right to do so under this Section 3(a); and Purchaser shall have waived its right to terminate this Agreement for any reason whatsoever except for Seller's default or inability to deliver indefeasible fee simple title to Purchaser at Closing free and clear of all liens and encumbrances except for the Permitted Exceptions and liens created at the time of Closing relating to the financing of the Purchase Price.

(b) Purchaser may enter the Property to conduct its inspection, but shall be solely responsible for and shall promptly pay for any damages caused thereby. **Purchaser shall promptly restore the Property to its original condition existing immediately prior to such inspections or testing and shall repair any damage to the Property it causes or that is caused by its agents, contractors, representatives, consultants or employees, or any other party acting by or under the direction of Purchaser (the "Purchaser Parties"), and shall hold Seller, its representatives, officers, directors, trustees, and agents harmless from and against any and all claims, liabilities or damages to the Property or against Seller, except to the extent caused by the intentional or negligent acts or omissions of Seller; provided, that Purchaser shall not be required to hold Seller harmless for Purchaser's discovery of any existing violations of any applicable law, statute, rule, regulation, code or ordinance revealed during such inspection, or discovery of any preexisting conditions present at the Property. Nothing stated herein shall be construed as a waiver of the protections which may be afforded Seller, if any, as a Texas non-profit corporation organized pursuant to the Development Corporation Act (Chapter 12, Subtitle C1 of the Texas Local Government Code, as amended or "the Act"), including, but not limited to, any immunity to liability or immunity from suit afforded the Seagoville Economic Development Corporation, its officers and/or agents under the Texas Tort Claims Act (Chapter 101, Tex. Civ. Prac. & Rem Code, as amended).**

(c) The provisions of this Section 3 shall expressly survive any termination of this Agreement or the Closing.

4. **Closing.** The closing of the sale of the Property in accordance with the terms of this Agreement (the "Closing") shall occur on or before the Closing Date at the Title Company or by mail or overnight delivery service, or at such other time and by such other methods 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 with vendor's lien, 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 (as defined in Section 8 hereof);

(ii) such other 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) in the amount of the Purchase Price, insuring such title to the Purchaser; and

(iii) possession of the Property, free of parties in possession (other than as reflected by the Title Commitment).

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

- (i) the Loan Documents, signed by Purchaser and in recordable form where applicable;
- (ii) a loan policy of title insurance, in the amount of \$603,314.00, insuring title to the Property and naming Seller, in its capacity as lender, as the insured party, such loan policy shall also confirm that the Deed of Trust lien is fully enforceable and such policy shall not contain any exceptions to coverage unless such exceptions have been specifically approved in writing by Seller; and
- (iii) such other documents as may be reasonably required by the Title Company.

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.

- (a) If Seller changes the use of the Property before Closing, resulting in the assessment of additional taxes for periods before Closing, Seller will be responsible for the payment of the additional taxes; and
- (b) If this sale or Purchaser's use of the Property after Closing results in the assessment of additional taxes for periods before Closing, Purchaser will be responsible for the payment of the additional taxes and assessments, if any, and Seller shall not be liable for payment of the additional taxes or assessments.
- (c) **If for the current ad valorem tax year, the taxable value of the land that is the subject of this Agreement is determined by special appraisal method that allows for appraisal of the land at less than its market value, the person to whom the land is transferred may not be allowed to qualify the land for that special appraisal in a subsequent tax year and the land may then be appraised at its full market value. In addition, the transfer of the land or a subsequent change in the use of the land may result in the imposition of an additional tax, plus interest as a penalty for the transfer or the change in the use of the land. The taxable value of the land and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the land located.**

7. **Closing Conditions and Costs.**

- (a) Closing on the sale of the Property shall be conditioned upon and subject to the following having occurred:
  - a. Purchaser and Seagoville Economic Development Corporation having executed the Economic Development Incentive Agreement considered by the SEDC at its December 17, 2020 meeting (the "Economic Development Incentive Agreement");
  - b. Seagoville City Council having approved the Project outlined in the Real Estate Purchase Agreement and the Economic Development Incentive Agreement; and
  - c. SEDC and the City of Seagoville having received no objection to the Project (including the transactions contemplated in the Real Estate Purchase Agreement and in the Economic Development Incentive Agreement) within sixty (60) days of notice

to the public of the proposed sale, the associated Economic Development Incentive Agreement, or the Project contemplated therein.

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

(i) all fees and costs of any Survey;

(ii) the Title Company's escrow fees:

(iii) all costs and expenses incurred by or on behalf of Purchaser, including Purchaser's attorney's 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 Mortgagees Title Policy, and/or Interim Construction Lender Endorsement;  
Costs for any tax certificates issued in connection with the transaction contemplated hereunder;

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

(vi) recording fees for the special warranty deed with vendor's lien conveying the Property to Purchaser and any other documents that are required to be recorded granting any liens or security interests in the Property and/or any improvements existing or constructed thereon; and

(vii) such other incidental costs and fees customarily paid by sellers and/or purchasers of real 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 attorney's fees.

8. **Permitted Exceptions.** The (i) lien for current taxes not yet due and payable, (ii) any matters shown on the Title Commitment which are promulgated by law to appear in any title insurance commitment or policy, (iii) any exceptions to title to which Purchaser does not timely object in accordance with Section 2(c) above or to which Purchaser objects but are subsequently waived by Purchaser, (iv) zoning ordinances, (v) existing oil and gas leases and reservations of the mineral estate, and (vi) the deed of trust lien recorded at Closing, shall not be valid objections to title and shall be deemed to be "Permitted Exceptions". Subject to the foregoing, 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 in writing to cure pursuant to Section 2(c) above, if any.

9. **Representations and Covenants**

(a) Seller represents and covenants that: (i) 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; (ii) to Seller's actual knowledge, without duty of inquiry, no other person has any interests in or claims against the Property (other than as reflected by the Title Commitment); (iii) except as may be set forth in the documents delivered by Seller to Purchaser pursuant to Section 2(a),

Seller has no actual knowledge, without duty of inquiry, 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 (iv) it will not hereafter encumber the Property

(b) 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.

(c) The representations set forth in this Section 9 shall survive Closing.

10. **Property Sold As Is.**

(a) Purchaser acknowledges, agrees and represents that as of the Closing Date it:

(i) will have fully inspected the Property; and

(ii) will have made all investigations as it deems necessary or appropriate and will be relying solely upon its inspection and investigation of the Property for all purposes whatsoever, including, but not limited to, the determination of the condition of the structures, improvements, soils, subsurface, drainage, surface and groundwater quality, and all other physical characteristics; availability and adequacy of utilities; compliance with governmental laws and regulations; access; encroachments; acreage and other survey matters and the character and suitability of the Property.

(b) Purchaser acknowledges and agrees that the sale of the Property as provided for herein is being made on an **“AS IS” CONDITION AND BASIS with all faults and defects, whether patent or latent.**

(c) EXCEPT WITH RESPECT TO THE WARRANTY OF THE TITLE TO THE PROPERTY BEING CONVEYED BY SELLER PURSUANT TO THIS AGREEMENT, SUCH WARRANTY TO BE INCLUDED IN THE SPECIAL WARRANTY DEED WITH VENDOR’S LIEN, PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING BUT NOT LIMITED TO WARRANTIES AND REPRESENTATIONS AS TO MATTERS OF TITLE (OTHER THAN SELLER’S SPECIAL WARRANTY OF TITLE SET FORTH IN THE DEED TO BE DELIVERED AT CLOSING), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVAL, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THINGS RELATED TO OR AFFECTING THE PROPERTY INCLUDING WITHOUT LIMITATION: (i) THE VALUE, DESIGN, QUALITY, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY, (ii) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO ANY OF THE PROPERTY, (iii) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, (iv) COMPLIANCE WITH SPECIFICATIONS, (v) ABSENCE OF LATENT DEFECTS, (vi) CONDITION OR ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES, (vii) ABSENCE OF FAULTS, AND (viii) COMPLIANCE WITH LAWS AND REGULATIONS, INCLUDING WITHOUT LIMITATION THOSE RELATED TO HEALTH, SAFETY, AND THE ENVIRONMENT. PURCHASER AGREES THAT

WITH RESPECT TO THE PROPERTY, EXCEPT AS SET FORTH SPECIFICALLY IN THIS AGREEMENT, PURCHASER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY AGENT, EMPLOYEE, SERVANT, OR REPRESENTATIVE OF THE SELLER, OR ANYONE ACTING OR CLAIMING TO BE ACTING ON SELLER'S BEHALF. PURCHASER REPRESENTS THAT PURCHASER IS A KNOWLEDGEABLE PURCHASER OF REAL ESTATE AND THAT PURCHASER IS RELYING SOLELY ON ITS OWN EXPERTISE AND INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC, COMPLIANCE, AND LEGAL CONDITION OF THE PROPERTY AND THAT OF PURCHASER'S CONSULTANTS, AND THAT PURCHASER HAS CONDUCTED SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS PURCHASER DEEMS NECESSARY, INCLUDING BUT NOT LIMITED TO THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAME. WITHOUT LIMITING THE GENERALITY OF THE DISCLAIMERS, AGREEMENTS, AND ACKNOWLEDGEMENTS CONTAINED HEREIN, PURCHASER FURTHER ACKNOWLEDGES THAT SELLER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS REGARDING (i) THE TRUTH OR ACCURACY OF ANY SURVEY OR STUDY AND/OR (ii) THE QUALIFICATIONS OR EXPERTISE OF THE RESPECTIVE PARTIES CONDUCTING SAME, AND THAT SELLER HAS NOT UNDERTAKEN ANY INDEPENDENT INVESTIGATION WITH RESPECT THERETO. PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS," AND PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY MADE BY SELLER, OR ANY AGENT, EMPLOYEE, SERVANT OR REPRESENTATIVE OF SELLER, OR ANYONE ACTING OR CLAIMING TO BE ACTING ON SELLER'S BEHALF, OR ANY OTHER THIRD PARTY. PURCHASER ACKNOWLEDGES AND HEREBY AGREES THAT SELLER WOULD NOT SELL THE PROPERTY AT THE PURCHASE PRICE SET FORTH HEREIN EXCEPT UPON THE COMPLETE DISCLAIMER OF ANY REPRESENTATIONS AND WARRANTIES OF SELLER, EXCEPT THE WARRANTY OF TITLE TO THE PROPERTY SET FORTH IN THE SPECIAL WARRANTY DEED. THE TERMS AND CONDITIONS OF THIS SECTION 10 SHALL EXPRESSLY SURVIVE THE CLOSING, SHALL BE BINDING UPON THE PARTIES HERETO, AND SHALL NOT BE DEEMED TO BE MERGED INTO OR WAIVED BY THE INSTRUMENTS EXECUTED AND DELIVERED AT CLOSING, BUT SHALL BE INCORPORATED INTO THE DEED.

11. **Remedies.** Except with respect to any indemnities and obligations set forth in Paragraph 3, and Seller's right to reasonable attorney's fees in enforcing any part of this Agreement, if Purchaser defaults, Seller's sole remedy shall be to terminate this Agreement and retain the Earnest Money. If Seller defaults, Purchaser's sole and exclusive remedy shall be to terminate this Agreement and obtain a refund of the Earnest Money and the Option Fee. 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.

12. **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 with confirmed receipt, 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 depositing 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, effective notice further requires that copies of notices shall be provided to the party's attorney at the addresses indicated above.

13. **Seller Loan Documents.** Seller has agreed to finance an amount equal to the Purchase Price less the Option Fee subject to execution by Purchaser of a promissory note (“the Note”), a deed of trust (“Deed of Trust”) and such other loan documents to which the parties agree (collectively referred to as “the Loan Documents”), in favor of Seller at Closing, in form and substance to be agreed by the parties. The parties shall use commercially reasonable efforts to agree to the form of the Loan Documents on or before the expiration of the Inspection Period. Subject to the provision of this Section 13, the parties agree that the Note shall provide for at least the following basic terms regarding the loan to be made to Purchaser:

- a. **Original Principal Amount:** \$600,000.00
- b. **Annual Interest Rate:** Zero Percent (0.0%)
- c. **Maturity:** Fifteen (15) Years from effective date of the Note.
- d. **Payments:** 180 equal monthly installments of principal.
- e. **Security for Payment:** The lien contained in the Deed of Trust granted for the benefit of Seller at Closing.
- f. **Assignability:** Only with Seller’s prior written consent, which may be withheld by Seller, in Seller’s sole discretion.
- g. **No Liens or Encumbrance.** For so long as the Note and Deed of Trust are outstanding, Purchaser will take no action resulting in the assessment of additional taxes or assessments or the creation of a lien on all or any portion of the Property.

In the event the parties have not agreed to the form of the Loan Documents on or before the last day of the Inspection Period, this Agreement shall automatically terminate without further notice and the Earnest Money, less the Option Fee, shall be refunded to Purchaser, whereupon neither party shall have any further rights or obligations hereunder except as to those rights or obligations which are stated to expressly survive the termination of this Agreement. The parties agree that notwithstanding anything contained herein to the contrary, the Seller may reject the form and substance of all Loan Documents in Seller’s sole and absolute discretion.

14. **Miscellaneous.**

(a) **Entireties.** This Agreement contains the entire agreement of the parties pertaining to the purchase and sale of the Property. The parties agree there are no oral agreements, understandings, representations or warranties made by the parties that are not expressly set forth in this Agreement. Any prior written agreements, understandings, representations or warranties between the parties will be deemed merged into and superseded by this Agreement, unless it is clear from the written document that the intent of the parties is for the previous written agreement, understanding, representation or warranty to survive the execution of this Agreement.

(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 without first obtaining the prior written consent of Seller, which consent may be withheld by Seller in Seller’s sole

discretion. Any permitted assignee must execute an assumption of the obligations of Purchaser hereunder in form reasonably acceptable to Seller at least five (5) days before the Closing Date. Any assignment in contravention of this provision shall be void.

(d) Effective Date. The Effective Date of this Agreement shall be the date on which the following conditions have been satisfied:

- (i) authorized representatives of the parties have signed this Agreement; and
- (ii) a fully signed copy of this Agreement has been delivered to and received by the Title Company.

(e) 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 holiday, then the end of such period shall be extended to the next business day.

(f) Brokers. Purchaser and Seller represent and acknowledge 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.

(g) 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.

(h) 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.

(i) 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 Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

(j) 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.

(k) Time of the Essence. Time is of the essence with respect to each provision of this Agreement. Strict compliance with the times for performance is required.

**SIGNED AND AGREED** this \_\_\_ day of \_\_\_\_\_, 2020.

**SELLER: SEAGOVILLE ECONOMIC  
DEVELOPMENT CORPORATION**

**By:** \_\_\_\_\_

**Jose Hernandez, Chairman**

**SIGNED AND AGREED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

**PURCHASER: SEAGOVILLE TRINITY  
PLAZA, LLC**

**By:** \_\_\_\_\_  
**Gezim “Andy” Rushiti, Manager**

**RECEIPT OF AGREEMENT**

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

By: \_\_\_\_\_

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

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

Town Square Title Company  
310 N. 9<sup>th</sup> Street, Suite A  
Midlothian, Texas 76065



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

This Economic Development Incentive Agreement (“Agreement”) is made by and between Seagoville Trinity Plaza, LLC, a Texas limited liability company (“Trinity Plaza” or “Company”), and the Seagoville Economic Development Corporation, a Texas non-profit corporation (“SEDC”), each acting by and through their respective authorized representatives. SEDC and Trinity Plaza may be referred to herein each as a “Party” and collectively as the “Parties”.

**W I T N E S S E T H:**

**WHEREAS**, Trinity Plaza intends to expand its restaurant business operations and desires to purchase the Property located at 1880 N. Highway 175, Seagoville, Texas 75159, including the Improvements located thereon, as identified on the survey attached hereto as Exhibit “A” (the “Property”), from SEDC and intends to complete the construction finish out of said Improvements (as hereafter defined) on the Property and specifically devote the Restaurant Portion of the Improvements to expand its restaurant business operations and locate a Starwood Café restaurant therein and operate that business for the Required Uses (as hereafter defined); and

**WHEREAS**, the Company intends to make a Capital Investment of approximately Three Hundred Thousand Dollars (\$300,000.00) in the Restaurant Improvements, in the form of finish-out of construction and installation of personal property, to be located on the Property and, as Company is able to secure tenants for the remaining portion of the Improvements, to also finish out the remaining portion of the improvements; and

**WHEREAS**, Company has advised SEDC that a contributing factor that would induce Company to purchase the Property, complete construction, including finish-out work, of the Restaurant Portion of the Improvements and, as tenants are secured, the remaining portion of the Improvements, and open and operate a Starwood Café in the Restaurant Portion of the Improvements on the Property would be an agreement by SEDC to provide an economic development loan to Company to finance and be applied to the Purchase Price of the Property; and

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

**WHEREAS**, the Development Corporation Act, Chapter 501-505 of the Texas Local Government Code (the “Act”) authorizes the SEDC to provide economic development incentives for the creation, promotion and expansion of new or expanded business opportunities in the City; and

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

**WHEREAS**, the SEDC has determined that providing the Loan to Company in accordance with this Agreement will further the objectives of SEDC, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City.

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

### **Article I Definitions**

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

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

“City” shall mean the City of Seagoville, Texas.

“Capital Investment” shall mean the aggregate of the total costs of design and Finish Out Work, including installation of personal property necessary for the Required Uses, for the Restaurant Portion of the Improvements (inclusive of all hard and soft costs) but not including costs related to the purchase of the Property.

“Commencement of Finish Out Work” shall mean that (1) the Finish Out Plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for the Finish Out (as defined herein) of the Restaurant Portion of the Improvements, (2) all necessary permits for the Finish Out of the Restaurant Portion of the Improvements have been issued by all applicable governmental authorities, and (4) on-site work on the Finish Out of the Restaurant Portion of the Improvements has commenced at the Improvements.

“Completion of Finish Out Work” shall mean that the (1) Finish Out of the Restaurant Portion of the Improvements has been substantially completed, (2) a final, permanent certificate of occupancy for the Restaurant Portion of the Improvements has been issued, and (3) a Starwood Café restaurant operated by Trinity Plaza is open and conducting business during normal business hours utilizing the Restaurant Portion of the Improvements.

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

“Expiration Date” shall mean (i) the Maturity Date of the Note, or (ii) the date all amounts of principal, interest, and/or other amounts due on the Note have been paid, whichever is earlier.

“Finish Out Plans” shall mean the plans and specifications sufficient for the construction and other Finish Out Work on the Restaurant Portion of the Improvements on the Property (including civil, architectural, grading and site plans) in accordance with the Zoning and any design plans approved by the City.

“Finish Out Work” shall mean all work necessary for issuance of a certificate of occupancy by the City for the Restaurant Portion of the Improvements.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages, and periods during a pandemic when restaurants and similar businesses are required by federal, state, or local law to limit customer occupancy to less than 75% of maximum legally allowed occupancy load.

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

“Improvements” shall mean the approximately 5,500 square foot structure currently constructed and located on the Property.

“Loan” shall mean an economic development loan in the amount of \$600,000.00, to be repaid as set forth in accordance with the Note, and to provide funds solely for the purpose of being applied at closing of the sale of the Property by SEDC to Company to the Purchase Price of the Property.

“Note” shall mean that certain “Promissory Note (Secured) setting forth the terms of repayment of the Loan substantially in the form set forth in Exhibit “B” hereto.

“Property” shall mean an approximately 0.9853 acre tract being Lot 3, Block A of Best Western/Seagoville Addition, an addition to the City of Seagoville, Dallas County, Texas, according to the map thereof recorded in Volume 99125, Page 40, of the Map Records of Dallas County, Texas the boundaries of which are determined by the survey

attached hereto and incorporated herein by reference as Exhibit “A”; together with all right, title and interest of Seller, if any, in and to any (i) buildings, improvements and fixtures; (ii) rights, privileges, and appurtenances pertaining to the Property, including Seller’s right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores and rights-of-way (iii) land lying in or under the bed of adjacent streets, alleys, roads or rights of way, (iv) easements or rights of way appurtenant to or otherwise benefitting said tract, (v) all permits and approvals relating to said tract, (vi) all development rights relating to said tract, (vii) all reversionary rights related to said tract, and (viii) all other rights and appurtenances of any kind related to said tract (the “Property”).

“Real Estate Purchase Agreement” means that certain Real Estate Purchase Agreement between the Parties, as amended from time to time, providing for the sale of the Property by SEDC to Company for the purchase price of \$603,314.00.

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

“Required Use” shall mean the development, use and operation of the Restaurant Portion of the Improvements after Completion of Finish Out Work by Company as a for-profit Starwood Café or similar caliber restaurant business entity opened to the public and operating on the Property in the Restaurant Portion of the Improvements and serving the citizens of the City.

“Restaurant Portion of the Improvements” shall mean that portion of the Improvements, not less than 2,500 square feet in area, which Company agrees to finish out and devote to the Required Use under the terms and conditions of this Agreement.

“SEDC” shall mean the Seagoville Economic Development Corporation.

“Trinity Plaza” or “Company” shall mean Seagoville Trinity Plaza, LLC, a Texas limited liability company, and its officers, agents, successors, and permitted assigns.

## **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**

### **Economic Development Loan**

3.1 Loan Amount; Note and Deed of Trust. Subject to the agreement of Company to repay the Loan pursuant to the terms of the Note, and the continued satisfaction of all the terms and conditions of this Agreement and any Related Agreements by Owner, SEDC agrees to loan to Company the amount of Six Hundred Thousand Dollars (\$600,000.00), the proceeds of said

Loan to be applied by SEDC to the purchase price of the Property upon the Closing of Company's purchase of the Property in accordance with the provisions of the Real Estate Purchase Agreement and delivery to SEDC by Company of (a) a fully signed Note by Company to SEDC and (b) a Deed of Trust granting to Kevin B. Laughlin and Victoria W. Thomas, Co-Trustees for the benefit of the SEDC, a lien against the Property to secure repayment of the Note.

3.2 Loan from Available Funds; No Payments to Third Parties. The Loan shall be made solely from lawfully available funds that have been appropriated by SEDC. SEDC shall have no obligation or liability to provide any Loan except as allowed by law. 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 in favor of any commercial lender and/or similar financial institution without the prior written consent of the SEDC.

#### **Article IV Conditions to Economic Development Loan**

Trinity Plaza shall during the term of this Agreement satisfy and comply with the terms and conditions of this Agreement and specifically, each term and condition of this Article IV. The obligation of SEDC to provide the Loan or any portion thereof shall be conditioned upon Trinity Plaza's compliance with and satisfaction of the terms and conditions of this Agreement and each of the conditions set forth in this Article IV.

4.1 Good Standing. Trinity Plaza shall not have an uncured breach or default of this Agreement or a Related Agreement.

4.2 Commencement of Finish Out Work. Commencement of Finish Out Work, as that term is defined herein, shall occur not later than thirty (30) days after the closing of the sale of the Property by SEDC to Company.

4.3 Completion of Finish Out Work. Completion of Finish Out Work, as that term is defined herein, shall occur not later than one (1) year after the closing of the sale of the Property by SEDC to Company

4.4 Required Use of Proceeds. The proceeds of the Loan shall only be used by Company for payment of the purchase price of the Property at the closing of the sale of the Property by SEDC to Company.

4.5 Capital Investment. Company's Capital Investment for the Finish Out Work for the Restaurant Portion of the Improvements, as of the Completion of Finish Out Work, shall be not less than Three Hundred Thousand (\$300,000.00) Dollars. Within five business days of Completion of Finsih Out Work, Company shall notify SEDC in writing of said completion. At SEDC's option, SEDC may, within fifteen (15) business days of receipt of said notice, request that Company provide and deliver to SEDC copies of all records, contracts, receipts, invoices, bills and such other information as SEDC may reasonably request to document compliance with the required Capital Investment and Company will deliver those documents to SEDC within

fifteen (15) days of receipt of the request. In the event the final total cost of the Finish Out Work, on the Restaurant Portion of the Improvements as reasonably verified by SEDC, is less than Three Hundred Thousand Dollars (\$300,000.00), the Company shall, at SEDC's option, pay the SEDC the difference in value between \$300,000.00 and the final total cost of the Finish Out Work as reasonably verified by SEDC, up to a maximum amount of \$100,000.00.

4.6 Required Uses for the Restaurant Portion of the Improvements. Beginning on the Completion of Finish Out Work and continuing thereafter until the Expiration Date or earlier termination, the Restaurant Portion of the Improvements, being at least two thousand, five hundred (2,500) square feet of the area of the Improvements, shall not be used for any purpose other than the Required Uses and the Company shall not allow the operation of that portion of the Restaurant Portion of the Improvements in conformance with the Required Uses to cease for a period of more than thirty (30) consecutive days, except in connection with and to the extent of an event of Casualty or Force Majeure. With regard to the remaining portion of the Improvements, following finish out in compliance with all City, State and federal Codes and regulations, Company shall be allowed to operate any legally allowed for-profit business operation or establishment therein in compliance with all local, state and federal laws, or may lease the same to one or more third-parties.

4.7 Casualty and Condemnation. If the Improvements are damaged partially or destroyed by casualty, regardless of the extent of the damage or destruction, Company shall, subject to events of Force Majeure and the availability of adequate insurance proceeds, within two hundred seventy (270) days from the date of such casualty commence to repair, reconstruct or replace the damaged or destroyed portion of the Improvements, as applicable, and pursue the repair, reconstruction, or replacement with reasonable diligence so as to restore the Improvements to substantially their condition immediately prior to the Casualty.

## **Article V Termination; Repayment**

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

- (a) by mutual written agreement of the Parties;
- (b) by SEDC in the event Company breaches any of the terms or conditions of this Agreement or a Related Agreement and such breach is not cured within thirty (30) days after written notice thereof;
- (c) upon written notice by SEDC, if any Impositions owed to SEDC, City or the State of Texas by Trinity Plaza shall have become delinquent (provided, however, Trinity Plaza retains the right to timely and properly protest and contest any such taxes or Impositions), and such delinquency is not cured within thirty (30) days following Trinity Plaza's receipt of written notice thereof;
- (d) by SEDC, if Trinity Plaza suffers an event of Bankruptcy or Insolvency;

- (e) 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;
- (f) upon full payment of the Note and delivery to SEDC of all documents required under this Agreement and any Related Agreement.

5.2 Repayment due to Termination Under Section 5.1(b), (c) or (d). In the event the Agreement is terminated by SEDC pursuant to Section 5.1 (b), (c), or (d), Trinity Plaza shall, for each such breach, immediately refund to SEDC \$3,000.00, said amount being 0.50% (one half of one percent) of the total Loan amount of \$600,000.00. The obligations of the Trinity Plaza set forth in this Section 5.2 shall survive termination of this Agreement.

## **Article VI Miscellaneous**

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon and inure to the benefit of the officers, successors, affiliates, administrators, executors, and permitted assigns of the respective Parties. Neither this Agreement nor the Note or Deed of Trust may be assigned or assumed without the prior written consent of the SEDC.

6.2 Limitation on Liability. It is understood and agreed between the Parties that Trinity Plaza and SEDC, 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.

6.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.4 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. Company represents and warrants that it is a duly formed, validly existing Texas limited liability company in good standing under the laws of the State of Texas and is authorized to transact business in the State of Texas. The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

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

If intended for SEDC, to:

Seagoville Economic Development  
Corporation  
Attn: Patrick Stallings, Exec. Director  
702 N. Highway 175  
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

If intended for Trinity Plaza:

Gezim "Andy" Rushiti  
Seagoville Trinity Plaza, LLC  
15331 Viburnum Road  
Frisco, Texas 75035

6.6 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. There is no other collateral oral or written agreement among the Parties that in any manner relates to the subject matter of this Agreement.

6.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

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

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

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

6.11 Successors and Assigns. This Agreement may not be assigned without the prior written consent of SEDC, which, upon Completion of the Finish Out Work, shall not be unreasonably withheld.

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

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

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

6.15 Employment of Undocumented Workers. During the term of this Agreement, Trinity Plaza agrees to not knowingly employ any undocumented workers, and if convicted of a violation under 8 U.S.C. Section 1324a (f), Trinity Plaza shall repay the value of the incentive provided hereunder and the costs incurred by SEDC to provide the Loan within 120 days after the date Trinity Plaza is notified by SEDC of such violation, plus interest at the rate of 4% compounded annually from the date of violation until paid. Trinity Plaza is not liable for a violation of this section in relation to any workers employed by a subsidiary, affiliate, or franchisee of Trinity Plaza or by a person with whom the Trinity Plaza contracts.

6.16 Prohibition of Boycott of Israel. Company verifies that (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the Agreement or any Related Agreement. This section does not apply if the Company is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the Company has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Contract.”

6.17 Conditions Precedent. The obligations of the Parties are expressly subject to and conditioned Company and SEDC having entered into the Real Property Purchase Agreement.

*[Two Signature Pages to Follow]*

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

**SEAGOVILLE      ECONOMIC      DEVELOPMENT  
CORPORATION**

By: \_\_\_\_\_  
Patrick Stallings, Executive Director

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

**SEAGOVILLE TRINITY PLAZA, LLC**

By: \_\_\_\_\_  
Gezim “Andy” Rushiti, Managing Member



**EXHIBIT “B”**  
**[Promissory Note]**

**PROMISSORY NOTE**

**Date:** INSERT DATE

**Borrower:** Seagoville Trinity Plaza, LLC, a Texas limited liability company

**Borrower’s Mailing Address:** 15331 Viburnum Road, Frisco, Texas 75035 15331 (Collin County)

**Lender:** Seagoville Economic Development Corporation

**Place for Payment:** Attn: Patrick Stallings, Seagoville Economic Development Corporation, 702 North Highway 175, Seagoville, Texas 75159 (Dallas County)

**Principal Amount:** SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00)

**Annual Interest Rate:** ZERO (0.0%) PERCENT

**Maturity Date:** INSERT DATE

**Annual Interest Rate on Matured, Unpaid Amounts:** Maximum allowed by law.

**Terms of Payment (principal and interest):** The principal and interest shall be paid in one hundred, seventy-nine (179) equal monthly installments of \$3,333.33 each and one final monthly installment of \$3,333.34, the first such installment being due and payable on INSERT DATE (“the Initial Payment Date”), the remaining one hundred, seventy-nine (179) installments to be due and payable on the monthly anniversary of the Initial Payment Date thereafter, with all remaining principal and interest due under this Note being due and payable in full on the Maturity Date.

**Security for Payment:** This Note is secured by a lien described in that certain deed of trust of even date hereto signed by Borrower to Seagoville Economic Development Corporation for the benefit of Lender (“Deed of Trust”), said Deed of Trust lien attaching to the real property located in Dallas County, Texas, and described more fully in Exhibit “A”, attached hereto and incorporated herein by reference (“the Property”), together with all (i) buildings, improvements and fixtures located on the Property, (ii) strips and gores between said tract and abutting properties, (iii) land lying in or under the bed of adjacent streets, alleys, roads or rights of way, (iv) easements or rights of way appurtenant to or otherwise benefiting said tract, (v) utility capacities, commitments, reservations and other rights and capacities (including but not limited to storm water detention rights) related to said tract, (vi) all licenses, permits and approvals relating to said tract, (vii) all development rights relating to said tract, (viii) all rights to credits, refunds and reimbursements associated with said tract, (ix) all water and drainage rights associated with said tract, (x) all reversionary rights related to said tract, (xi) all leases and rents for all or a part of the Property, and (xii) all other rights and appurtenances of any kind related to said tract.

**Other Security for Payment:** Vendor’s Lien retained by Lender as Grantor in Special Warranty Deed of even date herewith conveying the Property to Borrower as Grantee.

Borrower promises to pay to the order of Lender the Principal Amount plus interest at the Annual Interest Rate. This Note is payable at the Place for Payment and according to the Terms of Payment. All unpaid amounts are due by the Maturity Date. After maturity, Borrower promises to pay any unpaid principal balance plus interest at the Annual Interest Rate on Matured, Unpaid Amounts.

If Borrower defaults in the payment of this Note or in the performance of any obligation in any instrument securing or collateral to this Note, Lender may declare the unpaid principal balance, earned interest, and any other amounts owed on this Note immediately due. Borrower and each surety, endorser, and guarantor waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.

Borrower also promises to pay reasonable attorney's fees and court and other costs if this Note is placed in the hands of an attorney to collect or enforce this Note. These expenses will bear interest from the date of advance at the Annual Interest Rate on Matured, Unpaid Amounts. Borrower will pay Lender these expenses and interest on demand at the Place for Payment. These expenses and interest will become part of the debt evidenced by this Note and will be secured by any security for payment.

Interest on the debt evidenced by this Note will not exceed the maximum rate or amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the Principal Amount or, if the Principal Amount has been paid, refunded. On any acceleration or required or permitted prepayment, any excess interest will be canceled automatically as of the acceleration or prepayment or, if the excess interest has already been paid, credited on the Principal Amount or, if the Principal Amount has been paid, refunded. This provision overrides any conflicting provisions in this Note and all other instruments concerning the debt.

In the event any installment shall become overdue for a period in excess of thirty (30) days, a charge of one percent (1.0%) of the installment payment so overdue may be charged by Lender for the purpose of defraying the expense incident to handling such delinquent payments. This charge is in addition to and not in lieu of Lender's other rights and remedies that it may have available.

A default exists under this Note if (1) (a) Borrower or (b) any other person liable on any part of this Note or who grants a lien or security interest on any property as security for any part of this Note (an "Other Obligated Party") fails to timely pay or perform any obligation or covenant in any written agreement between Lender and Borrower or any Other Obligated Party; (2) any warranty, covenant, or representation in this Note or in any other written agreement between Lender and Borrower or any Other Obligated Party is materially false when made; (3) a receiver is appointed for Borrower, any Other Obligated Party, or any property on which a lien or security interest is created as security (the "Collateral Security") for any part of this Note; (4) any Collateral Security is assigned for the benefit of creditors; (5) a bankruptcy or insolvency proceeding is commenced by Borrower, a partnership of which Borrower is a general partner, or an Other Obligated Party; (6) (a) a bankruptcy or insolvency proceeding is commenced against Borrower, a partnership of which Borrower is a general partner, or an Other Obligated Party and (b) the proceeding continues without dismissal for sixty days, the party against whom the proceeding is commenced admits the material allegations of the petition against it, or an order for relief is entered; (7) any of the following parties is dissolved, begins to wind up its affairs, is authorized to dissolve or wind up its affairs by its governing body or persons, or any event occurs or condition exists that permits the dissolution or winding up of the affairs of any of the following parties: Borrower, a partnership of which Borrower is a general partner, or an Other Obligated Party; or (8) any Collateral Security is impaired by loss, theft, damage, levy and execution, issuance of an official writ or order of seizure, or destruction,

unless it is promptly replaced with collateral security of like kind and quality or restored to its former condition.

Borrower and each surety, endorser, and guarantor waive demand, notice of intent to demand, presentment for payment, notice of nonpayment, protest, notice of protest, grace, notice of dishonor, notice of intent to accelerate maturity, notice of acceleration of maturity, and diligence in collection. Failure by the holder of this Note to exercise its option to accelerate upon any default shall not constitute a waiver of the holder's right to exercise such option in the event of any subsequent default.

Borrower hereby represents and warrants that this Note has been duly and validly executed and delivered by Borrower, and constitutes the legal, valid and binding agreement of Borrower enforceable against Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws from time-to-time in effect affecting the enforcement of creditor's rights generally and to general equitable principles.

Each right, power and remedy of the Lender as provided for in this Note or now or hereafter existing under any applicable law shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Note or now or hereafter existing under applicable law, and the exercise or beginning of exercise by the Lender of any one or more of such rights, powers or remedies, shall not preclude the simultaneous or later exercise by the Lender of any and all such other rights, powers or remedies. No failure or delay by the Lender to insist upon the strict performance of any term, condition, covenant or agreement of this Note, or to exercise any right, power or remedy consequent upon a breach hereof, shall constitute a waiver of any such term, condition, covenant, agreement or breach or preclude the Lender from exercising any such right, power or remedy at a later time or times. By accepting payment after the due date of any amount payable under the terms of this Note, the Lender shall not be deemed to waive the right to either require prompt payment when due of all other amounts payable under the terms of this Note, or to declare an event of default for the failure to effect such prompt payment of any such other amount. No course of dealing or conduct shall be effective to amend, modify, release or change any provisions of this Note.

**Prepayment.** Borrower reserves the right to prepay, at any time prior to maturity, all or any part of the principal of this Note without penalty. Any prepayments shall be applied first to accrued interest and then to principal. Borrower will provide written notice to the holder of this Note of any such prepayment of all or any part of the principal at the time thereof. All payments and prepayments of principal or interest on this Note shall be made in lawful money of the United States of America in immediately available funds, at the address of Lender indicated above, or such other place as the holder of this Note shall designate in writing to Borrower. All partial prepayments of principal shall be applied to the last installments payable in their inverse order of maturity.

This Note is non-assignable by Borrower without the Lender's prior written consent.

Borrower is responsible for all obligations represented by this Note.

Borrower hereby represents and warrants to Lender that Borrower has no defenses under this Note or the Deed of Trust, and that this Note and the Deed of Trust represent the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with the terms thereof and hereof.

When the context requires, singular nouns and pronouns include the plural.

BORROWER:

SEAGOVILLE TRINITY PLAZA, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Gezim “Andy” Rushiti, Managing Member

**Exhibit "A" to Promissory Note  
Description of Property**

A 0.9853 ± acre tract legally described as Lot 3, Block A, of Best Western/Seagoville Addition, an addition to the City of Seagoville, Dallas County, Texas, according to the map thereof recorded in Volume 99125, Page 40, of the Map Records of Dallas County, Texas the boundaries of which are generally depicted on this Exhibit "A" as follows:



**PROMISSORY NOTE**

**Date:** INSERT DATE

**Borrower:** Seagoville Trinity Plaza, LLC, a Texas limited liability company

**Borrower's Mailing Address:** 15331 Viburnum Road, Frisco, Texas 75035 15331 (Collin County)

**Lender:** Seagoville Economic Development Corporation

**Place for Payment:** Attn: Patrick Stallings, Seagoville Economic Development Corporation, 702 North Highway 175, Seagoville, Texas 75159 (Dallas County)

**Principal Amount:** SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00)

**Annual Interest Rate:** ZERO (0.0%) PERCENT

**Maturity Date:** INSERT DATE

**Annual Interest Rate on Matured, Unpaid Amounts:** Maximum allowed by law.

**Terms of Payment (principal and interest):** The principal and interest shall be paid in one hundred, seventy-nine (179) equal monthly installments of \$3,333.33 each and one final monthly installment of \$3,333.34, the first such installment being due and payable on INSERT DATE ("the Initial Payment Date"), the remaining one hundred, seventy-nine (179) installments to be due and payable on the monthly anniversary of the Initial Payment Date thereafter, with all remaining principal and interest due under this Note being due and payable in full on the Maturity Date.

**Security for Payment:** This Note is secured by a lien described in that certain deed of trust of even date hereto signed by Borrower to Seagoville Economic Development Corporation for the benefit of Lender ("Deed of Trust"), said Deed of Trust lien attaching to the real property located in Dallas County, Texas, and described more fully in Exhibit "A", attached hereto and incorporated herein by reference ("the Property"), together with all (i) buildings, improvements and fixtures located on the Property, (ii) strips and gores between said tract and abutting properties, (iii) land lying in or under the bed of adjacent streets, alleys, roads or rights of way, (iv) easements or rights of way appurtenant to or otherwise benefiting said tract, (v) utility capacities, commitments, reservations and other rights and capacities (including but not limited to storm water detention rights) related to said tract, (vi) all licenses, permits and approvals relating to said tract, (vii) all development rights relating to said tract, (viii) all rights to credits, refunds and reimbursements associated with said tract, (ix) all water and drainage rights associated with said tract, (x) all reversionary rights related to said tract, (xi) all leases and rents for all or a part of the Property, and (xii) all other rights and appurtenances of any kind related to said tract.

**Other Security for Payment:** Vendor's Lien retained by Lender as Grantor in Special Warranty Deed of even date herewith conveying the Property to Borrower as Grantee.

Borrower promises to pay to the order of Lender the Principal Amount plus interest at the Annual Interest Rate. This Note is payable at the Place for Payment and according to the Terms of Payment. All unpaid amounts are due by the Maturity Date. After maturity, Borrower promises to pay any unpaid principal balance plus interest at the Annual Interest Rate on Matured, Unpaid Amounts.

If Borrower defaults in the payment of this Note or in the performance of any obligation in any instrument securing or collateral to this Note, Lender may declare the unpaid principal balance, earned interest, and any other amounts owed on this Note immediately due. Borrower and each surety, endorser, and guarantor waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.

Borrower also promises to pay reasonable attorney's fees and court and other costs if this Note is placed in the hands of an attorney to collect or enforce this Note. These expenses will bear interest from the date of advance at the Annual Interest Rate on Matured, Unpaid Amounts. Borrower will pay Lender these expenses and interest on demand at the Place for Payment. These expenses and interest will become part of the debt evidenced by this Note and will be secured by any security for payment.

Interest on the debt evidenced by this Note will not exceed the maximum rate or amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the Principal Amount or, if the Principal Amount has been paid, refunded. On any acceleration or required or permitted prepayment, any excess interest will be canceled automatically as of the acceleration or prepayment or, if the excess interest has already been paid, credited on the Principal Amount or, if the Principal Amount has been paid, refunded. This provision overrides any conflicting provisions in this Note and all other instruments concerning the debt.

In the event any installment shall become overdue for a period in excess of thirty (30) days, a charge of one percent (1.0%) of the installment payment so overdue may be charged by Lender for the purpose of defraying the expense incident to handling such delinquent payments. This charge is in addition to and not in lieu of Lender's other rights and remedies that it may have available.

A default exists under this Note if (1) (a) Borrower or (b) any other person liable on any part of this Note or who grants a lien or security interest on any property as security for any part of this Note (an "Other Obligated Party") fails to timely pay or perform any obligation or covenant in any written agreement between Lender and Borrower or any Other Obligated Party; (2) any warranty, covenant, or representation in this Note or in any other written agreement between Lender and Borrower or any Other Obligated Party is materially false when made; (3) a receiver is appointed for Borrower, any Other Obligated Party, or any property on which a lien or security interest is created as security (the "Collateral Security") for any part of this Note; (4) any Collateral Security is assigned for the benefit of creditors; (5) a bankruptcy or insolvency proceeding is commenced by Borrower, a partnership of which Borrower is a general partner, or an Other Obligated Party; (6) (a) a bankruptcy or insolvency proceeding is commenced against Borrower, a partnership of which Borrower is a general partner, or an Other Obligated Party and (b) the proceeding continues without dismissal for sixty days, the party against whom the proceeding is commenced admits the material allegations of the petition against it, or an order for relief is entered; (7) any of the following parties is dissolved, begins to wind up its affairs, is authorized to dissolve or wind up its affairs by its governing body or persons, or any event occurs or condition exists that permits the dissolution or winding up of the affairs of any of the following parties: Borrower, a partnership of which Borrower is a general partner, or an Other Obligated Party; or (8) any Collateral Security is impaired by loss, theft, damage, levy and execution, issuance of an official writ or order of seizure, or destruction,

unless it is promptly replaced with collateral security of like kind and quality or restored to its former condition.

Borrower and each surety, endorser, and guarantor waive demand, notice of intent to demand, presentment for payment, notice of nonpayment, protest, notice of protest, grace, notice of dishonor, notice of intent to accelerate maturity, notice of acceleration of maturity, and diligence in collection. Failure by the holder of this Note to exercise its option to accelerate upon any default shall not constitute a waiver of the holder's right to exercise such option in the event of any subsequent default.

Borrower hereby represents and warrants that this Note has been duly and validly executed and delivered by Borrower, and constitutes the legal, valid and binding agreement of Borrower enforceable against Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws from time-to-time in effect affecting the enforcement of creditor's rights generally and to general equitable principles.

Each right, power and remedy of the Lender as provided for in this Note or now or hereafter existing under any applicable law shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Note or now or hereafter existing under applicable law, and the exercise or beginning of exercise by the Lender of any one or more of such rights, powers or remedies, shall not preclude the simultaneous or later exercise by the Lender of any and all such other rights, powers or remedies. No failure or delay by the Lender to insist upon the strict performance of any term, condition, covenant or agreement of this Note, or to exercise any right, power or remedy consequent upon a breach hereof, shall constitute a waiver of any such term, condition, covenant, agreement or breach or preclude the Lender from exercising any such right, power or remedy at a later time or times. By accepting payment after the due date of any amount payable under the terms of this Note, the Lender shall not be deemed to waive the right to either require prompt payment when due of all other amounts payable under the terms of this Note, or to declare an event of default for the failure to effect such prompt payment of any such other amount. No course of dealing or conduct shall be effective to amend, modify, release or change any provisions of this Note.

**Prepayment.** Borrower reserves the right to prepay, at any time prior to maturity, all or any part of the principal of this Note without penalty. Any prepayments shall be applied first to accrued interest and then to principal. Borrower will provide written notice to the holder of this Note of any such prepayment of all or any part of the principal at the time thereof. All payments and prepayments of principal or interest on this Note shall be made in lawful money of the United States of America in immediately available funds, at the address of Lender indicated above, or such other place as the holder of this Note shall designate in writing to Borrower. All partial prepayments of principal shall be applied to the last installments payable in their inverse order of maturity.

This Note is non-assignable by Borrower without the Lender's prior written consent.

Borrower is responsible for all obligations represented by this Note.

Borrower hereby represents and warrants to Lender that Borrower has no defenses under this Note or the Deed of Trust, and that this Note and the Deed of Trust represent the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with the terms thereof and hereof.

When the context requires, singular nouns and pronouns include the plural.

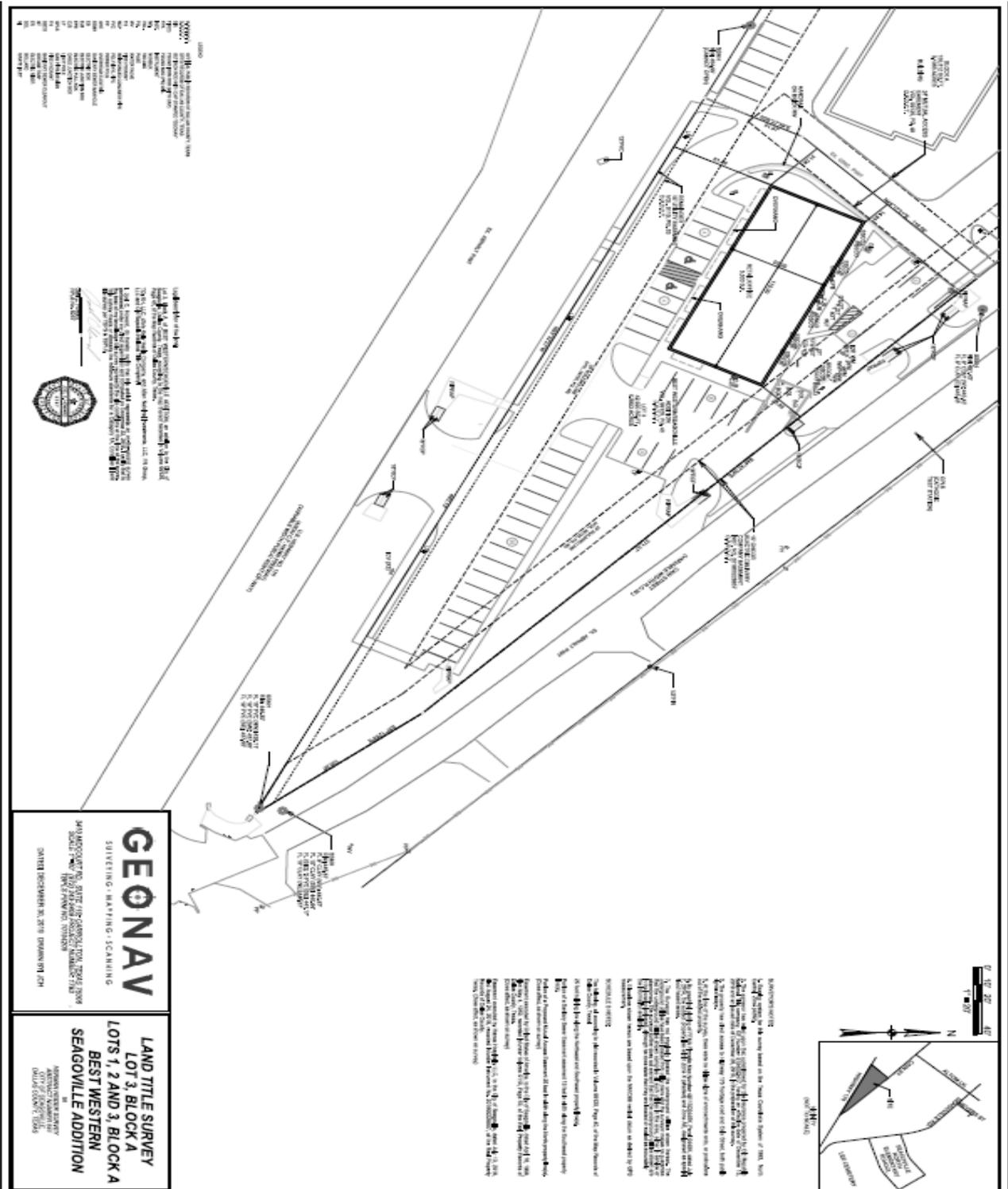
**BORROWER:**

SEAGOVILLE TRINITY PLAZA, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Gezim “Andy” Rushiti, Managing Member

**Exhibit "A" to Promissory Note  
Description of Property**

A 0.9853 ± acre tract legally described as Lot 3, Block A, of Best Western/Seagoville Addition, an addition to the City of Seagoville, Dallas County, Texas, according to the map thereof recorded in Volume 99125, Page 40, of the Map Records of Dallas County, Texas the boundaries of which are generally depicted on this Exhibit "A" as follows:



**After Recording, Return to:**  
Seagoville Economic Development Corporation  
c/o City Secretary, City of Seagoville  
702 N. Highway 175  
Seagoville, Texas 75159

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**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**

**Deed of Trust**

**Terms**

**Date:** INSERT DATE

**Grantor:** Seagoville Trinity Plaza, LLC, a Texas limited liability company

**Grantor's Mailing Address:** 15331 Viburnum Road, Frisco, Texas 75035 [Collin County]

**Co-Trustees:** Kevin B. Laughlin and Victoria W. Thomas; Nichols, Jackson, Dillard, Hager & Smith, LLP

**Co-Trustees' Mailing Address:** Suite 1800; 500 North Akard Street; Dallas, Texas 75233

**Lender:** Seagoville Economic Development Corporation

**Lender's Mailing Address:** Attn: Patrick Stallings, Seagoville Economic Development Corporation, 702 North Highway 175, Seagoville, Texas 75159 [Dallas County]

**Obligation**

**Note**

**Date:** INSERT DATE

**Original principal amount:** \$600,000.00

**Borrower:** Seagoville Trinity Plaza, LLC

**Lender:** Seagoville Economic Development Corporation

**Maturity date:** INSERT DATE

**Other Debt:** None

**Property (including any improvements) (the “Property”):** All that certain tract or parcel of land, lying and being situated in the City of Seagoville, Dallas County, Texas, and being a 0.9853 ± acre tract legally described as Lot 3, Block A, of Best Western/Seagoville Addition, an addition to the City of Seagoville, Dallas County, Texas, according to the map thereof recorded in Volume 99125, Page 40, of the Map Records of Dallas County, Texas the boundaries of which are generally depicted on this Exhibit “A” attached hereto and made a part hereof for all purposes, together with all right, title and interest of Grantor, if any, in and to any (i) buildings, improvements and fixtures located on the Property, (ii) strips and gores between said tract and abutting properties, (iii) land lying in or under the bed of adjacent streets, alleys, roads or rights of way, (iv) easements or rights of way appurtenant to or otherwise benefiting said tract, (v) utility capacities, commitments, reservations and other rights and capacities (including but not limited to storm water detention rights) related to said tract, (vi) all licenses, permits and approvals relating to said tract, (vii) all development rights relating to said tract, (viii) all rights to credits, refunds and reimbursements associated with said tract, (ix) all water and drainage rights associated with said tract, (x) all reversionary rights related to said tract, (xi) all leases and rents for all or a part of the Property, and (xii) all other rights and appurtenances of any kind related to said tract.

**Prior Lien:** None

**Other Exceptions to Conveyance and Warranty:** All oil, gas, and other minerals reserved by prior grantors of the Property and all other prior reservations and easements of record in the office of the County Clerk of Dallas County, Texas,

For value received and to secure payment of the Obligation, Grantor conveys the Property to Trustee in trust. Grantor warrants and agrees to defend the title to the Property, subject to the Other Exceptions to Conveyance and Warranty. On payment of the Obligation and all other amounts secured by this deed of trust, this deed of trust will have no further effect, and Lender will release it at Grantor’s expense.

## **Clauses and Covenants**

### **A. Grantor’s Obligations**

Grantor agrees to—

1. keep the Property in good repair and condition;
2. pay all taxes and assessments on the Property before delinquency;
3. defend title to the Property subject to the Other Exceptions to Conveyance and Warranty and preserve the lien’s priority as it is established in this deed of trust;
4. obey all laws, ordinances, and restrictive covenants applicable to the Property;
5. maintain, in a form acceptable to Lender, an insurance policy that—
  - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Lender approves a smaller amount in writing;

- b. contains an 80 percent coinsurance clause;
- c. provides all-risk coverage;
- d. protects Lender with a standard mortgage clause;
- e. provides flood insurance at any time the Property is in a flood hazard area;
- f. provides comprehensive general liability insurance, including bodily injury, death and property damage liability in such amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for properties comparable to the Property but in any event not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and
- g. contains such other coverage as Lender may reasonably require.

6. If Grantor fails to maintain and deliver to Lender the original policies or certificates of insurance required hereunder, upon ten (10) days' prior notice to Grantor, Lender may procure such insurance at Grantor's sole cost and expense.

7. comply at all times with the requirements of the 80 percent coinsurance clause;

8. deliver the insurance policy to Lender within ten days of the date of this deed of trust and deliver renewals to Lender at least fifteen days before expiration;

9. keep any buildings occupied as required by the insurance policy;

10. if the lien of this deed of trust is not a first lien, pay or cause to be paid all prior lien notes and abide by or cause to be abided by all prior lien instruments; and

11. notify lender of any change of address.

## **B. Lender's Rights**

1. Lender may appoint in writing a substitute trustee, succeeding to all rights and responsibilities of Trustee.

2. If the proceeds of the Obligation are used to pay any debt secured by prior liens, Lender is subrogated to all the rights and liens of the holders of any debt so paid.

3. Lender may apply any proceeds received under the insurance policy either to reduce the Obligation or to repair or replace damaged or destroyed improvements covered by the policy. If the Property is Grantor's primary residence and Lender reasonably determines that repairs to the improvements are economically feasible, Lender will make the insurance proceeds available to Grantor for repairs.

4. Notwithstanding the terms of the Note to the contrary, and unless applicable law prohibits, all payments received by Lender from Grantor with respect to the Obligation or this deed of trust may, at Lender's discretion, be applied first to amounts payable under this deed of trust and then to

amounts due and payable to Lender with respect to the Obligation, to be applied to late charges, principal, or interest in the order Lender in its discretion determines.

5. If Grantor fails to perform any of Grantor's obligations, Lender may perform those obligations and be reimbursed by Grantor on demand for any amounts so paid, including attorney's fees, plus interest on those amounts from the dates of payment at the rate stated in the Note for matured, unpaid amounts. The amount to be reimbursed will be secured by this deed of trust.

6. If there is a default on the Obligation or if Grantor fails to perform any of Grantor's obligations and the default continues for ten (10) days after Lender sends Grantor written notice of such default, Lender may—

a. declare the unpaid principal balance and earned interest on the Obligation immediately due;

b. direct Trustee to foreclose this lien, in which case Lender or Lender's agent will cause notice of the foreclosure sale to be given as provided by the Texas Property Code as then in effect; and

c. purchase the Property at any foreclosure sale by offering the highest bid and then have the bid credited on the Obligation.

7. Lender may remedy any default without waiving it and may waive any default without waiving any prior or subsequent default.

8. **COLLATERAL PROTECTION INSURANCE NOTICE.** In accordance with the provisions of section 307.052(a) of the Texas Finance Code, the Lender hereby notifies the Grantor as follows:

a. the Grantor is required to:

1. keep the collateral insured against damage in the amount the Lender specifies;

2. purchase the insurance from an insurer that is authorized to do business in the state of Texas or an eligible surplus lines insurer; and

3. name the Lender as the person to be paid under the policy in the event of a loss;

b. the Grantor must, if required by the Lender, deliver to the Lender a copy of the policy and proof of the payment of premiums; and

c. if the Grantor fails to meet any requirement listed in Paragraph (A) or (B), the Lender may obtain collateral protection insurance on behalf of the Grantor at Grantor's expense.

### **C. Trustee's Rights and Duties**

If directed by Lender to foreclose this lien, Trustee will—

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then in effect;
2. sell and convey all or part of the Property "AS IS" to the highest bidder for cash with a general warranty binding Grantor, subject to the Prior Lien and to the Other Exceptions to Conveyance and Warranty and without representation or warranty, express or implied, by Trustee;
3. from the proceeds of the sale, pay, in this order—
  - a. expenses of foreclosure, including a reasonable commission to Trustee;
  - b. to Lender, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
  - c. any amounts required by law to be paid before payment to Grantor; and
  - d. to Grantor, any balance; and
4. be indemnified, held harmless, and defended by Lender against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the trust created by this deed of trust, which includes all court and other costs, including attorney's fees, incurred by Trustee in defense of any action or proceeding taken against Trustee in that capacity.

### **D. General Provisions**

1. If any of the Property is sold under this deed of trust, Grantor must immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor will become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any trustee's deed conveying the Property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
4. This lien will remain superior to liens later created even if the time of payment of all or part of the Obligation is extended or part of the Property is released.
5. If any portion of the Obligation cannot be lawfully secured by this deed of trust, payments will be applied first to discharge that portion.
6. Grantor assigns to Lender all amounts payable to or received by Grantor from condemnation of all or part of the Property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the Property. After deducting any expenses incurred, including attorney's fees and court and other costs, Lender will either release any remaining amounts to Grantor or apply such amounts to reduce the Obligation. Lender will not be liable for failure to collect or

to exercise diligence in collecting any such amounts. Grantor will immediately give Lender notice of any actual or threatened proceedings for condemnation of all or part of the Property.

7. Grantor collaterally assigns to Lender absolutely, not only as collateral, all present and future rent and other income and receipts from the Property and its proceeds. Grantor warrants the validity and enforceability of the assignment. Grantor may, as Lender's licensee collect rent and other income and receipts as long as Grantor is not in default with respect to the Obligation or this deed of trust. Grantor will apply all rent to payment of the Obligation and performance of this deed of trust, but if the rent exceeds the amount due with respect to the Obligation and the deed of trust, Grantor may retain the excess. If a default exists in payment of the Obligation or performance of this deed of trust, Lender may terminate Grantor's license to collect rent and other income and then as Grantor's agent may rent the Property and collect all rent and other income and receipts and may exercise Lender's rights with respect to rent under the Texas Property Code as then in effect. Lender neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the Property. Lender may exercise Lender's rights and remedies under this paragraph without taking possession of the Property. Lender will apply all rent and other income and receipts collected under this paragraph as required by the Texas Property Code as then in effect. Lender is not required to act under this paragraph, and acting under this paragraph does not waive any of Lender's other rights and remedies.

8. Interest on the debt secured by this deed of trust will not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess will be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides any conflicting provisions in this and all other instruments concerning the debt.

9. In no event may this deed of trust secure payment of any debt that may not lawfully be secured by a lien on real estate or create a lien otherwise prohibited by law.

10. When the context requires, singular nouns and pronouns include the plural.

11. The term *Note* includes all extensions, modifications, and renewals of the Note and all amounts secured by this deed of trust.

12. This deed of trust binds, benefits, and may be enforced by the successors in interest of all parties.

13. Except as provided in the Note and this deed of trust, if all or any part of the Property is sold, transferred, or conveyed without the prior written consent of Lender, Lender may, at Lender's sole option, declare the outstanding principal balance of the Obligation plus accrued interest immediately due and payable. Lender has no obligation to consent to any such sale or conveyance of the Property, and Lender is entitled to condition any consent on a change in the interest rate that will thereafter apply to the Obligation and any other change in the terms of the Obligation or this deed of trust that Lender in Lender's sole discretion deems appropriate. A lease with an option to purchase, or a contract for deed will be deemed to be a sale, transfer, or conveyance of the Property for purposes of this provision. Any conveyance of an easement or right of way to any governmental authority or public utility for the purpose of providing utility services or the establishment of public streets or alleys, will not be construed as a sale or conveyance of the Property so long as such easement or right of way has been approved by Lender, which approval shall not be unreasonably withheld, conditioned or delayed by Lender. The creation of a

subordinate lien without the consent of Lender will be construed as a sale or conveyance of the Property, but any subsequent sale under a subordinate lien to which Lender has consented will not be construed as a sale or conveyance of the Property.

14. If Grantor and Borrower are not the same person, the term *Grantor* includes Borrower.

15. Grantor and each surety, endorser, and guarantor of the Obligation waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.

16. Grantor agrees to pay reasonable attorney's fees, trustee's fees, and court and other costs of enforcing Lender's rights under this deed of trust if this deed of trust is placed in the hands of an attorney for enforcement.

17. If any provision of this deed of trust is determined to be invalid or unenforceable, the validity or enforceability of any other provision will not be affected.

18. Grantor represents that this deed of trust and the Note are given for the purposes of assisting in financing the purchase of the Property.

19. The Note is further secured by a vendor's lien granted to Lender by Grantor in a Special Warranty Deed of even date herewith conveying the Property to Grantor.

20. This deed of trust binds, benefits, and may be enforced by the successors in interest of all parties.

21. Grantor agrees to execute, acknowledge, and deliver to Lender any document requested by Lender, at Lender's request from time to time, to (a) correct any defect, error, omission, or ambiguity in this deed of trust or in any other document executed in connection with the Note or this deed of trust; (b) comply with Grantor's obligations under this deed of trust and other documents; (c) subject to and perfect the liens of this deed of trust and other documents with respect to any property intended to be covered thereby; and (d) protect, perfect, or preserve the liens and the security interests of this deed of trust and other documents against third persons or make any recordings, file any notices, or obtain any consents requested by lender in connection therewith. Grantor agrees to pay all costs of the foregoing.

22. In the event of a foreclosure sale under this deed of trust, Grantor agrees that all the Property may be sold as a whole at Lender's option and that the Lender need not be present at the place of sale.

23. Grantor represents to Lender that no part of the Property is either the residential or business homestead of Grantor. Grantor acknowledges that Lender relies on the truth of representations in this paragraph in making the loan secured by this deed of trust.

24. The lien security interest and other security rights of Lender hereunder shall not be impaired by any indulgence, moratorium, or release granted by Lender, including, but not limited to, any renewal, extension, increase, or modification which Lender may grant with respect to the Obligation or this deed of trust.

25. It is expressly understood that the Obligation is non-recourse to Grantor and that the Property and other collateral described in this Deed of Trust securing this Note is the only security for the Obligation. Grantor hereby represents and warrants to Trustee and to Lender that Grantor has no defenses under the Note or this Deed of Trust, and that the Note and this Deed of Trust represent the legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with the terms thereof and hereof.

26. Grantor acknowledges that this deed of trust and the Note are made pursuant to and subject to that certain Economic Development Incentive Agreement dated and effective \_\_\_\_\_, 2021, between Grantor and Lender (the "Incentive Agreement"), the terms of which, to the extent that they affect and govern the payment of the Principal Amount and interest in the Note or the terms of this deed of trust, are incorporated herein by reference. Grantor further acknowledges that the Economic Development Incentive Agreement is entered pursuant to the Development Corporation Act, Chapters 501-505, Texas Local Government Code (the "Act"). Grantor understands, acknowledges, and agrees that the proceeds advanced by Lender will be used solely for the purposes set in the Economic Development Incentive Agreement, which purpose constitutes a Project under the Act.

27. For purposes of this Deed of Trust, the words "Grantor" and "Borrower" shall mean Seagoville Trinity Plaza, LLC.

**GRANTOR:**

SEAGOVILLE TRINITY PLAZA, LLC,  
A Texas limited liability company

By: \_\_\_\_\_  
Gezim "Andy" Rushiti, Managing Member

STATE OF TEXAS           §  
                                          §  
COUNTY OF DALLAS           §

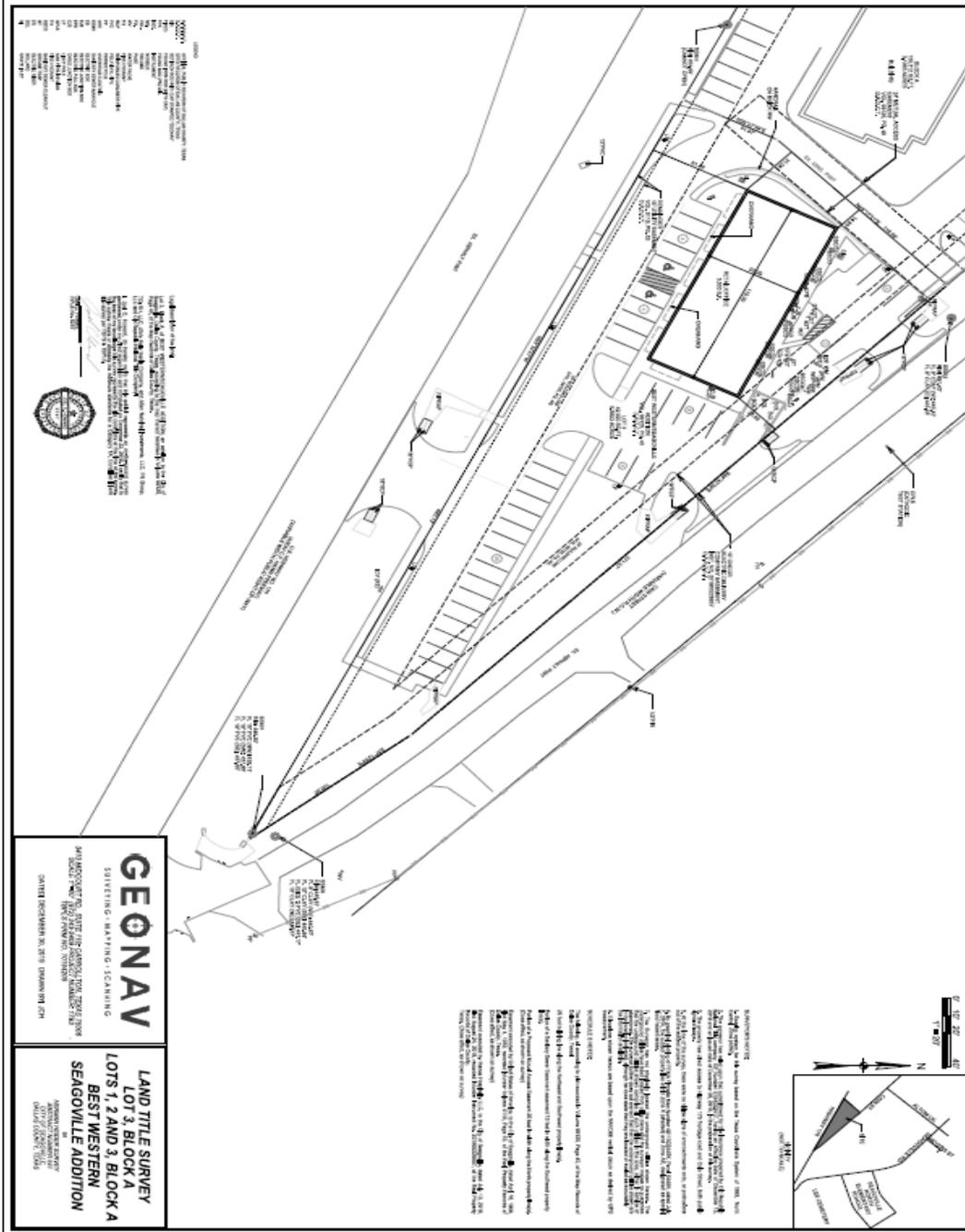
This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by **Gezim "Andy" Rushiti, Managing Member**, of Seagoville Trinity Plaza, LLC, a Texas limited liability company, on behalf of said company.

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

My Commission expires: \_\_\_\_\_

**Exhibit "A" to Deed of Trust  
Description of Property**

A 0.9853 ± acre tract legally described as Lot 3, Block A, of Best Western/Seagoville Addition, an addition to the City of Seagoville, Dallas County, Texas, according to the map thereof recorded in Volume 99125, Page 40, of the Map Records of Dallas County, Texas the boundaries of which are generally depicted on this Exhibit "A" as follows:



After Recording, Return to:

Seagoville Economic Development Corporation  
c/o City Secretary, City of Seagoville  
702 N. Highway 175  
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.**

### Special Warranty Deed

**Date:** INSERT DATE

**Grantors:** Seagoville Economic Development Corporation, a Texas nonprofit corporation

**Grantors' Mailing Address:** 702 N. Highway 175, Seagoville, Texas 75159 [Dallas County]

**Grantee:** Seagoville Trinity Plaza, LLC, a Texas limited liability company

**Grantee's Mailing Address:** 15331 Viburnum Road, Frisco, Texas 75035 [Collin County]

**Consideration:** TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration.

**Property:** Lot 3, Block A, of Best Western/Seagoville Addition, an addition to the City of Seagoville, Dallas County, Texas, according to the map thereof recorded in Volume 99125, Page 40, of the Map Records of Dallas County, Texas.

**Reservations from Conveyance:** None

**Exceptions to Conveyance and Warranty:** Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing instruments, other than conveyances of the surface fee estate, that affect the Property, and all oil, gas, and other minerals reserved by prior grantors.

Grantors, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grant, sell, and convey to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging and improvement located thereon, to have and to hold the Property to Grantee and Grantee's successors and assigns forever. Grantors bind Grantors and Grantors' successors to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantors but not otherwise.

When the context requires, singular nouns and pronouns include the plural.

Seagoville Economic Development Corporation

By: \_\_\_\_\_  
Patrick Stallings, Executive Director

State of Texas       §  
                                  §  
County of Dallas     §

Acknowledged before me, the undersigned authority, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Patrick Stallings, Executive Director of Seagoville Economic Development Corporation, a Texas non-profit corporation, for and on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas  
Commission Expires: \_\_\_\_\_

## *Regular Session Agenda Item: 5*

**Meeting Date: December 21, 2020**

### **ITEM DESCRIPTION:**

Discuss and direct Staff concerning Council Meetings for January 18, 2021 and February 15, 2021.

### **BACKGROUND OF ISSUE:**

January 18, 2021 is the Martin Luther King Holiday and February 15, 2021 is the Presidents Day Holiday. January 18<sup>th</sup> and February 15<sup>th</sup> are Council Meeting days. Staff is seeking direction from Council concerning the rescheduling or cancelling of the meetings.

### **FINANCIAL IMPACT:**

N/A

### **RECOMMENDATION:**

N/A

### **EXHIBITS:**

Calendars for January and February

# January 2021

January 2021							February 2021						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
3	4	5	6	7	8	9	7	8	9	10	11	12	13
10	11	12	13	14	15	16	14	15	16	17	18	19	20
17	18	19	20	21	22	23	21	22	23	24	25	26	27
24	25	26	27	28	29	30	28						
31													

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Dec 27	28	29	30	31	Jan 1, 21	2
3	4 6:30pm City Council Mtg.	5	6	7	8	9
10	11	12 6:30 pm P&Z Mtg.	13	14 SEDC Meeting	15	16
17	18 6:30pm City Council Mtg.	19 5:00pm Library Board 7pm KSB Mtg.	20	21	22	23
24	25	26 6:30pm P&Z Mtg.	27	28	29	30
31	Feb 1	2	3	4	5	6

# February 2021

February 2021							March 2021						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
7	1	2	3	4	5	6	7	1	2	3	4	5	6
14	8	9	10	11	12	13	14	8	9	10	11	12	13
21	15	16	17	18	19	20	21	15	16	17	18	19	20
28	22	23	24	25	26	27	28	22	23	24	25	26	27
	28	29	30	31				28	29	30	31		

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jan 31	Feb 1 6:30pm City Council Mtg.	2	3	4	5	6
7	8	9 6:30 pm P&Z Mtg.	10	11 6:30pm SEDC Meeting	12	13
14	15 6:30pm City Council Mtg.	16 5:00pm Library Board 7pm KSB Mtg.	17	18	19	20
21	22	23 6:30pm P&Z Mtg.	24	25	26	27
28	Mar 1	2	3	4	5	6

## ***Regular Session Agenda Item: 6***

**Meeting Date: December 21, 2020**

### **ITEM DESCRIPTION:**

Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas authorizing the City Manager to enter into a Service Agreement with Motorola Solutions (“Motorola”) approving the terms and conditions of the Agreement between the City of Seagoville and Motorola which is attached hereto as Exhibit “A”; repealing all Resolutions in conflict; providing an effective date.

### **BACKGROUND OF ISSUE:**

The Maintenance Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer for maintenance, support, and services under a Motorola Service Agreement; and customer accepts these Maintenance Service Terms and Conditions and agrees to pay the prices set forth in the Agreement; and Motorola will provide the Services described in this Agreement; and this Agreement will renew, for an additional one (1) year term on every anniversary of the state date; and for and in consideration of the mutual benefits and obligations set forth in this Agreement, attached as Exhibit A and fully incorporated herein.

### **FINANCIAL IMPACT:**

The amount of this Service Agreement is \$34,226.85 and has been budgeted in this fiscal year 2020-2021 under Support Services.

### **RECOMMENDATION:**

N/A

### **EXHIBITS:**

Resolution  
Agreement

**RESOLUTION NO. \_\_-R-2020**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEGOVILLE, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO A SERVICE AGREEMENT WITH MOTOROLA SOLUTIONS (“MOTOROLA”) APPROVING THE TERMS AND CONDITIONS OF THE AGREEMENT BETWEEN THE CITY OF SEGOVILLE AND MOTOROLA WHICH IS ATTACHED HERETO AS EXHIBIT “A”; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Motorola Solutions (“Motorola”) is willing to provide the maintenance, support and services identified on the Service Agreement (the “Agreement”) attached hereto as Exhibit “A” for a period of one year, with the Agreement to renew automatically on each annual anniversary date, with adjustments by Motorola to the pricing under the Agreement on each anniversary date, unless a party provides notice of intent not to renew; and

**WHEREAS**, City staff recommend approval of the Service Agreement, including the Maintenance Terms and Conditions thereto;

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

**SECTION 1.** The City Council hereby approves the Service Agreement with Motorola Solutions attached hereto as Exhibit “A” and authorizes the City Manager to execute the same.

**SECTION 2.** Any prior resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

**SECTION 3.** This resolution shall take effect immediately from and after its passage, and it is duly resolved.

**DULY PASSED** and approved by the City Council of the City of Seagoville, Texas, on this the 21<sup>st</sup> day of December, 2020.

**APPROVED:**

---

Dennis K. Childress, Mayor

**ATTEST:**

---

Kandi Jackson, City Secretary

**APPROVED AS TO FORM:**

---

Victoria W. Thomas, City Attorney



# SERVICE AGREEMENT

500 W Monroe Street  
 Chicago, IL. 60661  
 (888) 325-9336

Quote Number : QUOTE-1279675  
 Contract Number: USC000101457  
 Contract Modifier: R15-MAY-20 15:52:01

Date: 05/15/2020

<p>Company Name: SEAGOVILLE, CITY OF</p> <p>Attn:</p> <p>Billing Address: 702 N HWY 175</p> <p>City, State, Zip: Seagoville , TX, 75159</p> <p>Customer Contact: Christine Wirth</p> <p>Phone: 9722876834</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Required P.O. :  
 Customer # : 1035278622  
 Bill to Tag # :  
 Contract Start Date : 01-Oct-2020  
 Contract End Date : 30-Sep-2021  
 Anniversary Day : Sep 30th  
 Payment Cycle : ANNUALLY  
 PO # :

Qty	Service Name	Service Description	Extended Amt
	SVC02SVC0201A	ASTRO SUA II UO IMPLEMENTATION SERVICES --- SUAII - UO DESIGN --- SUAII - UO FIELD	\$0.00
	SVC02SVC0344A	RELEASE IMPLEMENTATION TRAINING --- SUAII - IMPLEMENT TRAINING	\$0.00
	SVC02SVC0343A	RELEASE IMPACT TRAINING --- SUAII - IMPACT TRAINING	\$0.00
	SVC01SVC1105C	ASTRO CUSTOMER TECHNICIAN DISPATCH --- CUST TECH DISPATCH	\$464.86
	SVC04SVC0169A	SYSTEM UPGRADE AGREEMENT II --- SMA --- SUAII - MOTO HDW --- SUAII - NONMOTO HDW	\$15,257.86
	LSV01S01106A	ASTRO SYSTEM ESSENTIAL PACKAGE --- REPAIR AND RETURN --- SECURITY UPDATE SERVICE --- SYSTEM TECH SUPPORT --- ADVANCE EXCHANGE	\$8,385.70
	SVC01SVC0032C	ASTRO NETWORK MONITORING-CTD --- NW MONITORING-CTD	\$3,155.16
	SVC01SVC0140A	REMOTE SUS --- REMOTE SUS MGT	\$905.92
	SVC02SVC0433A	ASTRO SUA II FIELD IMPLEMENTATN SVC --- SUAII - FIELD ENG --- SUAII - LABOR NONSTD HW --- SUAII - PM	\$784.06



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Qty	Service Name	Service Description	Extended Amt
	SVC01SVC0053A	--- SUAll - ST ASTRO NETWORK SECURITY MONITORING CTD	\$1,638.89
	LSV01S01034A	--- SECURITY MONITORING-CTD ASTRO DMS ADVANCED RM --- RM 2.0 SW LICENSE --- RM TECH SUPPORT	\$3,524.40
		Subtotal - Recurring Services	\$3,074.83
		Subtotal - One-Time Event Services	\$0.00
		Total	\$3,074.83
THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA			

**SPECIAL INSTRUCTIONS:**

I received Statements of Work that describe the services provided on this Agreement. Motorola's Service Terms and Conditions, a copy of which is attached to this Service Agreement, is incorporated herein by this reference.

AUTHORIZED CUSTOMER SIGNATURE

TITLE

DATE

CUSTOMER (PRINT NAME)

MOTOROLA REPRESENTATIVE(SIGNATURE)

TITLE

DATE

Cody Benningfield

512-202-2162

MOTOROLA REPRESENTATIVE(PRINT NAME)

PHONE

Company Name : SEAGOVILLE, CITY OF  
Contract Number : USC000101457  
Contract Modifier : R15-MAY-20 15:52:01  
Contract Start Date : 01-Oct-2020  
Contract End Date : 30-Sep-2021

500 W Monroe Street  
Chicago, IL. 60661  
(888) 325-9336

Quote Number : QUOTE-1279675  
Contract Number: USC000101457  
Contract Modifier: R15-MAY-20 15:52:01

## Service Terms and Conditions

Motorola Solutions Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

### Section 1. APPLICABILITY

These Maintenance Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

### Section 2. DEFINITIONS AND INTERPRETATION

2.1 "Agreement" means these Maintenance Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Maintenance Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2 "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3 "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

### Section 3. ACCEPTANCE

Customer accepts these Maintenance Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

### Section 4. SCOPE OF SERVICES

4.1 Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2 If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3 If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4 All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5 Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6 If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7 Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this.

### Section 5. EXCLUDED SERVICES

5.1 Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2 Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.



# SERVICE AGREEMENT

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## Section 6. TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

## Section 7. CUSTOMER CONTACT

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

## Section 8. INVOICING AND PAYMENT

8.1 Customer affirms that a purchase order or notice to proceed is not required for the duration of this service contract and will appropriate funds each year through the contract end date. Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date

8.2 Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity. The Customer will pay all invoices as received from Motorola. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

8.3 For multi-year service agreements, at the end of the first year of the Agreement and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, all Items, Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. All items, not seasonally adjusted shall be used as the measure of CPI for this price adjustment. Measurement will take place once the annual average for the new year has been posted by the Bureau of Labor Statistics. For purposes of illustration, if in year 5 the CPI reported an increase of 8%, Motorola may increase the Year 6 price by 5% (8%-3% base).

## Section 9. WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## Section 10. DEFAULT/TERMINATION

10.1 If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2 Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

10.3 If the Customer terminates this Agreement before the end of the Term, for any reason other than Motorola default, then the Customer will pay to Motorola an early termination fee equal to the discount applied to the last three (3) years of Service payments for the original Term.

## Section 11. LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement.



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ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

## Section 12. EXCLUSIVE TERMS AND CONDITIONS

12.1 This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2 Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

## Section 13. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1 Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2 Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3 This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

## Section 14. FCC LICENSES AND OTHER AUTHORIZATIONS

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

## Section 15. COVENANT NOT TO EMPLOY

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

## Section 16. MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

## Section 17. GENERAL TERMS

17.1 If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2 This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed.

17.3 Failure to exercise any right will not operate as a waiver of that right, power, or privilege.



## SERVICE AGREEMENT

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17.4 Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

17.5 Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.6 Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event.

~~17.7 THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.~~

17.8 If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.

17.9 This Agreement may be executed in one or more counterparts, all of which shall be considered part of the Agreement. The parties may execute this Agreement in writing, or by electronic signature, and any such electronic signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

Revised June 16, 2018

## ***Regular Session Agenda Item: 7***

**Meeting Date: December 21, 2020**

### **ITEM DESCRIPTION:**

Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas, authorizing the City Manager to enter into an Annual Agreement (also referred to as the Work Order) attached hereto as Exhibit "A" with the City of Garland, Texas ("Garland") in accordance with and governed by the Master Interlocal Radio Service Agreement between the City of Seagoville and Garland; repealing all Resolutions in conflict; providing an effective date.

### **BACKGROUND OF ISSUE:**

Garland and Seagoville are political subdivisions within the State of Texas, and each is engaged in the provision of governmental services for the benefit of its citizens; and both Garland and Seagoville are home rule municipalities as allowed by Tex. Const. Art. 5; and the Interlocal Cooperation Act, Tex. Gov't Code Ann. 791.001 et seq. (the "Act"), provides authority for local governments of the State of Texas to enter into interlocal agreements with each other for the purpose of performing governmental functions and services as set forth in the Act; and Garland and Seagoville are local governments as that term is defined in the Act and this Master Agreement is being entered into pursuant to and under the authority of the Act; and municipalities own and operate radio systems and other public safety communication devices for the purpose of providing radio communications in support of their governmental operations; and the municipal radio systems and public safety communications devices periodically need repairs, upgrades, and routine maintenance; and in order to provide dependable/mission-critical radio service for use by each of the Cities and their respective users, Garland and Seagoville desire to enter into this Master Agreement to provide maintenance and repair services for said radio systems and public safety devices used by the Cities and their respective users, as such radio system coverage is essential and a necessary component of providing certain vital government services by each respective City, including, without limitation, police, fire, emergency medical and public works protection provided by each City to ensure safe, effective and efficient communications, and to benefit the greatest number of citizens both now and in the future; and this Master Agreement memorializes the agreement between the Cities regarding the maintenance and repair of the radio system and other public safety devices.

### **FINANCIAL IMPACT:**

This is an ILA agreement to outline the maintenance and repair services. No cost for this agreement.

### **RECOMMENDATION:**

N/A

### **EXHIBITS:**

Resolution  
Agreement

## RESOLUTION

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEGOVILLE, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN ANNUAL AGREEMENT (ALSO REFERRED TO AS THE WORK ORDER) ATTACHED HERETO AS EXHIBIT “A” WITH THE CITY OF GARLAND, TEXAS (“GARLAND”) IN ACCORDANCE WITH AND GOVERNED BY THE MASTER INTERLOCAL RADIO SERVICE AGREEMENT BETWEEN THE CITY OF SEGOVILLE AND GARLAND; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Garland and Seagoville entered into a Master Interlocal Radio Service Agreement (“Master Agreement”) on or about December 21, 2020; and

**WHEREAS**, under the terms of that Master Agreement, the Cities will enter into an annual agreement, also referred to as the Work Order, to identify the scope of the work and cost thereof for each fiscal year; and

**WHEREAS**, the Cities have negotiated the Work Order, attached hereto as Exhibit “A”, to cover 2020-2021 fiscal year, with the amounts that would be due thereunder having been included in the City’s 2020-2021 budget;

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

**SECTION 1.** The City Council hereby approves the annual agreement or Work Order with the City of Garland attached hereto as Exhibit “A” for Fiscal Year 2020-2021, said Work Order being governed by and made in accordance with the Master Interlocal Radio Service Agreement between the City of Seagoville and the City of Garland and further authorizes the City Manager to execute the Work Order on behalf of the City of Seagoville.

**SECTION 2.** Any prior resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

**SECTION 3.** This resolution shall take effect immediately from and after its passage, and it is duly resolved.

**DULY PASSED** and approved by the City Council of the City of Seagoville, Texas, on this the 21<sup>st</sup> day of December, 2020.

**APPROVED:**

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Dennis K. Childress, Mayor

**ATTEST:**

---

Kandi Jackson, City Secretary

**APPROVED AS TO FORM:**

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Victoria W. Thomas, City Attorney  
(121720vwtTM119744)

## **MASTER INTERLOCAL RADIO SYSTEM SERVICE AGREEMENT**

This Master Interlocal Radio System Service Agreement (the “Master Agreement”) is entered into between the City of Garland, Texas (“Garland”) and the City of Seagoville, Texas, (“Seagoville”) (individually, Garland and Seagoville are also referred to as a “Party,” collectively, referred to herein as the “Cities” or “Parties”).

### **Recitals:**

**WHEREAS**, Garland and Seagoville are political subdivisions within the State of Texas, and each is engaged in the provision of governmental services for the benefit of its citizens; and

**WHEREAS**, both Garland and Seagoville are home rule municipalities as allowed by **Tex. Const. Art. 5**; and

**WHEREAS**, the Interlocal Cooperation Act, **Tex. Gov’t Code Ann. 791.001 et seq.** (the “Act”), provides authority for local governments of the State of Texas to enter into interlocal agreements with each other for the purpose of performing governmental functions and services as set forth in the Act; and

**WHEREAS**, Garland and Seagoville are local governments as that term is defined in the Act and this Master Agreement is being entered into pursuant to and under the authority of the Act; and

**WHEREAS**, municipalities own and operate radio systems and other public safety communication devices for the purpose of providing radio communications in support of their governmental operations; and

**WHEREAS**, the municipal radio systems and public safety communications devices periodically need repairs, upgrades, and routine maintenance; and

**WHEREAS**, in order to provide dependable/mission-critical radio service for use by each of the Cities and their respective users, Garland and Seagoville desire to enter into this Master Agreement to provide maintenance and repair services for said radio systems and public safety devices used by the Cities and their respective users, as such radio system coverage is essential and a necessary component of providing certain vital government services by each respective City, including, without limitation, police, fire, emergency medical and public works protection provided by each City to ensure safe, effective and efficient communications, and to benefit the greatest number of citizens both now and in the future; and

**WHEREAS**, this Master Agreement memorializes the agreement between the Cities regarding the maintenance and repair of the radio system and other public safety devices;

**NOW, THEREFORE**, for and in consideration of the mutual benefits and obligations set forth in this Master Agreement, the Cities agree as follows:

**Article 1 Definitions.**

Unless context clearly indicates a different meaning, the words and phrases set forth in this Article I shall have the following meanings when used in this Master Agreement and any Work Orders issued hereunder:

**“Business Day”** shall mean any day other than a Saturday, Sunday, or official City holiday in which either Garland’s or Seagoville’s City Hall offices are closed for business.

**“Consumables”** shall mean supplies or other materials other than specific parts or equipment which are used in the course of maintaining and/or repairing Covered Equipment. Examples include solvents, solder, wires, fuses, antennae, light bulbs, etc.

**“Covered Equipment”** shall mean the communications system equipment obtained through a separate contract between Seagoville and Motorola executed in 2018.:

- a) Infrastructure equipment consisting of four (4) GTR 8000 base stations, ,, one (1) LAN router/switch, and one (1) alarming system;
- b) Microwave radio equipment consisting of two (2) Cambium routers, DC power systems, and microwave radio equipment;
- c) Dispatch equipment, consisting of two (2) MCC7500 consoles.

The term “Covered Equipment” shall not be interpreted to include Subscriber Radios.

**“Covered Services”** shall mean those services described in Article 3 herein below, subject to changes set forth in any active Work Order. The term “Covered Services” applies only to the labor necessary to troubleshoot and repair the Covered Equipment, and specifically excludes parts, equipment, and consumables necessary for repairs and maintenance provided under the Master Agreement or any active Work Order.

**“Effective Date”** shall mean the later of the dates this Agreement is approved by the governing bodies of both Cities and signed by the authorized representatives of each City.

**“Governance Board”** means the administrative governing body tasked with the operation and administration of the System.

“**Special Projects**” shall mean IT services other than Covered Services that Garland may agree to perform for Seagoville on a case-by-case basis and which are ancillary to the Covered Services. The Cities retain the right to refuse to reach any agreement for Special Projects.

“**Subscriber Radios**” shall mean the APX4000, APX4500, APX6000, APX6500, APX7500, and APX8000 model radios that make up one component of the System.

“**System**” means the wide area, multi-site (“simulcast”) digital trunked radio system compliant with P-25 interoperability standards as more expressly defined in the CSA.

“**Work Order**” shall mean an annual agreement between Garland and Seagoville that is executed in accordance with and governed by this Master Agreement and which incorporates the terms of this Master Agreement therein by reference.

## **Article 2 Agreement to Perform Services.**

**2.01 Work performed.** Once a mutually agreed Work Order takes effect, Garland agrees to provide the Covered Services to Seagoville under the terms and conditions set forth herein, and any Special Projects to which the Parties may agree. Garland shall provide all necessary facilities, personnel, service documentation, transportation and software to maintain, install, program, and/or modify the Covered Equipment.

**2.02 Drive-in facility.** Garland will operate a drive-in maintenance facility for Seagoville to bring Subscriber Radios and other portable Covered Equipment for maintenance and repair. The facility shall be open on all Business Days.

**2.03 Service calls and response times.** Garland agrees to the following response times and conditions:

a) **Normal.** Garland shall provide field service for non-public safety fixed equipment during such dates and times as Garland City Hall may be open for business. Garland will respond to normal service calls within four (4) hours after Seagoville notifies Garland of the need for such services. Service notifications received after 1:00 p.m. may not be addressed until the following Business Day, depending on Garland’s volume of work and availability.

b) **Emergency.** Garland shall provide emergency field service within two (2) hours of notification, regardless of date or time, for Fire Station Alerting (FSA) equipment, public safety repeaters, base/control stations, consoles, voting equipment, and remotes.

**2.04 Customer support line.** Garland shall maintain a twenty-four (24) hour customer support telephone line for Seagoville to report any outages. Garland shall ensure the customer

support line is available each day of the year, including weekends and holidays.

**2.05 Notice by email.** For purposes of this Article 2, Seagoville may notify Garland by emailing the head of Garland's IT department or his designated proxy. Seagoville may also notify Garland by telephone by calling the customer support line.

### **Article 3 Covered Services.**

**3.01 Subscriber Radios.** Garland shall provide labor to perform technical troubleshooting of any Subscriber Radio.

**a) Maintenance issues, other.**

(1) During the troubleshooting process, if Garland determines the power cable, remote cables, power sources, antennas, or other peripheral equipment is the result of the radio failure, Garland shall notify Seagoville of the issue so that Seagoville may either provide Garland the appropriate equipment necessary to effect the repairs, or notify Garland, in writing, to obtain the necessary replacement equipment and invoice Seagoville for the necessary expense to purchase and obtain said equipment. Garland may, at its sole option, refuse to obtain any necessary replacement equipment and require Seagoville to do so at Seagoville's sole expense.

(2) If Garland determines that the Subscriber Radio failure resulted from any electrical malfunction of vehicle wiring and/or power sources, Garland will notify Seagoville. Repair of any damage caused by electrical malfunction shall be considered a Special Project. If the Cities do not agree to the Special Project, Garland shall return the damaged equipment to Seagoville at Seagoville's expense.

**b) Subscriber Radio service fees.**

(1) Garland shall charge Seagoville a monthly fee for making its technical troubleshooting services for each Subscriber Radio available to Seagoville as outlined herein below (the "Radio Fee").

(2) The Radio Fee shall be set forth in the Work Order.

(3) The total monthly Radio Fee for all Subscriber Radios combined shall be calculated by multiplying the total number of Subscriber Radios Seagoville possesses by the Radio Fee set forth in the Work Order ("Total Monthly Radio Fee"). The amount due for the entire year shall be determined by multiplying the Total Monthly Radio Fee by twelve (12) ("Total Annual Radio Fee").

(4) In the event Seagoville obtains additional Subscriber Radios during the pendency of a Work Order, it shall, within five (5) business days of taking possession of said Subscriber Radios, notify Garland, in writing, that it obtained additional Subscriber Radios and provide all necessary identifying information (model, serial numbers, etc.).

(5) Seagoville shall pay the Radio Fee for any new Subscriber Radio(s) at the time it notifies Garland of its acquisition as set forth in Section 3.01(b)(3), *supra*, beginning in the calendar month Seagoville notifies Garland of its acquisition of said Subscriber Radio. The total amount due for any new Subscriber Radio shall be calculated by multiplying the number of months remaining under the active Work Order, including the month in which Seagoville notified Garland of the acquisition, by the monthly Radio Fee set forth in the active Work Order.

(7) In the event Seagoville decreases the number of Subscriber Radios it possesses, it shall notify Garland within five (5) business days. Seagoville shall be entitled to a prorated refund of the Radio Fee for said Subscriber Radios, to be calculated by multiplying the amount of the Radio Fee by the remaining number of months the Work Order shall be in effect. The month in which Seagoville notifies Garland of the decrease in the number of Subscriber Radios shall not be included in this calculation.

**3.02 Manufacturer repairs.** In the event a Subscriber Radio needs to be sent to the manufacturer for repair, the following protocols shall apply.

a) **Shipping.** Garland shall send the Subscriber Radio to the manufacturer for repairs. Garland shall invoice Seagoville for any shipping and handling expenses Garland incurs in this process.

b) **Estimates; authorization.** Garland shall request the manufacturer provide an estimate for the cost of repairs and for the length of time the manufacturer estimates it will take to complete the repairs. Garland will forward this information, once provided by the manufacturer, to Seagoville prior to authorizing the repairs. Seagoville shall, upon receiving the manufacturer's estimate, notify Garland whether or not the manufacturer should proceed with the recommended repairs. The Parties mutually acknowledge that Garland shall not be held responsible in the event the manufacturer's final bill exceeds the preliminary estimate.

c) **Repair costs.** Garland shall bill Seagoville for any manufacturer depot repairs at the manufacturer's invoice amount, including any shipping and handling charges or other fees and costs the manufacturer may have invoiced.

d) **Reprogramming; installation.** Garland shall reprogram a Subscriber Radio returned from the manufacturer to the radio's specifications at the time Seagoville presented the Subscriber Radio to Garland for repairs. Garland shall then reinstall the Subscriber Radio into the Seagoville vehicle (if necessary), and ensure that the Subscriber Radio is activated on the radio System servers.

**3.03 Spare radios.** At times, the Parties recognize that Seagoville may periodically need a temporary replacement radio for use while a Subscriber Radio is being serviced, maintained, or repaired. Upon Seagoville's request, Garland shall program a spare radio and, if requested, install the spare radio into Seagoville's vehicle. Seagoville shall be solely responsible for obtaining and providing the spare radio at its own expense.

**3.04 Covered Services.** In addition to the foregoing services for Subscriber Radios, the following shall be considered "Covered Services":

a) **Covered equipment.** Garland shall provide labor to troubleshoot the Covered Equipment.

b) **On-site equipment.** Garland shall provide on-site troubleshooting and repair services for the Covered Equipment.

c) **Call management services.** Garland shall provide call management services for any issues with the infrastructure equipment, dispatch equipment, or Subscriber Radios.

**3.05 Annual preventative maintenance.** Garland shall provide the manufacturer's recommended annual preventative maintenance measures for the Covered Equipment.

**3.06 Replacement parts.** Garland shall bill Seagoville for any necessary replacement parts at Garland's cost.

**3.07 Consumables.** Garland shall bill Seagoville any Consumables necessary to repair the Covered Equipment at Garland's cost.

**3.08 Exclusions.** The following items are explicitly excluded from Covered Services: tower, generator, and power systems.

**3.09 Notice by email.** For purposes of this Article 3, Seagoville may satisfy any notice requirements contained herein by emailing the head of Garland's IT department or his designated proxy. Seagoville may also notify Garland by telephone by calling the customer support line. Likewise, Garland may satisfy any notice requirements by emailing the head of Seagoville's IT department or his designated proxy.

#### **Article 4      Special Projects.**

**4.01** The Parties recognize that Seagoville may, from time to time, request Garland provide services related to Seagoville's communications system, which are not covered by the terms of this Master Agreement or the active Work Order. These services, referred to herein as "Special Projects", may require Garland to perform electronic, electrical, and mechanical design, installation and/or modification of various equipment and sub-systems to achieve the outcome Seagoville desires. Upon Seagoville's written request, Garland may, at its sole discretion, prepare a written proposal for Seagoville's review and approval for any such Special Project. The Parties agree that the proposal is only an estimate of the cost to perform the Special Project. If the actual cost to perform the Special Project has or will exceed the estimated amount of the proposal by more than ten percent (10%), then Garland will stop work and notify Seagoville prior to proceeding with the services. Seagoville shall decide whether Garland should continue the Project, and shall notify Garland of its decision. In the event the final invoice reflecting Garland's actual costs for parts, equipment, consumables and time varies from the written proposal and Seagoville was notified and agreed to the increased cost, the final invoice shall control.

**4.02 Programming.** Any programming, alignment, tuning, or firmware updates other those set forth in Sections 3.02(c) and 3.03 above shall be considered a Special Project.

**4.03 Cost.** For any Special Projects, Garland shall invoice Seagoville as follows:

- a) **Parts and equipment.** Garland shall invoice Seagoville for parts and equipment at Garland's actual cost, including any applicable shipping and handling fees Garland incurs.
- b) **Consumables.** Garland shall invoice Seagoville for consumables used in any Special Projects at Garland's actual cost, including any applicable shipping and handling fees Garland may incur.
- c) **Labor.** Garland shall invoice Seagoville for labor on an hourly rate. The Special Project's rate shall be that set forth in the current Work Order. In the event a given Special Project spans multiple Work Orders, the hourly rate shall be the rate designated in the Work Order in effect at the time Seagoville approves Garland's proposal. A minimum of one hour of labor shall be charged for any Special Project.

## **Article 5 Work Orders.**

**5.01 Negotiation of Work Orders.** The Parties shall begin negotiations for a new Work Order in sufficient time for the Work Order and any associated fees and expenses to be accounted for in each City's budgeting process.

**5.02 Subject to Master Agreement.** Each Work Order shall state that it is subject to the

terms and conditions of this Master Agreement. In the event of a conflict between the terms of a particular Work Order and this Agreement, the Work Order terms shall apply.

**5.03 Work Order Fees.** Each Work Order shall indicate the following:

- a) The annual fee Garland will charge Seagoville to provide the Covered Services;
- b) The hourly rate Garland will charge Seagoville for any Special Project;
- c) The amount of the Radio Fee for each of the Subscriber Radios; and
- d) Whether any additional equipment beyond that described in this Master Agreement shall, for the duration of that particular Work Order, be considered Covered Equipment.

**5.04 Term of Work Orders.** Unless the terms of an individual Work Order state to the contrary, each Work Order shall begin at midnight on October 1 of a given calendar year and shall continue through 11:59 p.m. on September 30 of the following calendar year.

## **Article 6      Payment**

**6.01 Annual Covered Services Fee.** Seagoville shall pay Garland the annual fee for Covered Services no later than ten (10) business days after each Work Order takes effect.

**6.02 Radio Fees.** Seagoville shall pay Garland the Total Annual Radio Fee at the same time it pays the annual Covered Services fee described in Section 6.01, *supra*.

**6.03 Invoices.** Garland shall periodically invoice Seagoville for any parts, consumables, labor or other charges not included in the Covered Services. Payment for these periodic invoices is due thirty (30) days after issuance. To the extent any invoice includes pass-through charges for equipment or manufacturer repairs not covered by warranty, Garland shall provide documentation of the expense for Seagoville's records. If Seagoville fails to pay an invoice within ninety (90) days after issuance, the failure to pay shall be considered a breach of this Master Agreement.

**6.04 Interest.** Garland shall not charge Seagoville interest for the first thirty (30) days after Garland issues and sends Seagoville an invoice. Beginning on the thirty-first (31<sup>st</sup>) day, Seagoville shall pay Garland interest on any outstanding invoice(s) at the rate authorized pursuant to Chapter 2251 of the Texas Government Code.

## **Article 7      Term**

**7.01 Term of Master Agreement.** This Master Agreement shall commence on the Effective

Date and shall continue until and including September 30, 2026 (the “Initial Term”), unless terminated earlier as provided herein. Unless terminated earlier as provided herein, following the Initial Term, this Master Agreement shall automatically renew for successive terms of three (3) years each beginning October 1, 2026 and continuing on October 1<sup>st</sup> of each third calendar year thereafter (each a “Renewal Term” and collectively the “Renewal Terms”) unless either Party elects not to renew this Master Agreement. A Party shall provide written notice to the other Party that it does not wish to renew this Master Agreement at least five hundred and forty (540) days prior to the end of the Initial Term or the then current Renewal Term, as applicable. The Initial Term and all Renewal Terms shall collectively be referred to herein as the “Term”.

**7.02 Termination in Event of Non-Appropriation of Funds.** As home rule municipalities in the State of Texas, both Parties are subject to **Tex. Const. art. III, § 52-a** prohibiting unfunded debt. All expenditures to be made by each City under the terms of this Master Agreement and any associated Work Order shall be subject to such City's appropriation of funds for such purpose to be paid in the fiscal year for which such expenditure is to be made and shall be paid only from funds of such City authorized by Article III, Section 52a of the Texas Constitution. Each Party agrees to give the other Party at least ninety (90) days prior written notice if such Party anticipates that funds may not be appropriated to meet its obligations under the terms of either this Master Agreement or any associated Work Order for the City's next fiscal year. In the event the City Council of either City fails to appropriate funds in any fiscal year during the Term of this Master Agreement and any associated Work Order for the payment of all obligations of such City under the terms of this Master Agreement and any associated Work Order for such fiscal year, such Party shall have the right to terminate this Master Agreement and any associated Work Order by giving the other Party written notice of the non-appropriation of funds within five (5) days after such City fails to appropriate the necessary funds. The termination of this Master Agreement and/or any associated Work Order as a result of either Party's failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated.

**7.03 Early Termination.** Notwithstanding anything to the contrary herein, either Party may terminate this Master Agreement without cause prior to the end of the Initial Term subject to the following:

- a) The Party desiring to terminate this Master Agreement must give the other Party at least two hundred and ten (210) days prior written notice of termination; and
- b) The termination date shall be at 11:59 p.m. on the first September 30<sup>th</sup> after passage of the two hundred and ten (210) day notice period.

**7.04 Effect of Termination of Master Agreement Pursuant to Sections 7.02 or 7.03.** In the event either Party terminates this Master Agreement pursuant to Section 7.02 or 7.03 above, the following provisions shall apply:

a) Prior to the date of termination, the terminating Party must pay any remaining financial obligations related to the active Work Order which were incurred or accrued prior to the date of the termination; and

b) The provisions of this Section 7.04 shall expressly survive the termination of this Master Agreement.

**7.05 Notice of termination.** No Notice of Termination shall be effective unless given in accordance with the provisions of Article 10.18 below.

**7.06 Effect of termination.** Any Work Order in effect at the time this Master Agreement terminates is likewise terminated. Any amounts due and owing pursuant to such Work Order, less any agreed offsets, shall be paid within thirty (30) days.

## **Article 8 Performance**

**8.01 Priority and order of work.** Garland shall have the right to determine the time, order, and priority in which its obligations under this Master Agreement shall be performed under each Work Order, as well as any other matters relative to the timely and orderly conduct of Garland's work.

**8.02 Clean up.** For repairs and maintenance performed within the corporate limits of Seagoville, Garland agrees to clean up all debris, trash, and refuse generated by its work at the end of each work day, and shall otherwise leave its work area clean and free of debris.

## **Article 9 Dispute Resolution**

**9.01** In the event of a dispute between the parties regarding the terms, performance, or any other aspect of this agreement, the parties shall attempt to resolve the dispute as set forth in this Section.

**9.02 Opportunity to cure.** If a Party asserts that the other Party has breached any provision of this Master Agreement or any active Work Order, the non-breaching Party shall provide the other Party written notification of the alleged breach, describing the facts and circumstances the non-breaching Party claims constitutes the breach. The other Party shall have one hundred and twenty (120) days to cure any such breach.

**9.03 Informal mediation.** The Cities agree that, in the event of a dispute, the appropriate technical directors and other City officials, including, but not limited to, a representative from each City's City Attorney's office and one of the three persons appointed by each City to the Governance Board, shall conduct a meeting, via telephone or in person, and shall conduct a substantive discussion of each and every dispute in a good faith effort to resolve the dispute.

**9.04 Formal mediation.** In the event the Parties are unable to resolve the dispute through the informal mediation procedure set forth above, the parties shall submit the dispute to formal mediation to be conducted at a mutually acceptable location in Dallas County, Texas. Formal mediation shall be a prerequisite for filing suit. The mediator shall be selected as follows:

- a) The Parties may jointly agree upon a particular mediator. All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.
- b) If the Parties are unable to jointly agree upon a mediator, the parties shall request the American Arbitration Association (“AAA”) appoint a mediator and conduct the mediation under the AAA’s Commercial Mediation Procedures. All expenses of the mediation, including any fees imposed by the AAA as well as any required traveling and other expenses or charges of the mediator, shall be borne equally by the parties. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

**9.05 Litigation.** In the event the parties are unable to resolve any dispute through either informal or formal mediation, the dispute may be pursued through litigation.

**9.06 Venue.** The exclusive venue for all disputes shall be in any civil District Court of Dallas County, Texas.

**9.07 Recovery of litigation costs.** The prevailing party shall be entitled to recover its costs, reasonable expenses, expert fees and reasonable attorneys' fees incurred in connection with such dispute, including expenses incurred through the Formal Mediation process described in Section 9.04. For purposes of this section, a claimant or plaintiff is a “prevailing party” if it recovers at least eighty percent (80%) of the monies it seeks as damages, or obtains all injunctive relief it might seek, otherwise, the respondent or defendant shall be the prevailing party. If both Parties are “prevailing parties” or if neither Party is a “prevailing party”, then each side shall bear its own costs, reasonable expenses, expert fees and reasonable attorney’s fees.

## **Article 10 Miscellaneous Provisions**

**10.01 All modifications in writing.** This Master Agreement may be modified only by a writing signed by both Cities that expressly calls for its modification and not by implication from any other written document or oral agreement. This shall not prevent other documents from being incorporated by reference.

**10.02 Severability.** Should any part, term, or provision of this Master Agreement or any Work Order governed by this Master Agreement be held void, illegal, or unenforceable, the validity of the remaining portions or provisions shall not be affected thereby. However, in such event, said

part, term, or provision of this Master Agreement and/or any active Work Order issued pursuant thereto shall be modified to the minimum extent necessary to conform to the requirements of such law and be valid and enforceable, and as so modified, shall continue in full force and effect. The failure of either Party to insist upon the performance of any of the terms, covenants, or conditions of the Master Agreement and/or Work Order, or to exercise any right granted to such Party therein, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

**10.03 Entirety of agreement.** This Master Agreement is solely for the benefit of the Parties to said Master Agreement, and represents the entire and integrated Master Agreement between the Parties, subject to any active Work Orders issued pursuant to this Master Agreement, and any exhibits hereto; and supersedes all prior negotiations, representations, and agreements, whether oral or written, and does not create a third party benefit or obligation to anyone not a party hereto.

**10.04 Assignment.** Neither Party shall assign, sublet, subcontract, or transfer any interest in this Master Agreement or any Work Orders governed by this Master Agreement without prior written consent of the other Party, which consent may be withheld at that Party's sole discretion. No assignment, delegation of duties or subcontract under this Master Agreement or any associated Work Order(s) will be effective and enforceable without the written consent of both Parties.

**10.05 No creation of debt.** To the extent, if any, that this Master Agreement or any active Work Order imposes an obligation on either City to make a payment or other expenditure of any sort, such payment or expenditure shall be payable solely from current revenues that are immediately available for such purposes, and no debt is or is intended to be created by reason of said Master Agreement or Work Order. All obligations of a City under this Master Agreement and any active Work Order are payable solely from that City's operations budget in parity with all other operating expenses of that City and no ad valorem tax revenue or other revenues of that City shall in any manner be pledged or be deemed to have been pledged to the payment of any amounts under this Master Agreement or any active Work Order nor shall any Party have the right to demand payment of any amounts under same be paid from funds raised or to be raised from ad valorem taxation. The obligations under this Master Agreement and active Work Order shall never be construed to be a debt or pecuniary obligation of either City of such kind as to require the City to levy and collect ad valorem taxes to discharge its obligations and no obligation of either City to make a payment or other expenditure under same shall be payable through funds raised by taxation. Neither City has created and is not required to create any sort of sinking fund to secure the obligations of payment or other expenditure under this Master Agreement and active Work Order. To the extent not otherwise covered in this Master Agreement and active Work Order, each City retains its governmental and sovereign immunities and its limitations of liability. The Parties agree that each City is entering into this Master Agreement and any Work Order governed by same in its governmental capacity and the subject and nature of these agreements are governmental rather than proprietary. In any event, the

procedures and limitations of Chapter 271, Texas Local Government Code apply.

**10.06 Validity of conflicting terms.** Any provision of this Master Agreement or any active Work Order is void and unenforceable if it: (1) limits or releases either Party from liability that would exist by law in the absence of the provision; (2) creates liability for either Party that would not exist by law in the absence of the provision; or (3) waives or limits either Party's rights, defenses, remedies, or immunities that would exist by law in the absence of the provision.

**10.07 Notices.** Except as otherwise provided herein above, any notice required or desired to be given from one Party to the other Party to this Master Agreement or any active Work Order shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the recipient Party's City Secretary at the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to the City Secretary of the recipient Party at the address hereinafter specified; or (iii) delivered to such Party's City Secretary by courier receipted delivery. Either Party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other Party, the last address of such Party designated for notice shall remain such Party's address for notice.

**10.08 Waiver.** Either City shall have the right to waive any requirement contained in this Master Agreement (or any active Work Order) which is intended for the waiving Party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the Party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Master Agreement or any active Work Order shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

**10.09 Paragraph Headings; Construction.** The paragraph headings contained in this Master Agreement and any active Work Order are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both Parties have participated in the negotiation and preparation of same, and this Master Agreement and any active Work Order shall not be construed either more or less strongly against or for either Party.

**10.10 Binding Effect.** Except as limited herein, the terms and provisions of this Master Agreement and any active Work Order shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

**10.11 Counterparts.** This Master Agreement and any Work Order governed thereby may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**10.12 Exhibits.** All exhibits to this Master Agreement and any active Work Order are incorporated herein by reference for all purposes wherever reference is made to the same.

**10.13 Computation of Deadlines.** If any deadline contained herein ends on a Saturday, Sunday or a legal holiday recognized by the Texas Supreme Court, such deadline shall automatically be extended to the next day that is not a Saturday, Sunday or legal holiday.

**10.14 Relationship of Parties; No Third-Party Beneficiaries.** Nothing contained in this Master Agreement or any Work Orders governed thereby shall be deemed or construed by the Parties hereto or by any third party to create the relationship of principal and agent or of partnership, joint venture, or employment, it being expressly understood and agreed that no provision contained in said documents nor any act or acts of the Parties hereto shall be deemed to create any relationship between the Parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Master Agreement and any Work Order governed thereby. Neither Party has the authority to enter into contracts or to assume any obligation for the other, nor to make warranties or representations on behalf of the other except in accordance with the express terms of this Master Agreement and associated Work Orders or as otherwise authorized in writing by the other. There are no third-party beneficiaries to this Master Agreement or any associated Work Orders and no third-party beneficiaries are intended by implication or otherwise.

**10.15 Force Majeure.** Notwithstanding anything in this Master Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados) labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay.

**10.16 No Waiver of Immunity or Defense.** No Party, by execution of this Master Agreement, waives nor shall be deemed to have waived, any immunity or defense that would otherwise be available to it including, without limitation, immunity from liability and suit for damages to one another or to any third-party except as otherwise provided by law. By entering into this Master Agreement and /or any Work Order(s) governed by this Master Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

**10.17 AS-IS.** THE WARRANTIES CONTAINED IN THIS MASTER AGREEMENT AND ANY ASSOCIATED WORK ORDERS ARE IN LIEU OF ALL OTHER WARRANTIES,

EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE GOODS AND SERVICES BEING PROVIDED UNDER THIS MASTER AGREEMENT AND ANY ASSOCIATED WORK ORDERS ARE BEING OFFERED AND SOLD AS IS.

SEAGOVILLE AGREES THAT GARLAND SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFIT OR REVENUE ARISING FROM THE PROVISION OF GOODS OR SERVICES UNDER THIS MASTER AGREEMENT AND ANY ASSOCIATED WORK ORDERS EVEN IF GARLAND HAS BEEN ADVISED OF SUCH POSSIBILITY. IN NO EVENT SHALL DAMAGES TO SEAGOVILLE, WHETHER ARISING FROM BREACH OF CONTRACT OR WARRANTY, BY TORT, STRICT LIABILITY OR OTHERWISE EXCEED THE AMOUNT PAID BY SEAGOVILLE UNDER THIS MASTER AGREEMENT AND ANY WORK ORDER IN EFFECT AT THE TIME SUCH DAMAGES AROSE. IF THE EVENT OR OCCURRENCE SPANS MULTIPLE WORK ORDERS, GARLAND'S DAMAGES SHALL BE LIMITED TO THE AMOUNT PAID BY SEAGOVILLE FOR THE EARLIEST INDIVIDUAL WORK ORDER, ALL OTHER WORK ORDERS BEING DISREGARDED FOR DAMAGE CALCULATION PURPOSES.

**SEAGOVILLE WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, SEAGOVILLE VOLUNTARILY CONSENTS TO THIS WAIVER.**

**10.18 Addresses.** The following addresses shall be used for purposes of satisfying the notice provisions of Articles 7, 9 or 10:

- a) City Secretary  
City of Garland, Texas  
200 North Fifth Street  
Garland, Texas 75040
  
- b) City Secretary  
City of Seagoville, Texas  
701 North Highway 75  
Seagoville, Texas 75159

**10.19 Warranty.** Garland makes no warranties regarding its work and expressly disclaims any and all such warranties. To the extent this Master Agreement discusses warranty work, it is referring only to the warranty agreement between the manufacturer and Seagoville covering the Subscriber Radios and associated equipment. The Parties agree that any disputes regarding the

quality of any manufacturer repairs, the existence or extent of any manufacturer's warranty, and any terms of said warranty are solely between Seagoville and the manufacturer.

**10.21 Time is of the Essence.** The Parties agree that time is of the essence in the performance of this Master Agreement.

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

**CITY OF GARLAND, TEXAS**

By: \_\_\_\_\_  
Bryan Bradford  
City Manager

Approved as to form:

\_\_\_\_\_  
Stephen M. Hines  
Sr. Assistant City Attorney

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

**CITY OF SEAGOVILLE, TEXAS**

By: \_\_\_\_\_  
Patrick Stallings  
City Manager

Approved as to form:

\_\_\_\_\_  
Ray Calverley  
Police Chief

## *Regular Session Agenda Item: 8*

**Meeting Date: December 21, 2020**

### **ITEM DESCRIPTION:**

Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas, authorizing the City Manager to enter into a Master Interlocal Radio Service Agreement (the “Work Order”) with the City of Garland, Texas (“Garland”); attached hereto as Exhibit “A”; repealing all Resolutions in conflict; providing an effective date.

### **BACKGROUND OF ISSUE:**

Garland and Seagoville entered into a Master Interlocal Radio Service Agreement on or about November 8, 2020. The Cities desire to identify the scope of the work and cost thereof for the 2020-2021 fiscal year, which has, been budgeted.

### **FINANCIAL IMPACT:**

The total cost is \$23,400.00 which has been budgeted for the fiscal year 2020-2021 under Support Services.

### **RECOMMENDATION:**

N/A

### **EXHIBITS:**

## RESOLUTION

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO A MASTER INTERLOCAL RADIO SERVICE AGREEMENT (THE “WORK ORDER”) WITH THE CITY OF GARLAND, TEXAS (“GARLAND”); ATTACHED HERETO AS EXHIBIT “A”; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Garland and Seagoville entered into a Master Interlocal Radio Service Agreement (“Master Agreement”) on or about November 8, 2020; and

**WHEREAS**, the Cities desire to identify the scope of the work and cost thereof for the 2020-2021 fiscal year, which has, been budgeted;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, THAT:**

**SECTION 1.** The City Council hereby approves the Master Interlocal Radio Service Agreement with the City of Garland attached hereto as Exhibit “A”.

**SECTION 2.** Any prior resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

**SECTION 3.** This resolution shall take effect immediately from and after its passage, and it is duly resolved.

**DULY PASSED** and approved by the City Council of the City of Seagoville, Texas, on this the 21<sup>st</sup> day of December, 2020.

**APPROVED:**

---

Dennis K. Childress, Mayor

**ATTEST:**

---

Kandi Jackson, City Secretary

**APPROVED AS TO FORM:**

---

Victoria W. Thomas, City Attorney

**WORK ORDER SUBJECT TO THE TERMS AND CONDITIONS  
OF MASTER INTERLOCAL RADIO SERVICES AGREEMENT**

This Work Order Subject to the Terms and Conditions of the Master Interlocal Radio System Service Agreement (the “Work Order”) is entered into between the City of Garland, Texas (“Garland”) and the City of Seagoville, Texas, (“Seagoville”) (individually, Garland and Seagoville are also referred to as a “Party,” collectively, referred to herein as the “Cities” or “Parties”).

**WHEREAS**, Garland and Seagoville entered into a Master Interlocal Radio Service Agreement (“Master Agreement”) on or about November 8, 2020; and

**WHEREAS**, the Cities desire to identify the scope of the work and cost thereof for the 2020-2021 fiscal year;

**NOW, THEREFORE**, for and in consideration of the mutual benefits and obligations set forth in this Work Order, the Cities agree as follows:

**2020.001      Incorporation by reference.** This Work Order is subject to the terms and conditions of the Master Agreement, the terms of which are incorporated herein by reference.

**2020.002      Duration.** This Work Order shall be in effect from midnight, October 1, 2020, through 11:59 p.m., September 30, 2021.

**2020.003      Services provided.** During the pendency of this Work Order, Garland agrees to provide the services described in Articles 2 and 3 of the Master Agreement.

**2020.004      Fees.** Seagoville shall pay Garland for these services as follows:

(a)      **Subscriber fees.** Seagoville shall pay Garland Five and No/100 Dollars (\$5.00) per month for each mobile, portable, and control station subscriber. Additional Subscribers may be added at any time by paying this fee in full.

Subscriber Technical Support	\$6,900.00
------------------------------	------------

(b)      **Covered Services.** Seagoville agrees to pay Garland the lump sum of Sixteen thousand, Five hundred Dollars and Zero Cents (\$16,500.00) for the remaining Covered Services, said payment to be made on or before November 15, 2020. The Parties agree that, pursuant to the Master Agreement, the term “Covered Services” applies only to the labor necessary to troubleshoot and repair the Covered Equipment, and specifically excludes equipment, parts, and Consumables necessary for repairs and maintenance. These items, as well as any shipping and handling fees Garland incurs in sending any Covered Equipment or Subscriber Radios to the manufacturer for repairs (and any manufacturer fees, including shipping and handling fees, for any out-of-warranty repair work) shall be invoiced to Seagoville on a periodic basis.

On-Site Infrastructure Technical Support	\$9,500.00
On-Site FSA Technical Support	\$1,000.00
On-Site Microwave Technical Support	\$4,000.00
On-Site Infrastructure Preventive Maint.	<u>\$2,000.00</u>
Total	\$16,500.00

(c) **Special Project rate.** Pursuant to Section 4.03(c) of the Master Agreement, for any Special Project approved by Seagoville during the pendency of this Work Order, Garland shall charge Seagoville the rate of Eighty-five Dollars (\$85) per hour, with one hour minimum, for work performed on that Special Project, plus any applicable expenses for shipping and handling fees, equipment, parts, and Consumables necessary for repairs and maintenance. Garland shall invoice Seagoville for these fees and expenses on a periodic basis.

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

**CITY OF GARLAND, TEXAS**

\_\_\_\_\_  
 Bryan Bradford  
 City Manager

Approved as to form:

\_\_\_\_\_  
 Stephen M. Hines  
 Sr. Assistant City Attorney

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

**CITY OF SEAGOVILLE, TEXAS**

\_\_\_\_\_  
 Patrick Stallings  
 City Manager

Approved as to form:

\_\_\_\_\_  
 Ray Calverley  
 Police Chief

## *Regular Session Agenda Item: 9*

**Meeting Date: December 21, 2020**

### **ITEM DESCRIPTION:**

Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas authorizing the City Manager to sign a Master Interlocal Agreement with Dallas County for participation in the Major Capital Improvement Projects (MCIP) for the purpose of transportation improvements on roads inside Dallas County that are in the Dallas County Mobility Plan, said agreement to be in substantially the form of that attached hereto as Exhibit "A"; providing for the repeal of any and all Resolutions in conflict; providing for a severability clause; and providing an effective date.

### **BACKGROUND OF ISSUE:**

The City of Seagoville desires to enter into a Master Agreement with Dallas County for the participation in the Major Capital Improvement Program ("MCIP"). The approved MCIP project lists and MCIP funding commitment amounts may be modified, updated or approved by the Commissioners Court on a periodic, as-needed basis. Chapter 791 of the Texas Government Code, as amended, provides authorization for local governments to enter into interlocal government agreements.

### **FINANCIAL IMPACT:**

N/A

### **RECOMMENDATION:**

### **EXHIBITS:**

Resolution  
Agreement

**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS  
RESOLUTION NO. \_\_-R-2020**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS AUTHORIZING THE CITY MANAGER TO SIGN A MASTER INTERLOCAL AGREEMENT WITH DALLAS COUNTY FOR PARTICIPATION IN THE MAJOR CAPITAL IMPROVEMENT PROJECTS (MCIP) FOR THE PURPOSE OF TRANSPORTATION IMPROVEMENTS ON ROADS INSIDE DALLAS COUNTY THAT ARE IN THE DALLAS COUNTY MOBILITY PLAN, SAID AGREEMENT TO BE IN SUBSTANTIALLY THE FORM OF THAT ATTACHED HERETO AS EXHIBIT "A"; PROVIDING FOR THE REPEAL OF ANY AND ALL RESOLUTIONS IN CONFLICT; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Seagoville, Texas desires to enter into a Master Interlocal Agreement with Dallas County for the participation in the Major capital Improvements Project ("MCIP"); and

**WHEREAS**, Chapter 791 of the Texas Government Code, as amended, provides authorization for local governments to enter into such interlocal government agreements.

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

**SECTION 1.** The City Council hereby authorizes the City Manager to execute, on behalf of the City, a Master Interlocal Agreement, in substantially the form of that attached hereto as Exhibit "A", with Dallas County for participation in the MCIP.

**SECTION 2.** All resolutions of the City of Seagoville 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 of Seagoville not in conflict with the provisions hereof shall remain in full force and effect.

**SECTION 3.**

This resolution shall take effect immediately from and after its passage and it is accordingly resolved.

**DULY ORDERED** by the City Council of the City of Seagoville, Texas, this the 21<sup>st</sup> day of December, 2020.

**APPROVED:**

---

Dennis K. Childress, Mayor

**ATTEST:**

---

Kandi Jackson, City Secretary

**APPROVED AS TO FORM:**

---

Victoria Thomas, City Attorney  
(121720vwtTM119745)



**MASTER AGREEMENT GOVERNING  
MAJOR CAPITAL IMPROVEMENT PROGRAM**

**THIS MASTER AGREEMENT** is made by and between the City/Town of \_\_\_\_\_, Texas, hereinafter ("City") or ("Town"), and Dallas County, hereinafter ("County"), acting by and through its duly authorized officials, which desire to enter into an Interlocal Agreement, hereinafter ("Master Agreement") for the purpose of transportation improvements on roads inside Dallas County that are in the Dallas County Mobility Plan, hereinafter ("Mobility Plan").

**WITNESSETH**

**WHEREAS**, pursuant to Court Order \_\_\_\_\_, dated \_\_\_\_\_, County Commissioners Court approved participation in Transportation Major Capital Improvement Program ("MCIP") within the cities and towns inside Dallas County; and

**WHEREAS**, the approved MCIP project lists and MCIP funding commitment amounts may be modified, updated or approved by the Commissioners Court on a periodic, as-needed basis; and

**WHEREAS**, Chapter 791 of the Texas Government Code, as amended, provides authorization for local governments to enter into interlocal agreements; and

**NOW THEREFORE, THIS AGREEMENT** is hereby made and entered into by City/Town and County for the mutual consideration stated herein:

**ARTICLE I. DEFINITIONS**

The following definitions are incorporated into this agreement for all purposes.

- A. **AMENDMENT** shall mean a written document executed by all parties detailing changes, additions or deletions in the Master Agreement.
- B. **AMENITY** shall mean Project features not included in the Standard Basic Project Design including but not limited to street pavers, colored concrete, planters, irrigation, decorative lighting, special signage, or any other feature above and beyond the Standard Basic Project Design or any increase in capacity in excess of County determined requirements based on anticipated future traffic flow.
- C. **CITY/TOWN** shall mean the City/Town of \_\_\_\_\_, Dallas County, Texas.
- D. **CONTEXT SENSITIVE SOLUTIONS ("CSS")** is a collaborative, interdisciplinary approach that involves all stakeholders to develop a transportation facility that fits its physical setting and preserves scenic, aesthetic, historic and environmental resources, while maintaining safety and mobility. CSS is an approach that considers the total context within which a transportation improvement project will exist. CSS principles include the employment of early, continuous and meaningful involvement of the public and all stakeholders throughout the project development process. It is the intent of the Dallas County Public Works Department to

use the essential elements of CSS in all approaches to deliver the project. Some projects will dictate a very intense use of CSS, while others will only use a few of the elements, but the County will always consider CSS.

- E. **COUNTY** shall mean County of Dallas, State of Texas.
- F. **DIRECT PROJECT and PROGRAM COSTS** shall mean those costs that can be identified specifically with a particular project or program cost objective. These costs generally include compensation of employees for the time devoted and identified specifically to the performance of the project or program, cost of materials acquired, consumed or expended specifically for the purpose of the project or program; equipment changes; damage claims and other approved capital expenditures; change orders; travel expenses incurred specifically to carry out the project including, but not limited to, design, right-of-way, road or street drainage, utility relocation and adjustment, and construction. Direct Cost does not include the City/Town or the County's general overhead.
- G. **EFFECTIVE DATE** shall mean the date of the signature of the last person necessary for this Master Agreement to become effective.
- H. **FIVE PHASE PROJECT DELIVERY SYSTEM** shall mean the process for delivering a project from conception to completion as detailed in Attachment A, Project Management Practices Manual ("Practices Manual" or "Attachment A"), which is attached hereto and incorporated herein by reference, as well as any amendments, updates, additions, or supplements thereto, which are also incorporated herein by reference. This Master Agreement references the most current edition of the Practices Manual. Amendments, updates, additions, or supplements may be issued by the Dallas County Public Works Department to the Practices Manual, which may be provided to the city/town on an as-needed basis during the term of this Master Agreement. The five phases of the project delivery system are planning, design, right-of-way, utility clearance, and construction.
- I. **FUNDING AGREEMENT ("FA")** shall mean the agreement between the County and a City/Town to establish a preliminary proposed budget for a project, including the required funding match from the City/Town in an amount equal to or greater than County MCIP funding commitment. As design is completed and the engineering estimate is refined, the Funding Agreement ("FA") shall be incorporated into the Project Specific Agreement ("PSA"). A FA and/or PSA is necessary before beginning engineering design.
- J. **INDIRECT COSTS** shall mean those costs that benefit more than one project and cannot be readily identified with a particular final project or program cost objective. Their precise benefits to a specific project are often difficult or impossible to trace.
- K. **IN-HOUSE PROJECT DELIVERY COSTS ("IHPD")** shall mean all costs associated with the development of the Major Capital Improvement Program (MCIP) "Call for Projects", selection of projects, scoping of projects, project design, property acquisition and construction of projects. Cost Accounting shall include but is not limited to employee time reimbursement, materials, equipment, and other expenditures necessary for the management and continuation of the MCIP.
- L. **INTERLOCAL AGREEMENTS** shall mean contracts or agreements entered into between City/Town and County in accordance with the Texas Government Code, Chapter 791.
- M. **LEAD AGENCY** shall mean that entity responsible for project management, including, but not limited to planning, design, right-of-way acquisition, approved utility relocation or adjustment and construction unless otherwise designated.

- N. **MASTER AGREEMENT (“MA”)** shall mean this document including all incorporated documents, attachments, and exhibits.
- O. **MEMORANDUM OF AGREEMENT (“MOA”)** shall mean a written document that includes, but is not limited to a MOA, MOU, FA, and/or PSA, which incorporates the results of the Preliminary Design Charrette.
- P. **MEMORANDUM OF UNDERSTANDING “MOU”)** shall mean a written document that includes, but is not limited to a MOA, MOU, FA, and/or PSA, which incorporates the results of the Preliminary Design Charrette.
- Q. **MULTI-MODAL CONNECTIVITY IMPROVEMENTS** shall mean projects which comply with the concepts in the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (“MAP-21”), any supplements and/or amendments thereto, or any future federal transportation acts which increase safety, accessibility, flexibility, efficiency, and enhance the integration and connectivity of the transportation system, across and between modes throughout the County for motorized and non-motorized users.
- R. **ORPHAN ROADS** shall mean all or part of a street or road right-of-way, which are outside the incorporated limits of a municipality (or municipalities) and the incorporated area of the municipality (or municipalities) abuts or extends into the right-of-way. These roadway segments have, in effect, been “orphaned” by the abutting City/Town (or cities) that they serve in that they have been left unincorporated. Thus, the County has primary responsibility for maintenance, operation, enforcement, police and/or emergency services within these unincorporated rights of way.
- S. **PARCEL OR PARCELS** shall mean those portions or part of land and improvements located either wholly or partially thereon, identified by County, City/Town or other stakeholder as required for right-of-way requirements of the Project. Such right-of-way shall include the existing street, road, drainage or other City/Town or County real property ownership and all additional real property to be utilized for the Project.
- T. **PRELIMINARY CONCEPT CHARRETTE (“PCC”)** shall have the same meanings and purposes as the Preliminary Design Charrette, but be conducted very early in the design start, before substantial design is underway. The conditions for which a PCC is appropriate will be determined by the lead agency. Use of CSS will usually mean that a PCC will be conducted, since its use fits perfectly into CSS concepts. Other conditions encountered may dictate the use of a PCC, such as poor soils, presence of unconsolidated solid waste dumps, innovative integration of master planning with project delivery, unusual right-of-way (“ROW”) challenges, budgetary constraints (thus calling for significant Value Engineering efforts), etc. The results of properly using a PCC will be that early consensus will be achieved on a basic approach to the project design and construction, thus avoiding wasted design funding and loss of momentum for project delivery.
- U. **PRELIMINARY DESIGN CHARRETTE (“PDC”)** shall mean meetings of representatives of independent engineers and stakeholders of the contracting parties of the project for the purpose of discussing feasible design alternatives, forging consensus for the selected alternative, and includes entering into a MOA, MOU, FA, and/or a PSA for the overall estimate, alignment, and scope of the project. The PDC will be scheduled when the preliminary design is complete or near completion. This means horizontal and vertical alignment alternatives have been designed, ROW requirements are at least approximately known for each alternative, and the design is 40% to 60% complete. The result of a PDC that is conducted with all the stakeholders present is that it may help assure the project is able to

overcome any challenges with design completion, ROW acquisition, utility design and relocation, and finally, road construction.

- V. **PROJECT MANAGER** shall mean the person appointed by the Lead Agency who is assigned the primary duty for assuring Project Participant coordination and timely project delivery. There will be only one Project Manager assigned to a Project.
- W. **PROJECT PARTICIPANTS/TEAM** shall mean independent representatives from the County, City/Town, and other stakeholders of the contracting parties as may be mutually agreed upon by the County, City/Town, and stakeholders or otherwise with responsibility for delivering the completed Project.
- X. **PROJECT(S)** shall mean the proposed thoroughfare and multi-modal connectivity improvements approved by the Commissioners Court for inclusion in the Transportation MCIP and approved by the City/Town.
- Y. **PROJECT DURATION** shall mean the active life of the Project. Project shall commence with the application for a Project by the City/Town and approval by the Dallas County Commissioners Court. The Project shall be considered complete when construction has been fully completed and the maintenance period has expired or the Project has been terminated in accordance with Article IV of this Master Agreement.
- Z. **PROJECT SPECIFIC AGREEMENT (“PSA”)** shall mean a written agreement subsequent to this Master Agreement, which is entered into to establish the contractual rights and responsibilities of the City/Town and County as it relates to a particular Project. A PSA supersedes a MOA, MOU or FA.
- AA. **RIGHT - OF WAY- (“ROW”)** is a strip of land that is granted, through a ROW deed, an easement or other mechanism, for the Project. ROW shall mean that real property or property interest identified by the County or the City/Town, as necessary for the construction of the Project which shall include the existing street, road, drainage or other City/Town or County real property ownership and all additional real property to be utilized for the Project.
- BB. **SCOPING SHEETS** will be attached to PSA’s involving construction. Scoping sheets may be attached to PSA’s involving a study or design. These sheets will set forth the design criteria to be used for the Project, including the alignment, appropriate specifications, typical section and other parameters of the Project. As project goals and needs are more clearly defined, the Scoping Sheets shall be updated and revised by the Project Manager to reflect current construction goals.
- CC. **SMALL WATERSHED DAM** shall mean floodwater retarding structures that were constructed by the United States Department of Agriculture (“USDA”) Natural Resources Conservation Service (“NRCS”), formerly named the Soil Conservation Service (“SCS”), in watersheds less than 250,000 acres under the authority of the Flood Control Act of 1944 and the Watershed Protection and Flood Prevention Act of 1954. These structures typically have earthen embankments with principal and auxiliary spillways.
- DD. **STANDARD BASIC PROJECT DESIGN** shall mean the standard County-approved City/Town criteria for paving, bridges, drainage and appurtenances, traffic control items including pavement marking, warranted uniform signals, street light foundations, pull boxes, conduit, sidewalks, medians, storage/turn lanes, access, required structural retaining walls and standard driveways excluding road or street amenities, or such design criteria as may be agreed upon by the contracting parties and listed in a Project’s Scoping Sheets.

- EE. **TxDOT** shall mean the Texas Department of Transportation.
- FF. **UTILITIES** shall mean each City/Town utility, public utility, common carrier, governmental or quasi-governmental facility, fiber optic facility, or other facility located within the limits of the Project by virtue of Texas or federal law or agreement between the entity and the City/Town, County, or State of Texas.
- GG. **UTILITY, CITY/TOWN**, also known as **CITY/TOWN UTILITY** shall mean those utilities that are owned or operated by the City/Town, which requires relocation or adjustment for the purpose of the construction of the Project as identified by Project plans.
- HH. **UTILITY IN PUBLIC RIGHT-OF-WAY** shall mean all Utilities located within the limits of any governmental entity.
- II. **UTILITY IN PRIVATELY OWNED RIGHT-OF-WAY** shall mean all Utilities, excluding City/Town Utilities, whose facilities are located within a private easement.
- JJ. **UTILITY BETTERMENT** shall mean any increase in the capacity of any Utility’s Facility adjusted or relocated as a part of the Project as compared to the existing Facility, or any upgrading of the Utility’s Facility above the standard practices, devices or materials, specified by the Utility and customarily used by the City/Town or Utility on Projects solely financed by the City/Town or Utility. Provided, however, that any adjustments necessary to successfully accomplish the Project shall not be considered a Betterment, and further, that any increase in the capacity of the Utility Facility resulting solely from the replacement of devices or materials no longer regularly manufactured, processed or installed shall not be considered a Betterment, provided that such replacement shall be only to the standard devices or materials currently used on other projects financed solely by the City/Town or Utility. This meaning shall apply to utilities that are part of the Project as well as the standard basic street components (See “STANDARD BASIC PROJECT DESIGN”).

**ARTICLE II. PERIOD OF THE AGREEMENT**

This Master Agreement becomes effective when signed by the last party whose signing makes the respective agreement fully executed (The “Effective Date”). This Master Agreement shall expire ten (10) years from the Effective Date unless terminated in accordance with Article IV of this Maser Agreement.

**ARTICLE III. AMENDMENTS**

This Master Agreement may be amended with the mutual consent of the City/Town and County. Any amendment must be in writing and approved by the parties’ respective governing bodies through either a Court Order from Commissioners Court or a City/Town Council Resolution.

**ARTICLE IV. TERMINATION, DEFAULT, TIME OF THE ESSENCE AND FORCE MAJEURE**

**A. TERMINATION**

- a. This Master Agreement may be terminated by any of the following conditions:
  - 1. By expiration of the term of the agreement.

2. By either party, by providing written notice of termination pursuant to Article XIX, Paragraph I. of this Master Agreement establishing the effective date of termination to the other party as consequence of the party being in default of the provisions of this Master Agreement and/or any original, supplemental and/or any amended MOA, MOU, FA, and/or PSA or the failure to timely provide funding, with proper allowances being made for circumstances beyond the control of the defaulting party.
  3. By either party for any reason with ninety (90) days written notice to the other party pursuant to Article XIX, Paragraph I. of this Master Agreement.
- b. Should either party terminate this Master Agreement as herein provided, all existing, fully executed original and/or supplemental and/or amended MOA, MOU, FA, and/or PSA made under this Master Agreement shall not be terminated and shall automatically incorporate all the provisions of this Master Agreement.
  - c. In the event that any original and/or supplemental and/or amended MOA, MOU, FA, and/or PSA is terminated prior to completion of the Project, no additional Costs shall be incurred other than Costs due and payable at the time of termination for services actually performed or that shall become due and payable due to such termination. The Lead Agency, to the extent permitted, may terminate all Project contracts, unless written notice is given by either party to the other of its intent to complete the Project, and prepare a final accounting for the Project.
  - d. If the Project is terminated by the City/Town prior to the award of any construction contract and the Project is located within the City/Town limits, City/Town shall pay to the County the full amount expended by the County on the Project and the County shall transfer to the City/Town its rights and all deliverables that it may be entitled to receive under the existing professional services or other project contracts or agreements. Such amount shall be included in the final accounting for the Project. Such amount shall be due and payable in full ninety (90) days subsequent to the termination, or thirty days subsequent to delivery of final accounting.
  - e. Once the construction contract has been awarded by the governing body of the Lead Agency, the PSA for that Project cannot be terminated until completion of the construction.
  - f. In the event that a Project is terminated prior to the award of the construction contract, either party may, upon written notice pursuant to Article XIX, Paragraph I. of this Master Agreement, take over the Project and prosecute the work to completion by contract or otherwise at its sole cost and expense. In the event that the party completing the work is not the Lead Agency, it is agreed that the Project Manager will furnish to the Completing Party a listing of current records pertaining to any outstanding obligations or other records or information required by any project contract, including any Work Order, or requested in writing by Completing Party in either printed or electronic format or both. The Lead Agency agrees to cooperate with the Completing Party. The Lead Agency will use its best efforts to transfer to the Completing Party all contracts. Obligations under such contracts shall become the sole obligation of the Completing Party upon transfer. Completing party agrees to timely pay all future obligations under such contract as they become due and payable. Completing Party hereby releases the Lead Agency from any and all liability under such assigned contracts subsequent to date of transfer, effective upon the transfer date. Lead Agency shall exercise its best efforts to ensure a transition of services without interruption.

Either party shall have the right to retain copies of all data, information, engineering, studies, or other items produced to the date of termination.

- g. In the event that no FA is approved within five (5) years of Commissioners Court approval of County MCIP funding commitment, then the County in its sole discretion, can reallocate the County MCIP funding commitment.
- h. In the event the Project is being completed in phases and more than five (5) years has transpired after a completed phase without any activity on subsequent approved phases, then the County in its sole discretion, can terminate the Project and reallocate the remaining County MCIP funding.
- i. In the event that the City/Town enters into a PSA with the County, if the Project has not been completed within ten (10) years from the date of Commissioners Court approval of the original PSA, then the County in its sole discretion, can terminate the Project and reallocate the remaining County MCIP funding.
- j. Provisions b through j of this Article IV, Section A shall survive the termination of this Master Agreement and any MOA, MOU, FA, and/or PSA and shall be a continuing obligation until the transition of services, all payments made and the Projects are complete. All items listed or required in this provision shall be furnished by Lead Agency to Completing Party without additional cost or expense to completing party.

**B. FORCE MAJEURE:**

Neither County nor City/Town shall be in default or responsible for delays or failures in performance resulting from causes reasonably beyond its control and not attributable to its neglect. Such acts include but are not limited to acts of God, fire, storm, pandemic, epidemic, flood, earthquake, natural disaster, nuclear accident, strike, air traffic disruption, invasion, insurrection, lockout, stoppage of labor, riot, freight embargo, public regulated utility, or governmental statutes, orders, or regulations superimposed after the fact. Any party delayed by force majeure shall as soon as reasonably possible give the other party written notice of the delay. If reasonably practical, the party claiming the suspension shall give notice of such impediment or delay in performance to the other party within ten (10) days of the knowledge of such occurrence. The party delayed shall use reasonable diligence to correct the cause of the delay, if correctable, and if the condition that caused the delay is corrected, the party delayed shall immediately give the other party written notice thereof and shall resume performance under this Master Agreement as soon as practicable. In the event of such an occurrence, the time for performance of such obligations or duty shall be suspended until such time that such inability to perform, shall be removed. Each party shall make all reasonable efforts to mitigate the effects of any suspension. The provisions of this Article IV, Section B shall survive the termination of this Master Agreement.

**ARTICLE V. IMMUNITY AND LIABILITY FOR ACT AND OMISSIONS**

**County and City/Town agree that no provision of this Master Agreement is in any way intended to constitute a waiver of any immunities from suit or liability, or a waiver of any tort limitation, that the parties have by operation of law, or otherwise. County and City/Town agree that both County and City/Town shall each be responsible for their own negligent acts or omissions or other tortious conduct in the course of performance of this Master Agreement without waiving any sovereign or governmental immunity available to either County or City/Town or their respective officials, officers, employees, or agents under Texas or other law and without waiving any available defenses under Texas or other law. In the event of joint and concurrent negligence of the parties to this Master Agreement, responsibility, if any, shall be apportioned**

**comparatively in accordance with the laws of the State of Texas, without waiving any defenses, including sovereign or governmental immunity, or other defenses available to the parties under federal or Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities. The provisions of this Article V shall survive the termination, expiration, or cancellation of this Master Agreement, or any determination that this Master Agreement or any portion hereof is void, voidable, invalid, or unenforceable.**

#### **ARTICLE VI. LEAD AGENCY**

- A. Lead Agency shall be that entity which is responsible for the Project from conception through to completion of construction. City/Town and County may choose for the County to manage the Project through design and construction and for the City/Town to acquire ROW.
- B. In the event that the City/Town is the Lead Agency the City/Town shall:
  - a. Provide project management and leadership from Project selection to construction completion following the 5 Phase Project Delivery System as detailed in Attachment A to this Master Agreement, which is attached hereto and incorporated herein by reference, as well as any amendments, updates, additions, or supplements thereto, which are also incorporated herein by reference. Amendments, updates, additions, or supplements may be issued by the Dallas County Public Works Department to the Practices Manual, which may be provided to the city/town on an as-needed basis during the term of this Master Agreement;
  - b. Lead Agency shall be responsible for hosting the Preliminary Concept Charrettes and or Preliminary Design Charrettes and Neighborhood Public Workshops;
  - c. Acquire ROW necessary for the Project;
  - d. Enter into or obtain whatever agreements or permits necessary for Project completion;
  - e. Provide County with the opportunity for significant input in plan development and periodic progress reviews; and
  - f. Provide records for periodic auditing for either financial accounting or engineering accounting or both.
- C. For City/Town-led projects in which the City/Town is considering to specify transportation infrastructure elements exceeding the Standard Basic Project Design criteria, County funding will only be eligible to the Standard Basic Project Design criteria unless the City/Town and County have arrived at a mutual agreement through involvement of the County during the initial design phases, including the Design Kick-off Meeting and as necessary, the Preliminary Concept Charrette and Preliminary Design Charrette meetings.

#### **ARTICLE VII. CITY/TOWN AGREES AS FOLLOWS:**

- A. To execute, within five (5) years of Commissioners Court approval of funding commitment, the necessary agreements with the County for the implementation of design and construction of the Projects mutually agreed upon and incorporated herein by reference with a PSA. Without at least a FA within five (5) years of Commissioners Court approval of the funding commitment, the County in its sole discretion can reallocate the funding commitment.

- B. City/Town agrees not to allow more than five (5) years to transpire after a completed phase without any activity on subsequent approved phases, in the event that the Project is being completed in phases. If more than five (5) years transpire after a completed phase without any activity on subsequent approved phases, the County in its sole discretion, can reallocate the remaining County MCIP funding.
- C. City/Town agrees to complete the Project within ten (10) years from the date of Commissioners Court approval of the PSA. If more than ten (10) years transpire, the County in its sole discretion can reallocate the remaining County MCIP funding.
- D. To provide City/Town Council Resolution adopting approved preferred alignment, proposed estimated budget, and commitment to meet MCIP Project funding for each milestone as specified herein in the Master Agreement or in the FA and/or PSA.
- E. The County in its sole discretion can require the City/Town to provide a plan to address outstanding issues before entering into necessary agreements for the Project to proceed.
- F. City/Town agrees to share the funding of each Project with County on an equal share basis of 50%/50% or an otherwise agreed cost sharing arrangement as specified in a FA and/or PSA with the following exclusions:
  - a. City/Town shall bear the entire cost of:
    - 1. City/Town owned utilities relocation or adjustment such as water and sanitary sewer facilities, except utility adjustments directly attributable to storm sewer improvement conflicts;
    - 2. Amenities including but not limited to street pavers, colored concrete, planters, decorative lighting, special signage, or any other feature over the Standard Basic Project Design;
    - 3. Utility Betterments;
    - 4. Direct costs of City/Town which is fulfilling the role of Lead Agency, shall be totally funded by City/Town unless supported by a detailed hourly accounting system equal to County's accounting system; and
    - 5. City/Town Indirect Costs.
- G. After the City/Town and County enter into a MOA, MOU, FA and/or PSA, regarding the Project's concepts, design elements and limits by the County and City/Town at the PDC, the City/Town agrees to acquire ROW required for designated projects by voluntary dedication, the subdivision platting process and/or other legal means, to the maximum extent possible, and to ensure through the building permitting process that setback requirements are imposed to limit encroachment upon the required ROW. City/Town agrees to fund ROW not acquired, but reasonably expected to be acquired. City/Town also agrees to fund the removal of improvements that are encroachments within existing or proposed ROW areas.
- H. In the event of any proposed use of the Project ROW that will conflict with the proposed Project and City/Town is unable to obtain such ROW as described above, City/Town shall notify County of such conflict. County and City/Town shall determine if the acquisition of the conflicting parcel would be in the best interest of the Project. In the event that agreement is reached and the parcel is acquired such cost shall be included in the pro rated cost of the project in the agreed upon proportions.

- I. City/Town hereby grants the County authority to enter into eminent domain proceedings within the City/Town limits on each specific ROW alignment and/or project as approved by the City/Town and County.
- J. To require all Utilities located within or using the present public ROW on all designated transportation projects within City's/Town's municipal limits to adjust and/or relocate said Utilities as required by the proposed improvement of the designated transportation project. City/Town Utilities shall be relocated or adjusted at no cost to County except as may be specifically set forth in this Master Agreement.
- K. City/Town agrees to be cooperative on issues relating to billboards, advertising signs, non-conforming uses, zoning and similar restrictions and to exercise its best efforts to provide variances when possible to minimize costs and minimize delays of the Project. Additional Project costs caused or contributed to by the City/Town ordinance, zoning, non-conforming use determination or other requirement shall be paid in full by the City/Town.
- L. City/Town shall require the adjustment and/or relocation of Utilities to be accomplished and finalized, as expeditiously as possible after approval of final plans to prevent Project schedule delays. Notwithstanding anything contained herein to the contrary, all Utilities shall be adjusted or relocated and the ROW clear for construction not later than thirty (30) days prior to the award of the construction contract. City/Town will notify the County and other stakeholders when utility conflicts would impact progress of the Project's completion. County and City/Town agree to work with all stakeholders to solve the problem; which includes engaging elected officials in the problem's resolution to prevent delays in the commencement or prosecution of construction on the Project.
- M. Where planned roadway improvements (including, but not limited to storm drainage,) are in conflict with City/Town owned water and sanitary sewer systems, that could otherwise remain in place, the actual costs of the necessary adjustment of City/Town water and sewer utilities shall be pro rated at the overall percentage agreed to by City/Town and County for cost sharing. City/Town shall be responsible for funding one hundred percent (100%) of any Betterment; as well as 100% of any relocation that is caused by City/Town installation during the Project Duration. Except as provided herein, all costs for adjustment and/or relocation of utilities in the public ROW shall be the responsibility of the Utility Owner or of the City/Town Utility. Any Project delay or other damages caused by City/Town or the Utility's failure to timely relocate or adjust the facility shall be at the entire cost of City/Town.
- N. To provide for continuing surveillance and control of ROW to prevent the construction, placement, storage or encroachment of any signs, personal property or other appurtenances in the existing or proposed ROW. In the event that the aforementioned features are allowed by City/Town to encroach on necessary ROW during the duration of the project, City/Town shall bear the entire cost of removal or relocation of said encroachment.
- O. To provide to County for County's or County's designee's use, at no cost, adequate copies of all construction standards, codes, (specifically including zoning and development codes), plats, specifications, guidelines, standards or any other pertinent information as determined by County to be required for the completion of the Project. Additionally, City/Town shall furnish County, at no cost, such documents as necessary to keep all items previously furnished to County current.
- P. To actively participate and provide authorized representation with decision-making power at the PCC and/or the PDC, preconstruction meeting, and project meetings, which are necessary to Project development and completion.

- Q. City/Town agrees to provide timely review of interim submittals. “Timely review” will be agreed upon during the PCC and/or PDC as a part of the Project schedule. City/Town further agree that if no review notes are submitted by the City/Town in writing to the County in a timely basis, plans are approved as submitted.
- R. When City/Town is Lead Agency, City/Town agrees to allow forty-five (45) days for County review of submittals and that any of the County’s comments shall be incorporated into the final document.
- S. City/Town agrees that it will pay all additional Project cost for any City/Town requested discretionary change, including, but not limited to Amenities and Utility Betterments, in or in addition to the design or construction of the Project subsequent to the City/Town’s opportunity to review the sixty five percent (65%) design plans.
- T. Provide at City’s/Town’s cost for the continuing maintenance of all the Project ROW, such as mowing, drainage, trash removal, etc., during the period between acquisition and construction.
- U. During the construction of the Project and after completion of the Project, City/Town will be responsible for the control, operation, police enforcement and/or emergency services, without cost or contribution from the County.
- V. After the completion of a Project and the maintenance period, the City/Town will be responsible for all future maintenance without cost or contribution from the County.
- W. City/Town shall bear the entire cost of design, construction and administration for landscaping, streetscaping, streetlighting, as such items are not included in the Standard Basic Project Design and other amenities specified or requested by the City/Town in excess of the Standard Basic Project Design.
- X. It is the intent of this Master Agreement that the County will be the Lead Agency. In the event that the City/Town and County agree in writing that the City/Town will manage and administer one or more projects, the City/Town and the County will enter into a FA and/or PSA as to that project(s). In such instance, the City/Town agrees to assume all Lead Agency responsibilities except as may be determined by mutual agreement and set forth in the FA and/or PSA.

**ARTICLE VIII. UTILITY IMPACTS.**

- A. In cases where a Utility is located in a Privately Owned ROW, and it is necessary to relocate the facility or make adjustments by reason of the widening or improvement of the designated Project, the County (or City/Town if acting as the Lead Agency) will, after submission by the utility company of ROW documentation and cost estimates acceptable to the City/Town, County and other stakeholders, assign the actual costs for the relocation and/or adjustment of said utility to the Project.
- B. In cases where a Utility in Public ROW, excluding City/Town Utilities, occupies any portion of the Project ROW by Texas or federal law or by agreement with the City/Town that allows or permits the City/Town to cause the relocation of the utility for the construction of the Project, the City/Town shall timely require and enforce the relocation or adjustment requirement at no cost to the Project. In the event that the City/Town has no legal or contractual right to cause the relocation, the relocation or adjustment shall be relocated or adjusted and all cost shall be a Project Cost. City/Town shall take all steps necessary to ensure that such relocation or adjustment shall not conflict with or delay the Project schedule.

**ARTICLE IX. COUNTY AGREES AS FOLLOWS:**

- A. To provide, as a Project Cost, preliminary engineering which will define project details, e.g., location, scope of work and specific right-of-way alignment for each improvement. Such preliminary engineering shall be submitted to the City/Town for approval, prior to proceeding with the final design and any right-of-way acquisition.
- B. To provide, as a Project Cost, for the construction of transportation improvements based upon design criteria conforming to Standard Basic Project Design in conformity with applicable City ordinances and standards, to the extent of Commissioners Court approved program funding. Scope of work shall include the agreed upon design standards as the basis for improvement criteria. Deviations from mutually agreed upon application of City/Town standards and/or design criteria shall require prior approval of the City/Town. Where City/Town standards do not exist, TxDOT standards as of the Effective Date of this Master Agreement shall be utilized unless otherwise mutually agreed to by the parties in the FA and/or PSA.
- C. To actively participate and provide authorized representation at the PCC and/or the PDC, preconstruction meetings, and Project meetings, which are necessary to project development through project completion.
- D. To provide project management of each Project where the County is Lead Agency from commencement to completion of construction. City and County may agree to redefine project management roles as beneficial to the Project as defined in the MOA, MOU, FA, and/or PSA, and/or supplemental and/or amended agreements.
- E. Upon receipt of written request detailing the information requested, to provide information related to the Project to the City/Town or the City /Town's designee at no cost to the City/Town.
- F. County agrees to provide review of interim submittals within forty-five (45) days of receipt, and hereby agrees that if no review notes are submitted by the County (if City/Town is filling the role as Project Manager) in writing to the City/Town within that time period, plans are to be approved as submitted.
- G. To submit final engineering plans for review and written approval by the City/Town forty-five (45) days prior to submitting documents to the County Purchasing Department for advertising the project for construction.
- H. To provide for the acquisition, including acquisition by Eminent Domain, of the necessary additional ROW, on designated projects, in accordance with minimum standard requirements and utilizing existing public ROW to the maximum extent possible as a Project cost.
- I. To require all contractors to secure all necessary permits required by the City/Town on said construction projects.
- J. To furnish record drawings of construction plans for the permanent records of the City/Town within twelve (12) months upon completion and acceptance of the transportation improvement Project.
- K. To transfer the real property or property interest acquired by the County and used for the Project to the City/Town.
- L. In the event the County and the City/Town agree in writing that the City/Town will be the Lead Agency for the agreed upon Project, the County will reimburse the City/Town for agreed costs as detailed in Article XII. (Funding) in this Master Agreement in an amount not to exceed the Project cost as approved by Dallas County Commissioners Court and incorporated in the FA and/or PSA.

All County payments shall be in accordance with Texas law and County policies and procedures as may be mutually agreed to by the parties and incorporated by reference in a FA and/or PSA.

**ARTICLE X. PRELIMINARY DESIGN CHARRETTE (PDC), PRELIMINARY CONCEPT CHARRETTE (PCC)**

- A. City/Town and County, as specified in Articles VII, IX, and X of this Master Agreement, respectively, will designate officials or representatives to participate in a PCC and/or PDC to be conducted on a mutually agreed to date and location. At least part of this meeting will be conducted on the Project site.
- B. Results from the PCC will identify the general project scope, the basic approach and concepts to be taken with the project, the elements of CSS that will be included, and some ideas for alignments alternatives. The Lead agency will already have been determined, as well as the project administration and management roles, which include the Project Manager. Key project participants shall be introduced to stakeholders at the PCC and or PDC. Results from the PDC will identify the preferred alignment of the project, and provide all stakeholders a commitment for project delivery schedules and project budgets.

**ARTICLE XI. FISCAL FUNDING**

Notwithstanding anything to the contrary herein, this Master Agreement is expressly contingent upon the availability of County funding for each item and obligation contained herein. City/Town shall have no right of action against the County as regards this Master Agreement, specifically including any funding by County of the Project in the event that the County is unable to fulfill its obligations under this Master Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Master Agreement or failure of any funding party to budget or authorize funding for this Master Agreement during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the County, at its sole discretion, may provide funds from a separate source or terminate this Master Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

Notwithstanding anything to the contrary herein, this Master Agreement is expressly contingent upon the availability of City/Town funding for each item and obligation contained herein. County shall have no right of action against the City/Town as regards this Master Agreement, specifically including any funding by City/Town of the Project in the event that the City/Town is unable to fulfill its obligations under this Master Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Master Agreement or failure of any funding party to budget or authorize funding for this Master Agreement during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the City/Town, at its sole discretion, may provide funds from a separate source or terminate this Master Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

**ARTICLE XII. FUNDING**

- A. City/Town and County mutually agree to proportionately fund the Direct Project and Program costs as agreed by the parties in a FA and/or PSA. Unless otherwise specified in the FA and/or PSA, the County shall bear fifty percent (50%) of the total Direct Project and Program costs

excluding the Amenities, relocation or adjustment of City/Town Utilities, Utility Betterment, Indirect Cost, Direct Cost not supported by detailed hourly accounting system and other items as specified in this Master Agreement, FA, and/or PSA. County shall not be responsible for any amount of funding in excess of the Project not-to-exceed amount as shown in the FA and/or PSA. Unless otherwise specified in the FA and/or PSA, the City/Town shall bear fifty percent (50%) of all Direct Project and Program costs. In addition, the City/Town agrees to fund all other City/Town cost as provided herein, including, but not limited to, Amenities, relocation or adjustment of City/Town Utilities, Utility Betterment, Indirect Cost, Direct Cost not supported by detailed hourly accounting system, and other items as specified in this Master Agreement, FA, and/or PSA.

- B. Unless otherwise stated in a FA and/or PSA, the milestones for each project shall be (1) preliminary and primary design (2) ROW acquisition and utility relocation or adjustment and (3) construction. The Lead Agency shall prepare an estimated cost for each milestone. Upon approval of the cost by the other party, each party shall fund its share of the respective milestones by placing that amount of money in an escrow account or otherwise encumber the funds to ensure that the Lead Agency will have sufficient funding available from current revenue for the timely payment of Project milestone costs. The Lead Agency may bill the other party for periodic payments for the actual amount of work completed toward the completion of the milestone. Upon completion of the milestone, the non-management party will be furnished a notice that such work has been completed and the amount of funding that may be utilized to pay subsequent milestone Project cost. Notwithstanding any other term or condition contained herein in this Master Agreement or in any FA and/or PSA, neither party will be required to award any contract until written certification has been received that funding has been placed in escrow or encumbered for the payment of the non-awarding party's portion of the Project cost.
- C. In the event that the cost of the Project shall exceed the not-to-exceed amount, City/Town and County agree to either reduce the scope of construction or seek additional funding to complete the Project at the agreed upon cost share percentages. At the termination of the Project, the Lead Agency will do a final cost accounting of the Project. In the event that the amount paid by either party exceeds its portion of the actual cost, the difference will be remitted to such party. In the event that additional funds are due, the Lead Agency will bill the other party who agrees to pay such funds within thirty (30) days of receipt of such billing.
- D. If the City/Town elects to manage the Project, the County will reimburse the City/Town based on invoices for actual costs expended as supported by documentation approved by the County Auditor. Any and all supporting documentation required by the County Auditor shall be included with the invoice from the City/Town.
- E. After approval by the County's Commissioners Court and the City/Town's City/Town Council, and after the execution of an FA and/or PSA, the City/Town shall escrow an amount adequate for estimated Project costs, which the County may use to pay for professional services, which include, but are not limited to scoping, preliminary design, and primary design.
- F. City/Town and County shall enter into a FA to establish funding commitments for both parties as required for each project within at least five (5) years of project selection unless the County and City decide to enter directly into a PSA. If the City/Town agree the Project is to be completed in phases, no more than five (5) years may transpire after a completed phase without any activity on subsequent approved phases.

- G. If the City/Town and County agree to enter into a PSA without first entering into a FA, the City/Town shall enter into a PSA with the County and complete the Project within ten (10) years or less.
- H. Suggested timeframes for FA's, PSA's, and/or any supplements and/or amendments thereto are:
- a. As soon as the project is accepted by Commissioners Court and as a result of the Kick-off meeting, a FA to establish the Lead Agency for preliminary engineering and general funding responsibilities and procedures for reimbursement by the Participating Agency; or
  - b. For a PSA, when the preliminary engineering plans are at sixty percent (60%) complete, providing specific details on project scope to enter into a PSA; or
  - c. After construction bids are opened, amend the PSA as needed.

### **ARTICLE XIII. NO THIRD PARTY BENEFICIARY ENFORCEMENT**

It is expressly understood and agreed that enforcement of the terms and conditions of this Master Agreement and all rights of action relating to such enforcement shall be strictly reserved to the City/Town and the County. Nothing contained in this Master Agreement shall give or allow any claim or right of action whatsoever to any other person or entity. The terms and provisions of this Master Agreement are for the benefit of the parties hereto and not for the benefit of any third party. It is the express intention of the City/Town and the County that any entity or person other than the City/Town or the County receiving services or benefits under this Master Agreement shall be deemed an incidental beneficiary only. This Master Agreement is intended only to set forth the contractual right and responsibilities of the parties hereto.

### **ARTICLE XIV. RIGHT OF ENTRY**

The City/Town agrees that the County shall have the right to enter upon the Project area for the time period necessary for the completion of the Project. The City/Town agrees to furnish such police or other City/Town personnel as requested by the County for traffic control or other public safety matters at no cost to the Project or the County.

### **ARTICLE XV. LIST OF PROJECTS**

City/Town agrees that it has been furnished with a list of the potential Projects as approved by the Dallas County Commissioners Court, subject to the agreement between the parties in a MOA, MOU, FA and/or PSA. City/Town stipulates and agrees that the Commissioners Court Order approving the projects identifies the potential project location and describes the type of project in sufficient detail that the City/Town is fully aware of the location and type of projects being considered.

### **ARTICLE XVI. REALLOCATION OF COUNTY MCIP FUNDING**

The County in its sole discretion has the ability to reallocate County MCIP funding away from the City/Town's Project if the City/Town has not entered into a FA confirming the City/Town funding match within five (5) years from Commissioners Court approval of the funding commitment. The County in its sole discretion has the ability to reallocate the remaining County MCIP funding in the event the Project is being completed in phases and more than five (5) years has transpired after a completed phase without any activity on subsequent approved phases. The County, in its sole discretion, also has the ability to reallocate the remaining County MCIP funding away from the

City/Town's Project if the City/Town has not completed the Regional Transportation milestone within ten (10) years.

### **ARTICLE XVII. ORPHAN ROAD POLICY**

- A. The County encourages all cities adjacent to orphan roads in the county to develop, commit to and submit a plan to the County for completing the annexation of the orphan road segments and assuming full responsibility for these roadways. In instances where two cities abut the same orphan road segment, the County encourages the two cities to jointly develop a plan for the annexation of that segment. The County offers its assistance to the cities in developing such plans.
- B. The County, at the discretion of the Commissioners Court, may give additional selection value to projects in cities that have submitted a specific plan for the annexation of orphan roads when the County selects, approves, and schedules projects for funding in the County's Major Capital Improvement Program ("MCIP"). Such preference may also be given in approving projects for road and bridge district participation (Type "B" work).
- C. The County, at the discretion of the Commissioners Court, may also refuse to participate in discretionary projects, such as road and bridge district projects or MCIP projects, in a City that elects not to pursue the annexation of orphan road segments that abut its boundaries. Failure to notify the County of the City's intent to annex and/or failure to submit a plan for annexation in a timely manner shall be construed by the County as the City's election not to pursue annexation.
- D. The County, at the discretion of the Commissioners Court, may select specific orphan road segments for improvement when a City commits to annexation of the segment upon completion of the project. However, the specific plan for annexation of orphan roads submitted by the City will not be limited to annexation upon completion of improvements by the County. The County improvements may be made as road and bridge projects or as MCIP Projects (subject to other MCIP criteria, including but not limited to regional thoroughfare plan designation and City cost participation).
- E. This policy application is prospective and projects selected by the County and approved by the Commissioners Court prior to the date of the adoption of this policy shall not be impacted by this policy.
- F. The County shall provide written notification of the adoption of, and future revisions of, this policy to the cities abutting orphan road segments.
- G. The County Director of Public Works shall maintain a listing of orphan roads and the city or cities they abut and shall provide updates to the Commissioners Court and to the cities as changes occur. The listing and changes to the listing shall be based on municipal boundary and annexation information provided to the County's Public Works by the cities as required by Texas Local Government Code, Section 242.001(c).
- H. The provisions of this Article XVII of this Master Agreement shall survive the termination of this Master Agreement.

(Dallas County Code, Chapter 102, Article IV, Sec. 102-131 - 102-133, 6-27-2006, 8-10-2020).

## ARTICLE XVIII. SMALL WATERSHED DAMS

The County encourages all cities/towns adjacent to small watershed dams maintained by the County to develop, commit to and submit a plan to the County for assuming full responsibility for the operations and maintenance of these dams. In instances where more than one city/town abuts a small watershed dam, the County encourages the cities/towns to develop a plan for operation and maintenance of the dam. The County offers its assistance to the cities/towns in developing such plans.

- A. The County, at the discretion of the Commissioners Court, may refuse to participate in MCIP projects in a City/Town that elects not to pursue accepting full responsibility for the operations and maintenance of small watershed dams within their jurisdiction. Failure to notify the County of the City/Town's intent to submit a plan for operations and maintenance of small watershed dams in a timely manner shall be construed by the County as the City/Town's election not to pursue operations and maintenance of these dams.
- B. Projects selected by the County and approved by the Commissioners Court prior to the Effective Date of the adoption of this policy, shall not be impacted by this policy.
- C. The County shall provide written notification of the adoption of, and future revisions of, this policy to the cities abutting small watershed dams.
- D. The provisions of this Article XVIII shall survive the termination of this Master Agreement.

## ARTICLE XIX. MISCELLANEOUS GENERAL PROVISIONS

A. **Applicable Law/Venue.** This Master Agreement and all matters pertinent thereto shall be governed by and enforced in accordance with the laws and case decisions of the State of Texas. Exclusive venue for any legal action regarding this Master Agreement and all matters pertinent thereto filed by either the County or the City/Town shall be in Dallas County, Texas. Notwithstanding anything herein to the contrary, this Master Agreement is expressly made subject to the County's and the City/Town's sovereign and/or governmental immunity, pursuant to Title 5 of the Texas Civil Practice and Remedies Code, and all applicable State of Texas and federal laws.

B. **Entire Agreement.** This Master Agreement constitutes the entire agreement between the parties respecting the subject matter contained herein, supersedes all prior and contemporaneous understandings and agreements, whether oral or in writing, between the parties respecting same, and may not be modified except by an instrument in writing executed by the parties hereto as herein provided.

C. **Severability.** If one or more of the provisions in this Master Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not cause this Master Agreement to be invalid, illegal or unenforceable, but this Master Agreement shall be construed as if such provision had never been contained herein, and shall not affect the remaining provisions of this Master Agreement, which shall remain in full force and effect.

D. **Default/Waiver/Mitigation.** It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Master Agreement does not preclude pursuit of other remedies in this Master Agreement or as provided by law.

E. **Federal or State of Texas Funding.** In the event that any work or part thereof is funded by State of Texas or U. S. Government funding and any statute, rule, regulation, grant, contract provision or other State of Texas or U. S. Government law, rule, regulation or other provision imposes additional or greater requirement(s) than stated herein, the City/Town agrees to timely comply therewith without additional cost or expense to the County.

F. **Headings.** The headings and titles, which are used following the roman numeral of each paragraph are only for convenience in locating various provisions of this Master Agreement and shall not be deemed to affect the interpretation or construction of such provisions.

G. **Number and Gender.** Words of any gender used in this Master Agreement shall be held and construed to include any other gender, and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.

H. **Counterparts.** This Master Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

I. **Notice.** Any notice provided for in this Master Agreement to be given by either party to the other, shall be required to be in writing and shall be deemed given when personally delivered, or three (3) business days after being deposited in the United States Mail, postage prepaid, via certified mail, return receipt requested, or via registered mail, and addressed as follows:

County:	County of Dallas Director of Public Works Dallas County Administration Building 411 Elm Street, Fourth Floor Dallas, Texas 75202-3389
To City/Town:	City/Town of _____ Name Title Address Town/City, Zip Code

Either party may change its address for notice by giving the other party written notice thereof.

J. **Assignment.** This Master Agreement may not be assigned or transferred by either party without the prior written consent of the other party and formal approval by the governing body of each party.

K. **Binding Agreement, Parties Bound.** When this Master Agreement has been duly executed and delivered by both parties, this Master Agreement shall constitute a legal, valid, and binding obligation of the parties, their successors, and permitted assigns.

L. **Amendment.** This Master Agreement may not be amended except in a written instrument specifically referring to this Master Agreement and signed by the parties hereto.

M. **Effective Date.** This Master Agreement shall commence on the Effective Date. The Effective Date of this Master Agreement shall be the date it is executed by the last of the parties. Reference to the date of execution shall mean the Effective Date.

N. **Contingent.** This Master Agreement is expressly subject to and contingent upon formal approval by the Dallas County Commissioners Court and by resolution of the City/Town Council.

O. **No Joint Enterprise/Venture.** City/Town and County agree that neither party is an agent, servant, or employee of the other party. The parties, including their agents, servants, or employees, are independent contractors, and not an agent, servant, joint enterprise/venture, or employee of any other party, and are responsible for their own acts, forbearance, negligence, and deeds, and for those of their agents, servants, or employees in conjunction with this Master Agreement. No joint enterprise/venture exists between the City/Town and County.

The City/Town of \_\_\_\_\_, State of Texas, has executed this Master Agreement pursuant to duly authorized City/Town Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_ dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

The County of Dallas, State of Texas, has executed this Master Agreement pursuant to Commissioners Court Order Number \_\_\_\_\_ and passed on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

*(the remainder of this page intentionally left blank)*

*(signatures appear on the following page)*

CITY/TOWN OF \_\_\_\_\_

COUNTY OF DALLAS

BY \_\_\_\_\_

BY \_\_\_\_\_  
Clay Lewis Jenkins, County Judge

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

DATE \_\_\_\_\_

ATTEST \_\_\_\_\_  
CITY SECRETARY \ ATTORNEY

APPROVED AS TO FORM\*:  
JOHN CREUZOT  
DISTRICT ATTORNEY

BY \_\_\_\_\_  
Jana Prigmore Ferguson  
Assistant District Attorney

\*By law, the District Attorney’s Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

# ATTACHMENT A



**DEPARTMENT OF PUBLIC WORKS**

411 ELM ST., 4TH FLOOR  
DALLAS, TEXAS 75202

## PROJECT MANAGEMENT PRACTICES MANUAL

### 5 PHASE PROJECT DELIVERY SYSTEM

2021



## **PREAMBLE**

City/Town and County agree that neither party is an agent, servant, or employee of the other party. The parties, including their agents, servants, or employees, are independent contractors, and not an agent, servant, joint enterprise/venture, or employee of any other party, and are responsible for their own acts, forbearance, negligence, and deeds, and for those of their agents, servants, or employees in conjunction with this Master Agreement. No joint enterprise/venture exists between the City/Town and County.

Nothing in this manual creates a joint enterprise/venture between the County and the City/Town. This manual is being included so that it could help encourage these protocols to be followed because it will assist in the efficiencies and thereby possibly help reduce monetary obligations and duration of the projects. These guidelines are strongly recommended to be followed in order to avoid potential cost-related and/or time delay issues.



## **INTRODUCTION**



The purpose of this Dallas County Public Works Project Management Practices Manual (“Practices Manual”) is primarily to provide a standard practice guide on project management practices within the Dallas County Public Works (“DCPW”) department. It is meant to ensure that a standard approach is used by all Project Managers (“PMs”) and other project members in the delivery of County Major Capital Improvement Program (“MCIP”) funded transportation projects. The guidelines are meant to meet the requirements and intent of the American Public Works Association’s (“APWA”) publication entitled “The Public Works Management Practices Manual” (“the APWA Manual”). The APWA Manual contains recommended practice statements that describe the critical elements necessary for a full-service public works agency to accomplish its mission. The practice statements in the APWA Manual “call for the development and implementation of a policy or procedure in the form of a rule, regulation, written directive, or for the execution of an activity, report, procedure or other action.”

The resulting Practices Manual is intended to list a number of applicable recommended practice statements. Our basic methodology is a strong matrix approach, so that our PMs are assigned from the time a planning initiative becomes an approved project, to completion of the total project. We use the terminology found in the Project Management Institute’s “A Guide to the Project Management Body of Knowledge” (“PMBOK”). This includes the definition of a “Matrix Organization.” The definition is “any organization structure in which the project manager shares responsibility with the functional managers for assigning priorities and for directing the work of individuals assigned to the project.”

When we speak of a project participants/team, we are referring to a group led by an appointed DCPW Project Manager (“PM”) who has team members from throughout the four functional divisions of DCPW. These four divisions in DCPW are Transportation & Planning, Property Management & Utility Coordination, Engineering & Construction, and Program & Engineering Management. The PMs manage projects from cradle to completion without switching between functional divisions.

The intent of this Practices Manual is to provide an overview guide to project delivery practices, not an exhaustive “how to” manual. Greater detail on these and other Public Works practices can be found in the APWA Manual for more detailed instructions on the specific elements of project delivery. Our experience is that really thick manuals are not used as much as shorter guidelines that provide the boundaries of good practice and a standard approach on the essentials, with empowerment to individual PMs on the details of how they work to deliver their individual projects.

This Practices Manual can also serve as a guideline for the city/town to follow when the city/town is leading an MCIP project. Dallas County can provide input on the consultant selection process used by the city/town and the bidding process.



## **PHASE 1 -- PLANNING & PRELIMINARY DESIGN**



### **STEP ONE, PROJECT DEFINITION**



1. Dallas County Public Works, in conjunction with other Dallas County departments and with approval from Dallas County Commissioners Court (“Commissioners Court”), initiates a “Call for Projects”. The Dallas County Public Works Transportation & Planning Division will adjust the project selection criteria based on the Dallas County Mobility Plan developed from input provided from the cities and/or towns, criteria that the North Central Texas Council of Governments (“NCTCOG”) is using, and guidance from the County Commissioners. The final criteria and Call for Projects process will be briefed and approved by the Commissioners Court and a 5-signature letter will be used to invite the cities to participate in the MCIP Call for Projects.
2. The MCIP Call for Projects is a process that involves Dallas County, requesting a nomination of projects from all cities/towns in Dallas County, which can also involve stakeholders such as NCTCOG, Texas Department of Transportation (“TxDOT”), Dallas Area Rapid Transit (“DART”) and/or others. The nomination period is open for four to six months to allow cities/towns to submit projects to the County for review. Soon after sending out notification about the MCIP Call for Projects, Dallas County Public Works will host a workshop on the

MCIP and the application process. Various aspects of this Call for Projects Workshop and process will be adjusted based on prior input from the cities/towns in Dallas County. The amount of time and submittal deadline for the cities and/or towns to nominate projects will be adjusted based on feedback from the cities/towns. This is to ensure that the cities/towns have enough time to brief their elected officials, plan for inclusion of projects in city bond elections, etc.

3. DCPW's Transportation & Planning Division helps ensure that all of the information has been submitted correctly by cities/towns. If necessary, assistance may be provided to some of the smaller city/town staffs with preparation of their project submissions. A matrix team that consists of DCPW employees begins with field evaluations of the projects for conducting a feasibility review that precedes developing recommendations for selection of projects by Commissioners Court to be included in the County's MCIP. The DCPW team, with staff participation from each of the four DCPW divisions involved, provides assistance with risk assessments from various perspectives, which include cost estimates, scope definition, political aspects, funding, technical issues, utilities, safety, environmental, and traffic factors, etc. The DCPW Property Division team members examine Right-of-Way ("ROW"), utilities involvement, railroad involvement, relocations, etc.
4. Every project selected for MCIP funding commitments is then placed into a Program Year (PY) (year slated for construction start) in a spreadsheet called the "MCIP Transportation Funding Commitments" that is presented in Briefing format in a public forum to the Commissioners Court for their formal approval.
5. The MCIP has been formulated on the premise that legal agreements should reflect the nature and character of the program. Equal funding, Project Management (groups of independent stakeholders and cities/towns) methods of project delivery, and principles applied in every phase of project delivery are the essential elements of the MCIP. The time it takes for getting interlocal agreements approved should never be on the critical path of project delivery. Therefore, much effort was expended between the Civil Division of the Dallas County District Attorney's staff and DCPW staff to formulate a Master Agreement Governing Transportation Major Capital Improvement Projects ("Master Agreement"). This MCIP Master Agreement has been signed by all the cities/towns with approved projects and serves as the legal basis for future agreements between the various cities/towns and Dallas County, including but not limited to a Memorandum of Agreement ("MOA") and Memorandum of Understanding ("MOU"). Later, during project design, enough information will be known to forge a Funding Agreement ("FA") or a Project Specific Agreement ("PSA") that details the specifics of that particular project. None of the basic elements of a city-county legal agreement have to be repeated in the FA and/or the PSA, thus simplifying the process and time involved.
6. A project management planning meeting is held next with each City or Town, which has projects selected. This meeting is to initially review the selected projects and determine the basic parameters for each of the projects, such as cash flow requirements, for each participant of the project, who the lead agency for project delivery will be, agreed upon technical criteria, known risks, roles for each stakeholder, etc., all focused on assuring timely project delivery and moving the project into construction during the selected PY. If there is a great deal of uncertainty associated with the project (e.g. part of some economic development such as transit oriented development, or part of brown field development, or other significant environmental challenges, or a very significant change in planned use of an area in the future

such as industrial area converted to mixed use, etc), then the lead agency may conduct a Planning Charrette.

The purpose of the Planning Charrette meeting, with all significant participants and stakeholders, is to determine the beginning scope and the realm of possible approaches. Serious design cannot begin until there is an agreement on a relatively reasonable set of alternatives, which bear some relationship to the scope of funding currently available. Relationships will also be established at the Planning Charrette meeting involving the city/town, stakeholders, utilities and other participants of the project, which may be sustained throughout the life of the project.

7. DCPW commits to using Principles of Trust, Commitment, and Shared Vision in addition to Best Practices of Project Management Principles throughout the life of the project. Each city/town is invited to use the same principles to deliver the selected projects. This type of approach is also an integral part of Context Sensitive Solutions (“CSS”), which is a design methodology that involves early and continuous involvement of all participants and stakeholders of a project. The Planning Charrette meeting is a form of CSS. The Dallas County Mobility Plan should also be considered as part of applying CSS for project delivery.
8. For every project that the city and/or town and county stakeholders agree to assign Dallas County as the Lead Agent, a PM will be assigned by DCPW. In addition, the DCPW Assistant Director (“AD”), in consultation with the PM and other AD’s or designated DCPW business unit leaders, will identify their own matrix team members for the project. Any available Project Management tools will be used to optimal effect during the life of the project.
9. An initial Project Funding & Execution Status (“PFES”) and Program Management & Planning Status (“PMAPS”) form will be developed by the PM for each project in coordination with the ADs (or designees) from the DCPW divisions including Program & Engineering Management Division (“PEMD”), the Engineering & Construction division and Transportation & Planning Division. Each AD or designated DCPW business unit leader will review PFES and PMAPS in order to provide an adequate workforce for each project, and ensure that their own employees’ assignments are balanced.
10. A decision on the use of Subsurface Utility Engineering (“SUE”) will be made before initiating design. In the analysis of candidate projects, utility relocation risks will have been identified. When these risks are high (the usual situation), then funding will be planned in the design for SUE efforts. Dallas County Public Works (“DCPW”) will have in place an Indefinite Delivery, Indefinite Quantity (“IDIQ”) contract for quick implementation of SUE consultant efforts. Initiatives for joint efforts of utilities are anticipated between independent participants and stakeholders wherever feasible. This information will be critical for designers to use as they launch the design. Total integration of the SUE methodology will help ensure that all utility impacts are considered in every phase of project delivery.



## STEP TWO, PRELIMINARY DESIGN



1. A systematic decision process as part of the DCPW Business Operating Plans (“PWBOP”) updating is done to determine which design efforts will be completed with in-house designers and which will be done by consultants. For consultant selection, a rigorous and systematic process will be used to select the best qualified consultants for each project. An initial contract will be signed with a best qualified consultant to perform the entire preliminary design, or participate as a Preliminary Design liaison, trainer, or expert to advise an in-house design force for the project. As much as possible, an Indefinite Delivery, Indefinite Quantity (“IDIQ”) methodology will be used to help ensure that inordinate amounts of time are not used in the best qualified selection process required by state law. Cities and/or towns who participate in the process are welcome to provide input to the County in the consultant selection process.
2. The DCPW’s team of in-house design staff, a city/town, or a selected consultant firm will begin the initial design efforts under the leadership of the PM. One initial objective is to resolve alignment issues early in the design process with the participation of all stakeholders. In some circumstances, a feasibility study may be required to compare and contrast different alternatives before real design can begin. Estimated ROW takes, utility impacts, and environmental effects for each alternative may need to be reported before stakeholders decide on a preferred alternative for preliminary design.
3. CSS methodology will continue to be used, stressing total stakeholder involvement, throughout the project delivery process. Task Force meetings will be scheduled. Dallas County Public Works employees’ matrix team meetings will also be scheduled.
4. When a consultant is used as the design agent, a contract will be negotiated for the preliminary design only, unless the project is relatively simple and the final solutions are not in question. The goal is to avoid protracted negotiations on the total scope and fee at the very beginning of the project, when many of the factors influencing final design consideration are not yet known. The decision to issue a new work order for completion of the Primary Design will be made after an interim evaluation on the Preliminary Design is completed using the County’s consultant evaluation system.
5. A Preliminary Design Charrette (“PDC”) will be planned by the PM who will lead the execution with all stakeholders (cities/towns, utilities, county, any private parties or other decision-makers/stakeholders). The scope of invitees to the PDC will be dependent upon the project’s complexity and number of unknowns. The goal of the PDC is to build support behind the project and the alignment alternative that is selected. Many projects have been derailed by a lack of support by the project’s independent representatives from the county, city/town, and other stakeholders. A great effort will be made to ensure attendance of all of the independent key players.
6. This consensus building effort is an integral part of any CSS approach to design. The DCPW Director and/or AD’s will be personally involved and the PM will make special efforts to notify political leaders of meetings, so that the political leaders can have the meetings on

their calendars and may plan to attend. In addition, individual contacts will have to be made to ensure that utility company representatives attend meetings, since key alignment decisions will be made that can affect, or be affected by, probable utility locations. If applicable, the PDC will include an orientation walk-thru of the project site, which includes right-of-way assessment. The PM will highlight specific city/town zoning and other ROW requirements, or ask the city to highlight these.

7. As part of the CSS approach, a public involvement strategy will be forged under the leadership of the PM, and the advisement of the DCPW Transportation & Planning Division (“T&P”). Staff of DCPW’s T&P will advise PMs on various public involvement techniques and methods to use to best involve the public and other stakeholders. DCPW will use innovative methods, such as workshop/small group formats. City/town methods and approaches will be respected and adhered to in this area.
8. Phase 1 ends with approval of the Preliminary Design Report, Preliminary Alignment/Profile and Preliminary Sizing of bridges and drainage structures along with SUE determination, Preliminary Survey Report, and Preliminary Utility Investigation Report.
9. The design firm or DCPW in-house design team will have begun necessary permitting and environmental assessments. Basically, the level of effort will approximate that required of the Preliminary Schematic and Environmental Assessment Phase that currently is required on TxDOT projects.
10. Project plans are estimated to be 60-65% complete at the end of Preliminary Design. A risk assessment may occur before proceeding into Primary Design to identify key aspects that may need to be resolved before or during the Primary Design.



## **PHASE 2 -- PRIMARY DESIGN**



1. The initial task is the assignment of either a DCPW In-house design team or the negotiation of a new work order with the consultant, specifically for completing the Primary Design. A new work order for completion of the Primary Design can be negotiated after Preliminary Design is nearing completion when the unknowns should be relatively few.
2. Scope of Work is now well defined by all Phase 1 effort and includes geotechnical investigations, utility analysis (including an appropriate level of SUE), constructability review, environmental analysis, traffic analysis, ROW parcels (based on Preliminary Design), and integration of context sensitive solution elements. Other aspects in Phase 1 that may be included but not limited to are: neighborhood public workshops, key stakeholder meetings and initial coordination with utilities, as necessary. With the scope defined a PSA can be executed with attached scoping sheets defining the critical parameters for the project.
3. Part of negotiations, both with DCPW In-house design teams and consultants, includes definitive delivery dates for various deliverables, phases, and reviews. In paying submitted invoices for progress during the design period, earned value analysis concepts will be used to

track cost and schedule progress. DCPW generally does not make “cost plus” assumptions about a consultant’s work efforts. Greater clarity on scope definition can be achieved with the typical multi-phase design approach of issuing separate work orders for Preliminary Design and Primary Design avoiding or minimizing the instances of misunderstanding on the true project scope.

4. The consultant or DCPW in-house design team works with all stakeholders, including utilities, under the guidance and direction of the County PM. The lead designer is the Technical Manager at this point in the process, and is always under the leadership of the PM. When an IDIQ consultant is hired to perform a survey, miscellaneous design, SUE, or materials testing, the PM is closely monitoring the progress. Also, the design firm for water and/or wastewater services will be integrated, and whenever possible, we will attempt to ensure that the design consultant for the transportation or infrastructure project is also selected by the city/town to design the municipal utility improvements. We anticipate and expect our consultants to become familiar with our 5 Phase Project Delivery System’s processes and deliverables.
5. Traffic and utilities data will be considered in design, with data from the city/town, County, NCTCOG, and/or consultant. An agreed upon level of SUE will be key to input into the design details, and including utility companies involvement throughout all phases of the project.
6. Environmental assessment will be completed during this phase. Significant issues should be addressed without wasting time on clearly unimportant areas. An environmental impact analysis will be completed if the assessment shows that this analysis is required. The goal is to execute environmentally sustainable solutions that improve the overall quality of life of the transportation users and citizens of Dallas County and the city/town.
7. Right-of-Way (ROW) documents will be finalized, with quality control by the consultant or DCPW’s in-house design team. The quality assurance (“QA”) function will be completed by both the PM and DCPW’s Property Management & Utility Coordination Division (“PMUC”) in a smooth manner, using pre-coordinated checklists. At the appropriate time, the documents will be delivered to PMUC, but the PM still retains overall responsibility for timely project delivery. Early involvement on ROW issues, including utility relocation aspects such as getting possible Rights of Entry (“ROE”) can be critical for obtaining vital information to ensure successful utility relocations. Early provision of final and accurate ROW documents will be a critical milestone of the design contract.
8. The Design Consultant or the DCPW In-house design team completes the work on a provided schedule. Consultants and/or DCPW’s In-house design team are expected to ensure that they accomplish “muddy boots” design with true “eyes-on” on the total project site. These actions will avoid lengthy rounds of passing designs back and forth, in favor of “over-the-shoulder” reviews, as required to meet design completion timelines. These will include city/town, utilities and other interested stakeholders under the orchestration of the PM.
9. The PM completes the interim evaluation of the consultant. Special note will be taken of the consultant’s system for assuring quality control (“QC”) of all design efforts, including ROW documents.
10. After construction is complete, the PM performs a final consultant evaluation, using the standard evaluation system. The Consultant is given an opportunity to evaluate DCPW’s project management process.



## **PHASE 3 – DESIGN COMPLETION & RIGHT-OF-WAY INITIATION**



1. This phase begins with the delivery of the initial, unsealed ROW documents to the County by the consultant. Consultants will first bring a few ROW documents for initial review by the PM and DCPW Property Division team members, to ensure that they fully understand the details and level of Quality Control that the County expects in their submittals. Standards and scheduling will be clearly spelled out in writing within the Consultant's contract. Deliverables will include ROW maps and deed records.
2. Consultant is required by contract to submit property owner deeds along with right-of-way maps, which have received an internal quality control process. The PM ensures utility representatives are informed of the project and all known utilities are shown on the plans. Diligent efforts must be made to ensure that all private or public utility easements are identified on the maps and plans as required in Consultant Contract. All the SUE efforts should be included in the design documents.
3. Consultants or In-house Design Team are to avoid taking ROW that is not necessary to the construction of the project. The PM works with the project participants to minimize the ROW takings and ensures the appropriate leadership is used so that project delivery dates are met.
4. The PM ensures that the county or the city/town's ROW Functional Manager works towards the efficient execution of ROW planning, appraisal and acquisition services. The DCPW's Property Division will manage the ROW Acquisition Services IDIQ contract, if this delivery tool is used. Before writing a Work Order for the ROW Acquisition Services IDIQ, the DCPW Property Division Manager may meet with the DCPW Engineering & Construction Manager or DCPW Transportation & Planning Manager, DCPW Program Engineering Manager and the PM, to ensure that an adequate project budget is available for the added cost of procuring ROW services.
5. The county or city/town PM monitors and tracks progress on ROW acquisition. The County or the city/town's PM resolves issues as they develop, keeping all stakeholders, including utilities, informed.
6. DCPW may have further final discussions with city/town, utilities and stakeholders, early enough to preclude re-work by the prime consultant. The goal is to achieve this prior to completing the final design documents.
7. Consultant will make minor design changes as directed by the PM resulting from property owner requests or other changes that arise naturally in ROW negotiations.
8. As required, the PM will be prepared to present expert testimony at any Eminent Domain hearings and any related litigation.
9. ROW is complete when all parcels necessary for construction have been acquired.





## PHASE 5 -- CONSTRUCTION



### STEP ONE, CONSTRUCTION



1. The PM works with PEMD to advertise a project in coordination with the Dallas County Purchasing Department for advertisement, pre-bid meetings, bid opening, and award. A one hundred percent (100%) design completion up-to-date construction estimate will be completed by the PM and will be used as the fair-cost government estimate for construction bidding purposes.
2. DCPW leads the drafting of the PSA and any necessary amendments/supplements to the PSA with each city/town giving approval of final funding on a timely basis. An updated PFES will be needed at this time.
3. The PM works with PEMD to help the Dallas County Purchasing Department facilitate the construction contract award. PM works with all cities/towns to ensure a logical and timely notice to proceed is given. This order to begin work and the contract time period will be based on the status of utility relocations, any city requirements, etc.
4. The PM will plan, schedule, and execute the Pre-Construction Meeting involving key stakeholders of the project, including utility companies. The PM will schedule for attendance and participation, the DCPW Director and the AD for Engineering & Construction and/or the AD for Transportation& Planning. Careful pre-planning helps ensure the attendance of the right stakeholders and staff. The PM will normally facilitate their own meetings since they have the expertise and experience to accomplish these tasks without hiring specialized consultants.
5. Construction proceeds on schedule with Construction Management services provided by the County or the city/town. The PM helps ensure that principles of collaboration (Trust, Commitment, and Shared Vision) are maintained throughout the project construction phase by the independent project participants such as contractors, cities, utility companies, transportation agencies and other key stakeholders.
6. The PM ensures constant communication with customers and other project stakeholders. This may include a construction oriented neighborhood meeting, as well as periodic project newsletters, notices of key construction events or phasing, meeting with neighborhood interests (property owners, schools, churches, businesses, etc). We are interested in not only achieving a high quality end-product, but also in delivering the project in a user-friendly manner. This is all part of total Context Sensitive Solutions project delivery.



## **STEP TWO, PROJECT CLOSE OUT**



1. The PM ensures the final pay estimate is paid to Contractor on a timely basis with assistance from the DCPW Program & Engineering Management Division (“PEMD”).
2. The PM completes final Evaluation on the Contractor, using interim evaluation results (if one was done), and performance during the entire contract period. Contractor evaluates DCPW (on a voluntary basis).
3. The PM ensures that as-built plans are provided to the ultimate owner of the project, typically the city/town, from marked-up construction plans.
4. The PM works with the PEMD to ensure total project costs are finalized, a final PFES is completed, and Program Management is able to disencumber any remaining funds to be put back into the MCIP fund.
5. The PM ensures the city/town is invoiced for their remaining portion of the Total Project Costs.
6. The PM formally turns the project over to the City by letter citing the date of return to City for maintenance.
7. The PM plans an After Action Review (“AAR”) to capture lessons learned and celebrate project completion with all participants involved in project delivery from design to construction completion.
8. The PM conducts the applicable one (1) or two (2) year Maintenance Bond Inspection in conjunction with all applicable stakeholders.
9. The PM completes close out project report, including retaining the key project documents digitally and documenting key lessons learned.



18. Share accurate information with all companies and try to help ensure that they share information with each other.
19. Communicate the need to follow city/town ordinances, particularly those relating to traffic control, backfill and pavement restoration. Traffic control plan must be filed and approved.
20. Ensure that the companies have measures for handling complaints about their work and that they do not inconvenience customers more than is absolutely essential. **Remember, ORR!!**



## GUIDELINES FOR ENSURING SMOOTH RELATIONSHIPS BETWEEN LOCAL GOVERNMENTS AND THE UNION PACIFIC RAILROAD (UPRR)



- **Start Early Coordination** – Set up a meeting with UPRR’s local representative to share project selection lists and to ascertain projects with UPRR impacts. Then on impacted projects, share preliminary designs, invite UPRR to early meetings, such as stakeholder preliminary design charrettes, public workshops, etc.
- **Work out precisely the location of railroad project impacts**, before contacting UPRR. This speeds the coordination process greatly. Use MAPSCO location, subdivision, and RR Mile Post wherever possible.
- **Use the UPRR website for a wealth of information, maps, etc.** This can save time in answering questions and can provide much information about UPRR, including points of contact, e-mail and telephone information, instructions, applications, specifications, DOT crossing information, permit requirements, ROW agreements, etc. DCPW in-house or consultant designers need to explore this web-site before launching road design whenever there is going to be a RR crossing. Procedures and responsibilities are clearly laid out, as are design guidelines and specifications. Avoid nasty surprises that can impact project costs if not budgeted.
- **Expect the UPRR owned ROW to contain many other utilities (telecommunications, power, pipelines, etc.), that you will have to pay to relocate.** These are private easements the utilities have paid for and the project will have to bear the costs of relocation. UPRR is a good source of information on the potential conflicts that you will encounter. Budgeting accurately for these costs will avoid nasty surprises later.
- **Check with UPRR before pursuing any changes to their standard agreement or attachments.** UPRR has agreements to work out in 23 states, and their lawyers are very vigilant to watch for precedents that might bind UPRR elsewhere. Work on win-wins in the body of the agreement.
- **Avoid adversarial actions and relationships.** Do not presume upon the UPRR (e.g., impossible requests that are not pursued in a timely manner, making demands they cannot meet, presuming the worst).
- **Look for ways to forge win-wins, for UPRR and the local community.** Understand that the United States Department Of Transportation (“USDOT”) has a policy to reduce at-grade RR crossings. This puts tremendous pressure on railroad companies to accomplish this goal. Are there some rarely used at-grade railroad crossings in the city/town that could possibly be closed? Explore ways to eliminate them and UPRR could be more interested to meet the needs of the project that is needing UPRR assistance.
- **When appropriate, have Dallas County’s attorneys communicate directly with UPRR attorneys.** If we follow the spirit of win-win, then both sides will have better results, even if our attorneys are involved, as they may have to be. The Project Manager should stay involved to ensure that going down “legal rabbit trails” is avoided whenever possible.
- **When you are in doubt and have searched all the readily available information, contact UPRR’s Real Estate Division in Omaha, NE.** Even though UPRR staff have large territories to cover, they are never too busy to help you proactively solve a problem and forge a win-win situation. If you setup a “folder number,” with UPRR this will save them much time in looking up the project file information.

## ***Regular Session Agenda Item: 10***

**Meeting Date: December 21, 2020**

### **ITEM DESCRIPTION**

Discuss and consider a Resolution of the City Council of the City of Seagoville, Texas, authorizing the City Manager to execute Work Order Authorization Agreement No. 3 with Halff Associates, Inc. for Professional Engineering Services on a Task Order Basis for Development Plan Review Assistance in an amount not to exceed Twenty Nine Thousand Five Hundred Dollars and No Cents (\$29,500.00); and providing an effective date.

### **BACKGROUND OF ISSUE:**

The City has previously entered into an Agreement for Professional Engineering Services on a Work Order Basis (the “Master Agreement”) with Halff Associates, Inc. for Development Plan Review Assistance. Under that Master Agreement, Halff Associates, Inc. has provided a proposed Work Order Authorization Agreement No. 3 for Professional Engineering Services including Development Plan Review Assistance, attached hereto as Exhibit “A”, for work to be completed September 30, 2021. The City Council finds that it is in the best interest of the City to approve Work Order Authorization Agreement No. 3 with Halff Associates, Inc. in an amount not to exceed twenty nine thousand, five hundred dollars and no cents (\$29,500).

### **FINANCIAL IMPACT:**

\$29,500.00

### **RECOMMENDATION:**

City Staff recommends approval.

### **EXHIBITS**

Resolution (2 Pages)  
Exhibit A

**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS**

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE WORK ORDER AUTHORIZATION AGREEMENT NO. 3 WITH HALFF ASSOCIATES, INC. FOR PROFESSIONAL ENGINEERING SERVICES ON A TASK ORDER BASIS FOR DEVELOPMENT PLAN REVIEW ASSISTANCE IN AN AMOUNT NOT TO EXCEED TWENTY NINE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$29,500.00); AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City has previously entered into an Agreement for Professional Engineering Services on a Work Order Basis (the “Master Agreement”) with Halff Associates, Inc. for development plan review assistance; and

**WHEREAS**, under that Master Agreement, Halff Associates, Inc. has provided a proposed Work Order Authorization Agreement No. 3 for Professional Engineering Services including Development Plan Review Assistance, attached hereto as Exhibit “A”, for work to be completed September 30, 2021; and

**WHEREAS**, the City Council finds that it is in the best interest of the City to approve Work Order Authorization Agreement No. 3 with Halff Associates, Inc. in an amount not to exceed twenty nine thousand, five hundred dollars and no cents (\$29,500);

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, THAT:**

**SECTION 1.** The City Council approves the Work Order Authorization Agreement No. 3 with Halff Associates, attached hereto as Exhibit “A”, for the purpose of providing development plan review assistance in an amount not to exceed twenty nine thousand, five hundred dollars and no cents (\$29,500), and 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.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Seagoville, Texas, and it is accordingly resolved.

**DULY PASSED** by the City Council of the City of Seagoville, Texas, on the 8<sup>th</sup> day of January, 2018.

APPROVED:

\_\_\_\_\_  
DENNIS K. CHILDRESS, MAYOR

ATTEST:

\_\_\_\_\_  
KANDI JACKSON, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
VICTORIA THOMAS, CITY ATTORNEY  
(121720vwtTM119746)

# EXHIBIT "A"

## City of Seagoville, Texas Work Order Authorization Agreement For Professional Engineering Services with Halff Associates, Inc.

### Work Order Authorization No. 3 Development Plan Review Assistance December 10, 2020

The City of Seagoville has requested that Halff continue to assist the City with private development plan reviews. Halff Associates will perform the following proposed services under the terms and conditions described in the **Agreement for Professional Engineering Services on a Work Order Basis (Agreement)**, dated \_\_\_\_\_, between Halff Associates and the City of Seagoville.

<b>Scope of Work:</b>	<p><u>General Description</u></p> <p>Halff will provide assistance for engineering plan reviews to be determined by the City. An individual work order will be issued for each engineering plan review. Each request for engineering plan review assistance from the City will be confirmed by Halff in a brief message to the City sent via email. The email message will contain a description of services, a maximum fee, and a schedule. An email response from the City will constitute approval of the request.</p> <p><u>Personnel to be Committed</u></p> <ol style="list-style-type: none"><li>1. Designated Review Engineer – Halff will provide a designated review engineer for each engineering plan review that the City requests assistance on. This review engineer will be a registered professional engineer.</li><li>2. Meetings and Coordination – If required, Halff’s project manager and/or designated review engineer will meet with City staff and coordinate the efforts of Halff for review of engineering plans. Halff’s project manager and/or designated review engineer will also be available to attend meetings with the “Other Engineer” and Owner/Developer at the City’s request.</li><li>3. Engineering Plan Reviews – When required, Halff will commit additional staff to perform reviews and miscellaneous tasks. Additional staff may include engineers and technicians with clerical support.</li></ol> <p><u>Scope of Services</u></p> <ol style="list-style-type: none"><li>1. Engineering Plan Reviews – In the review of new engineering plans, Halff will perform the following tasks:<ol style="list-style-type: none"><li>1. Check the grading plans for compatibility with previously established and natural drainage patterns.</li><li>2. Drainage</li></ol></li></ol>
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**City of Seagoville, Texas  
Work Order Authorization Agreement  
For  
Professional Engineering Services with Halff Associates, Inc.**

	<ol style="list-style-type: none"> <li>a. Check drainage area maps and drainage calculations</li> <li>b. Check proposed storm drainage facilities to ensure that they meet City criteria</li> <li>c. Check to ensure that proposed project does not impact flood zone (Special Flood Hazard Areas) per current effective FEMA Flood Insurance Rate Maps</li> <li>d. Check hydrology and hydraulics of open channel design</li> </ol> <ol style="list-style-type: none"> <li>3. Check erosion control plans to ensure they are adequate and meet City, State and Federal requirements</li> <li>4. Review paving plans to determine if they meet City minimum horizontal and vertical control criteria. Does not include reviews of joint spacing or joint design</li> <li>5. Determine if typical street sections meet City criteria.</li> <li>6. Check water and sewer line sizing with respect to the Master Plans.</li> <li>7. Check water line materials, fittings, valves, fire hydrant, and FDC locations.</li> <li>8. Check sanitary sewer materials, sizing and manhole locations. Check for conflicts with storm drainage and other on-site utilities and features.</li> <li>9. Check paving plans for conformance to Article 23 of the UDC.</li> <li>10. Check the compatibility of plans with standard City details, specifications and general notes.</li> <li>11. Check plats against the plans for adequacy, size and location of easements.</li> <li>12. Provide value engineering comments, if needed.</li> </ol> <ol style="list-style-type: none"> <li>2. City Standards &amp; Criteria – All reviews will be performed to ensure compliance with current City criteria and ordinances. Halff will utilize current City checklists to standardize and itemize the areas and criteria for each review, ensuring that associated comments are based on these items.</li> </ol> <p><u>Documentation</u></p> <ol style="list-style-type: none"> <li>1. Halff will prepare and maintain a project status report, in a format approved by the City that will detail the status of each engineering plan review and work order as well as the total fee remaining in the agreement. The status report will be updated on a bi-weekly basis</li> </ol>
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**City of Seagoville, Texas  
Work Order Authorization Agreement  
For  
Professional Engineering Services with Halff Associates, Inc.**

	<p>and transmitted to the City via email.</p> <p>2. Halff will provide direct correspondence to the “Other Engineer”, if requested by the City. Halff will document the minutes of these discussions.</p>
<b>Deliverables:</b>	<p>1. Review Comments and Letter – Halff will submit review comments (via email and hard copy) and ‘red lined’ plans to the City and meet with the City and/or the “Other Engineer” to discuss the review comments, if necessary. Halff’s review letter will also incorporate any outstanding third-party drainage review comments. Reviews will continue until all comments have been addressed. Halff will issue a “recommendation for release of plans” letter at the end of the review.</p>
<b>Items Furnished by City:</b>	<p>1. The City will furnish copies of substantially (approximately 90%) complete engineering plans to initiate the Halff review. The City will also furnish record drawings, studies and reports needed by Halff in the performance of the work.</p>
<b>Schedule:</b>	<p><u>Development Plan Review Schedule</u></p> <p>Initial submittal pick-up and fee estimate will be completed within 3 working days of initial notice from the City. This fee estimate will be transmitted, by Halff, via e-mail to the City’s Project Engineer.</p> <p>Initial engineering plan reviews (first review) will be completed within 10 working days after receipt of “notice to proceed”. 15 working days may be needed if the project is greater than 25 acres. A brief comment letter will be sent to the City along with the “red-lined” drainage plans.</p> <p>Follow up reviews (2<sup>nd</sup>, 3<sup>rd</sup>, etc.) will be completed within 5 working days of receipt of the revised engineering plans. 10 days may be needed if project is greater than 25 acres or if substantial changes have occurred since previous review. A brief comment letter will be provided to the CITY along with the “red-lined” drainage plans.</p> <p>Special or more intense reviews may require additional time to complete. The CITY will be notified immediately if additional time is required.</p> <p>Complete by September 30, 2021.</p>

**City of Seagoville, Texas**  
**Work Order Authorization Agreement**  
**For**  
**Professional Engineering Services with Halff Associates, Inc.**

<b>Fees:</b>	<p>This Task will be billed on a time and materials basis in accordance with the Agreement. The proposed budget for these services is as follows:</p> <p>Anticipated fees per review (subject to change):</p> <ol style="list-style-type: none"> <li>1. \$7,500 – Engineering review of projects greater than 50 acres</li> <li>2. \$6,500 – Engineering review of projects between 25 and 50 acres</li> <li>3. \$5,500 – Engineering review of projects between 10 and 25 acres</li> <li>4. \$4,500 – Engineering review of projects between 5 acres and 10 acres</li> <li>5. \$3,500 – Engineering review of projects less than 5 acres</li> </ol> <p>Additional fees may be included based on complexity of paving, access and/or utility plans and if off-site design is included. If reviews extend to a 4<sup>th</sup> review or if substantial changes occur to the project from the initial plan submittal, a subsequent Work Order may be requested if the review fee has been exceeded. Additional fees will be negotiated between the City of Seagoville and Halff, if needed.</p> <p>Work Order #3 Total:                   <b>\$ 29,500</b></p>
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Submitted:  
**HALFF ASSOCIATES, INC.**

Approved:  
**CITY OF SEAGOVILLE, TEXAS**

By:           *Stephen Crawford*            
Signature

By: \_\_\_\_\_  
Signature

Stephen Crawford, PE, CFM  
Printed Name

\_\_\_\_\_  
Printed Name

Vice President/Public Works Team Lead  
Title

\_\_\_\_\_  
Title

          12/10/2020            
Date

\_\_\_\_\_  
Date



## ***Regular Session Agenda Item: 11***

**Meeting Date: December 21, 2020**

### **ITEM DESCRIPTION:**

Second Reading - Discuss and consider approving a Resolution of the City Council of the City of Seagoville, Texas, approving the Economic Development Project between the Seagoville Economic Development Corporation and Seagoville Trinity Plaza, LLC as reflected in the terms and conditions of a Real Estate Purchase and Sale Agreement and an Economic Development Incentive Agreement between the parties; and providing an effective date.

### **BACKGROUND OF ISSUE:**

The Seagoville Economic Development Corporation ("SEDC") is authorized by the *Development Corporation Act*, Chapters 501-505, TEXAS LOCAL GOVERNMENT CODE (the "Act"), to provide funding for projects which will promote new and expanding business enterprises within the City.

On or about September 24, 2020, the SEDC Board of Directors voted to purchase the property and the improvements located thereon, located at 1880 N. Highway 175 and known as Trinity Plaza (hereinafter, "the Property"). On October 5, 2020, the City Council approved said expenditure of the SEDC. The SEDC became legal owners of the Property by Special Warranty Deed dated November 25, 2020.

Seagoville Trinity Plaza, LLC., *d/b/a Starwood Café*, desires to purchase the Property from the SEDC for the purposes of opening a restaurant. Approval of the Real Estate Purchase Agreement will promote new and expanded business enterprises within the City of Seagoville.

The SEDC Board of Director's approval of the Resolution approving Real Estate Purchase Agreement and the Economic Development Incentive will allow the Property to be developed and utilized in the manner intended.

### **FINANCIAL IMPACT:**

Positive to the SEDC

### **EXHIBITS:**

Resolution  
Real Estate Purchase Agreement  
Economic Development Incentive Agreement

**CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS**

**RESOLUTION NO. \_\_-R-2020**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, APPROVING THE ECONOMIC DEVELOPMENT PROJECT BETWEEN THE SEAGOVILLE ECONOMIC DEVELOPMENT CORPORATION AND SEAGOVILLE TRINITY PLAZA, LLC AS REFLECTED IN THE TERMS AND CONDITIONS OF A REAL ESTATE PURCHASE AND SALE AGREEMENT AND AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN THE PARTIES; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Seagoville Economic Development Corporation (“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 promote new and expanding business enterprises within the City; and

**WHEREAS**, the SEDC has negotiated and intends to undertake a project which will promote new and expanded business enterprises within the City with Seagoville Trinity Plaza, LLC, a Texas limited liability company, under the terms and conditions set forth in a Real Estate Purchase Agreement, attached hereto as Exhibit “A” and an Economic Development Incentive Agreement, attached hereto as Exhibit “B” (collectively, the “Project”) and

**WHEREAS**, section 505.158 mandates that the SEDC may not undertake a project that requires an expenditure of more than \$10,000 until the governing body of the corporation’s authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings; and

**WHEREAS**, the City Council has determined that the Project contemplated by SEDC and Seagoville Trinity Plaza, LLC under the terms and conditions set forth in the Real Estate Purchase and Sale Agreement and Economic Development Incentive Agreement will promote new and expanded business enterprises within the City of Seagoville; and

**WHEREAS**, the City Council finds that the expenditure of funds or the provision of an equivalent economic benefit in the form of an interest-free loan by SEDC in undertaking the Project is authorized by the Act and that the Project should be approved and authorized; and

**WHEREAS**, the City Council has conducted two (2) readings of this resolution;

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

**Section 1.** The City Council hereby approves and authorizes the Project between the Seagoville Economic Development Corporation and Seagoville Trinity Plaza, LLC, a Texas limited liability company, under the terms and conditions set forth in a Real Estate Purchase and Sale Agreement in substantially the form attached hereto as Exhibit “A” and an Economic Development Incentive Agreement in substantially the form attached hereto as Exhibit “B.”

**Section 2.** The City Council authorizes the SEDC to enter into any additional agreements necessary to undertake the Project in accordance with the terms and conditions set forth in the Real Estate Purchase and Sale Agreement and the Economic Development Incentive Agreement.

**Section 3.** This resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

**DULY RESOLVED AND ADOPTED First Reading and Second Reading** of the City Council of the City of Seagoville, Texas, this the 21<sup>st</sup> day of December 2020.

**APPROVED:**

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Dennis K. Childress, Mayor

**ATTEST:**

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Kandi Jackson, City Secretary

**APPROVED AS TO FORM:**

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Victoria Thomas, City Attorney  
(121120vwtTM119652)

**Exhibit "A"**  
**Real Estate Purchase and Sale Agreement**  
**(to be attached)**

**Exhibit "B"**  
**Economic Development Incentive Agreement**  
**(to be attached)**

## REAL ESTATE PURCHASE AGREEMENT

This **Real Estate Purchase Agreement** (“Agreement”) to buy and sell real property is entered between Seller and Purchaser as of the Effective Date as determined in Section 14(d), below.

**Seller:** Seagoville Economic Development Corporation  
702 US-175 Frontage Road  
Seagoville, Texas 75159  
Telephone: (469) 383-4888  
Email: [PStallings@seagoville.us](mailto:PStallings@seagoville.us)

**Seller’s Attorney:** Victoria W. Thomas  
Nichols Jackson Dillard Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard Street  
Dallas, Texas 75201  
Telephone: (214) 965-9900  
Email: [ythomas@njdhs.com](mailto:ythomas@njdhs.com)

**Purchaser:** Seagoville Trinity Plaza, LLC  
15331 Viburnum Road  
Frisco, Texas 75035  
Telephone: 214-449-3377  
E-mail: [Starwoodcare@gmail.com](mailto:Starwoodcare@gmail.com)

**Purchaser’s Attorney:** None

**Title Company:** Town Square Title Company  
310 N. 9<sup>th</sup> Street, Suite A  
Midlothian, Texas 76065  
Telephone: (972) 935-0800  
Fax: (972) 938-1045  
Email: [jbarton@townsquaretitle.com](mailto:jbarton@townsquaretitle.com)

**Property:** An approximately 0.9853 acre tract being Lot 3, Block A of Best Western/Seagoville Addition, an addition to the City of Seagoville, Dallas County, Texas, according to the map thereof recorded in Volume 99125, Page 40, of the Map Records of Dallas County, Texas the boundaries of which are determined by the survey attached hereto and incorporated herein by reference as Exhibit "A"; together with all right, title and interest of Seller, if any, in and to any (i) buildings, improvements and fixtures; (ii) rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores and rights-of-way (iii) land lying in or under the bed of adjacent streets, alleys, roads or rights of way, (iv) easements or rights of way appurtenant to or otherwise benefitting said tract, (v) all permits and approvals relating to said tract, (vi) all development rights relating to said tract, (vii) all reversionary rights related to said tract, and (viii) all other rights and appurtenances of any kind related to said tract (the "Property").

**Inspection Period:** The period commencing on the Effective Date and ending on the thirtieth (30<sup>th</sup>) day after the Effective Date.

**Closing Date:** Not later than forty-five (45) days after the end of the Inspection Period, or other date mutually agreed to by the parties in writing.

**Earnest Money:** \$3,314.00, to be delivered to the Title Company not later than the fifth (5<sup>th</sup>) day after the Effective Date, which amount shall be applied to the Purchase Price at and contingent upon Closing, and which amount shall become non-refundable upon the expiration of the Inspection Period, except as otherwise expressly provided in this Agreement. If Purchaser fails to timely deposit the Earnest Money, Seller may, at Seller's option, terminate this Agreement by delivering a written termination notice to Purchaser before Purchaser deposits the Earnest Money, whereupon neither party shall have any further rights or obligations hereunder except as to those rights or obligations which are stated to expressly survive the termination of this Agreement.

**Option Fee:** \$3,314.00, being the non-refundable portion of the Earnest Money (which amount shall be non-refundable, except as otherwise expressly provided in this Agreement), but which shall be applied to the Purchase Price at and contingent upon Closing.

**Purchase Price:** \$603,314.00 to be paid to Seller in accordance with terms of the Note, the form of which shall be agreed by the parties in accordance with Section 13, below.

**NOW, THEREFORE**, in consideration of the payment of the Purchase Price 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.** Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, and Purchaser agrees to purchase the Property as provided in this Agreement, including any and all improvements located thereon.

2. **Title and Survey.**

(a) Not later than the tenth (10th) day after the Effective Date, Purchaser will, at Purchaser's expense, cause the Title Company to issue, with respect to the Property, the following:

(i) a current commitment for an Owner's Policy of Title Insurance for the Property from the Title Company, 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) best available copies of all documents referenced in the Title Commitment; and

(iii) tax certificate(s) regarding the payment of ad valorem taxes showing no delinquent taxes on the Property.

(b) The Parties agree that the survey (the "Survey") of the Property prepared by a duly licensed Texas Registered Public Land Surveyor, a true and correct copy of which is attached hereto as Exhibit "A" is accepted by the Parties and the Parties waive all objection thereto. The legal description contained in said Survey shall be used by the parties as the legal description contained in the Special Warranty Deed and all other documents related to this Agreement without the necessity of amending this Agreement.

(c) Purchaser shall, not later than ten (10) days after Purchaser's receipt of the Title Commitment, notify Seller and Title Company in writing of any objections to the Title Commitment related to the Property. If there are any timely written objections made by Purchaser in accordance with this Section 2(c), Seller may, but shall be under no obligation to, attempt to satisfy same prior to Closing. Seller shall not be required to incur any cost to cure any of Purchaser's objections. If Seller delivers written notice to Purchaser not later than the fifth (5<sup>th</sup>) business day after Seller's receipt of Purchaser's objections that Seller is unwilling or unable to satisfy such objections, Purchaser may, as its sole and exclusive remedy, either (i) waive such objections and accept such title as Seller is able to convey, or (ii) terminate this Agreement by written notice to Seller and the Title Company prior to the expiration of the Inspection Period, whereupon the Earnest Money (save and except the Option Fee) shall be refunded to Purchaser and neither party shall have any further rights or obligations hereunder except as to those rights or obligations which are stated to expressly survive the termination of this Agreement. Any exceptions to title to which Purchaser does not timely object in accordance with this Section 2(c) or to which Purchaser objects but are subsequently waived by Purchaser shall be deemed to be Permitted Exceptions.

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 to conduct such non-invasive inspections, tests and studies as they may deem necessary; provided, however, that the costs and expenses of Purchaser's investigation shall be borne solely by Purchaser, Purchaser shall use its best efforts to avoid damage to the Property, and no inspection shall be undertaken without twenty-four (24) hours' prior notice to Seller (which notice may be by telephone). If for any reason Purchaser determines not to purchase the Property, Purchaser may, as its sole and exclusive remedy under this Section 3(a), terminate this Agreement by notifying Seller and Title Company in writing prior to the end of the Inspection Period, in which event, neither party hereto shall have any further claim against the other under this Agreement, except as otherwise provided herein, 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(a), it shall have no further right to do so under this Section 3(a); and Purchaser shall have waived its right to terminate this Agreement for any reason whatsoever except for Seller's default or inability to deliver indefeasible fee simple title to Purchaser at Closing free and clear of all liens and encumbrances except for the Permitted Exceptions and liens created at the time of Closing relating to the financing of the Purchase Price.

(b) Purchaser may enter the Property to conduct its inspection, but shall be solely responsible for and shall promptly pay for any damages caused thereby. **Purchaser shall promptly restore the Property to its original condition existing immediately prior to such inspections or testing and shall repair any damage to the Property it causes or that is caused by its agents, contractors, representatives, consultants or employees, or any other party acting by or under the direction of Purchaser (the "Purchaser Parties"), and shall hold Seller, its representatives, officers, directors, trustees, and agents harmless from and against any and all claims, liabilities or damages to the Property or against Seller, except to the extent caused by the intentional or negligent acts or omissions of Seller; provided, that Purchaser shall not be required to hold Seller harmless for Purchaser's discovery of any existing violations of any applicable law, statute, rule, regulation, code or ordinance revealed during such inspection, or discovery of any preexisting conditions present at the Property. Nothing stated herein shall be construed as a waiver of the protections which may be afforded Seller, if any, as a Texas non-profit corporation organized pursuant to the Development Corporation Act (Chapter 12, Subtitle C1 of the Texas Local Government Code, as amended or "the Act"), including, but not limited to, any immunity to liability or immunity from suit afforded the Seagoville Economic Development Corporation, its officers and/or agents under the Texas Tort Claims Act (Chapter 101, Tex. Civ. Prac. & Rem Code, as amended).**

(c) The provisions of this Section 3 shall expressly survive any termination of this Agreement or the Closing.

4. **Closing.** The closing of the sale of the Property in accordance with the terms of this Agreement (the "Closing") shall occur on or before the Closing Date at the Title Company or by mail or overnight delivery service, or at such other time and by such other methods 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 with vendor's lien, 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 (as defined in Section 8 hereof);

(ii) such other 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) in the amount of the Purchase Price, insuring such title to the Purchaser; and

(iii) possession of the Property, free of parties in possession (other than as reflected by the Title Commitment).

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

- (i) the Loan Documents, signed by Purchaser and in recordable form where applicable;
- (ii) a loan policy of title insurance, in the amount of \$603,314.00, insuring title to the Property and naming Seller, in its capacity as lender, as the insured party, such loan policy shall also confirm that the Deed of Trust lien is fully enforceable and such policy shall not contain any exceptions to coverage unless such exceptions have been specifically approved in writing by Seller; and
- (iii) such other documents as may be reasonably required by the Title Company.

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.

- (a) If Seller changes the use of the Property before Closing, resulting in the assessment of additional taxes for periods before Closing, Seller will be responsible for the payment of the additional taxes; and
- (b) If this sale or Purchaser's use of the Property after Closing results in the assessment of additional taxes for periods before Closing, Purchaser will be responsible for the payment of the additional taxes and assessments, if any, and Seller shall not be liable for payment of the additional taxes or assessments.
- (c) **If for the current ad valorem tax year, the taxable value of the land that is the subject of this Agreement is determined by special appraisal method that allows for appraisal of the land at less than its market value, the person to whom the land is transferred may not be allowed to qualify the land for that special appraisal in a subsequent tax year and the land may then be appraised at its full market value. In addition, the transfer of the land or a subsequent change in the use of the land may result in the imposition of an additional tax, plus interest as a penalty for the transfer or the change in the use of the land. The taxable value of the land and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the land located.**

7. **Closing Conditions and Costs.**

- (a) Closing on the sale of the Property shall be conditioned upon and subject to the following having occurred:
  - a. Purchaser and Seagoville Economic Development Corporation having executed the Economic Development Incentive Agreement considered by the SEDC at its December 17, 2020 meeting (the "Economic Development Incentive Agreement");
  - b. Seagoville City Council having approved the Project outlined in the Real Estate Purchase Agreement and the Economic Development Incentive Agreement; and
  - c. SEDC and the City of Seagoville having received no objection to the Project (including the transactions contemplated in the Real Estate Purchase Agreement and in the Economic Development Incentive Agreement) within sixty (60) days of notice

to the public of the proposed sale, the associated Economic Development Incentive Agreement, or the Project contemplated therein.

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

(i) all fees and costs of any Survey;

(ii) the Title Company's escrow fees:

(iii) all costs and expenses incurred by or on behalf of Purchaser, including Purchaser's attorney's 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 Mortgagees Title Policy, and/or Interim Construction Lender Endorsement;  
Costs for any tax certificates issued in connection with the transaction contemplated hereunder;

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

(vi) recording fees for the special warranty deed with vendor's lien conveying the Property to Purchaser and any other documents that are required to be recorded granting any liens or security interests in the Property and/or any improvements existing or constructed thereon; and

(vii) such other incidental costs and fees customarily paid by sellers and/or purchasers of real 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 attorney's fees.

8. **Permitted Exceptions.** The (i) lien for current taxes not yet due and payable, (ii) any matters shown on the Title Commitment which are promulgated by law to appear in any title insurance commitment or policy, (iii) any exceptions to title to which Purchaser does not timely object in accordance with Section 2(c) above or to which Purchaser objects but are subsequently waived by Purchaser, (iv) zoning ordinances, (v) existing oil and gas leases and reservations of the mineral estate, and (vi) the deed of trust lien recorded at Closing, shall not be valid objections to title and shall be deemed to be "Permitted Exceptions". Subject to the foregoing, 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 in writing to cure pursuant to Section 2(c) above, if any.

9. **Representations and Covenants**

(a) Seller represents and covenants that: (i) 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; (ii) to Seller's actual knowledge, without duty of inquiry, no other person has any interests in or claims against the Property (other than as reflected by the Title Commitment); (iii) except as may be set forth in the documents delivered by Seller to Purchaser pursuant to Section 2(a),

Seller has no actual knowledge, without duty of inquiry, 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 (iv) it will not hereafter encumber the Property

(b) 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.

(c) The representations set forth in this Section 9 shall survive Closing.

10. **Property Sold As Is.**

(a) Purchaser acknowledges, agrees and represents that as of the Closing Date it:

(i) will have fully inspected the Property; and

(ii) will have made all investigations as it deems necessary or appropriate and will be relying solely upon its inspection and investigation of the Property for all purposes whatsoever, including, but not limited to, the determination of the condition of the structures, improvements, soils, subsurface, drainage, surface and groundwater quality, and all other physical characteristics; availability and adequacy of utilities; compliance with governmental laws and regulations; access; encroachments; acreage and other survey matters and the character and suitability of the Property.

(b) Purchaser acknowledges and agrees that the sale of the Property as provided for herein is being made on an **“AS IS” CONDITION AND BASIS with all faults and defects, whether patent or latent.**

(c) EXCEPT WITH RESPECT TO THE WARRANTY OF THE TITLE TO THE PROPERTY BEING CONVEYED BY SELLER PURSUANT TO THIS AGREEMENT, SUCH WARRANTY TO BE INCLUDED IN THE SPECIAL WARRANTY DEED WITH VENDOR’S LIEN, PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING BUT NOT LIMITED TO WARRANTIES AND REPRESENTATIONS AS TO MATTERS OF TITLE (OTHER THAN SELLER’S SPECIAL WARRANTY OF TITLE SET FORTH IN THE DEED TO BE DELIVERED AT CLOSING), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVAL, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THINGS RELATED TO OR AFFECTING THE PROPERTY INCLUDING WITHOUT LIMITATION: (i) THE VALUE, DESIGN, QUALITY, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY, (ii) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO ANY OF THE PROPERTY, (iii) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, (iv) COMPLIANCE WITH SPECIFICATIONS, (v) ABSENCE OF LATENT DEFECTS, (vi) CONDITION OR ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES, (vii) ABSENCE OF FAULTS, AND (viii) COMPLIANCE WITH LAWS AND REGULATIONS, INCLUDING WITHOUT LIMITATION THOSE RELATED TO HEALTH, SAFETY, AND THE ENVIRONMENT. PURCHASER AGREES THAT

WITH RESPECT TO THE PROPERTY, EXCEPT AS SET FORTH SPECIFICALLY IN THIS AGREEMENT, PURCHASER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY AGENT, EMPLOYEE, SERVANT, OR REPRESENTATIVE OF THE SELLER, OR ANYONE ACTING OR CLAIMING TO BE ACTING ON SELLER'S BEHALF. PURCHASER REPRESENTS THAT PURCHASER IS A KNOWLEDGEABLE PURCHASER OF REAL ESTATE AND THAT PURCHASER IS RELYING SOLELY ON ITS OWN EXPERTISE AND INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC, COMPLIANCE, AND LEGAL CONDITION OF THE PROPERTY AND THAT OF PURCHASER'S CONSULTANTS, AND THAT PURCHASER HAS CONDUCTED SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS PURCHASER DEEMS NECESSARY, INCLUDING BUT NOT LIMITED TO THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAME. WITHOUT LIMITING THE GENERALITY OF THE DISCLAIMERS, AGREEMENTS, AND ACKNOWLEDGEMENTS CONTAINED HEREIN, PURCHASER FURTHER ACKNOWLEDGES THAT SELLER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS REGARDING (i) THE TRUTH OR ACCURACY OF ANY SURVEY OR STUDY AND/OR (ii) THE QUALIFICATIONS OR EXPERTISE OF THE RESPECTIVE PARTIES CONDUCTING SAME, AND THAT SELLER HAS NOT UNDERTAKEN ANY INDEPENDENT INVESTIGATION WITH RESPECT THERETO. PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS," AND PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY MADE BY SELLER, OR ANY AGENT, EMPLOYEE, SERVANT OR REPRESENTATIVE OF SELLER, OR ANYONE ACTING OR CLAIMING TO BE ACTING ON SELLER'S BEHALF, OR ANY OTHER THIRD PARTY. PURCHASER ACKNOWLEDGES AND HEREBY AGREES THAT SELLER WOULD NOT SELL THE PROPERTY AT THE PURCHASE PRICE SET FORTH HEREIN EXCEPT UPON THE COMPLETE DISCLAIMER OF ANY REPRESENTATIONS AND WARRANTIES OF SELLER, EXCEPT THE WARRANTY OF TITLE TO THE PROPERTY SET FORTH IN THE SPECIAL WARRANTY DEED. THE TERMS AND CONDITIONS OF THIS SECTION 10 SHALL EXPRESSLY SURVIVE THE CLOSING, SHALL BE BINDING UPON THE PARTIES HERETO, AND SHALL NOT BE DEEMED TO BE MERGED INTO OR WAIVED BY THE INSTRUMENTS EXECUTED AND DELIVERED AT CLOSING, BUT SHALL BE INCORPORATED INTO THE DEED.

11. **Remedies.** Except with respect to any indemnities and obligations set forth in Paragraph 3, and Seller's right to reasonable attorney's fees in enforcing any part of this Agreement, if Purchaser defaults, Seller's sole remedy shall be to terminate this Agreement and retain the Earnest Money. If Seller defaults, Purchaser's sole and exclusive remedy shall be to terminate this Agreement and obtain a refund of the Earnest Money and the Option Fee. 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.

12. **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 with confirmed receipt, 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 depositing 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, effective notice further requires that copies of notices shall be provided to the party's attorney at the addresses indicated above.

13. **Seller Loan Documents.** Seller has agreed to finance an amount equal to the Purchase Price less the Option Fee subject to execution by Purchaser of a promissory note (“the Note”), a deed of trust (“Deed of Trust”) and such other loan documents to which the parties agree (collectively referred to as “the Loan Documents”), in favor of Seller at Closing, in form and substance to be agreed by the parties. The parties shall use commercially reasonable efforts to agree to the form of the Loan Documents on or before the expiration of the Inspection Period. Subject to the provision of this Section 13, the parties agree that the Note shall provide for at least the following basic terms regarding the loan to be made to Purchaser:

- a. **Original Principal Amount:** \$600,000.00
- b. **Annual Interest Rate:** Zero Percent (0.0%)
- c. **Maturity:** Fifteen (15) Years from effective date of the Note.
- d. **Payments:** 180 equal monthly installments of principal.
- e. **Security for Payment:** The lien contained in the Deed of Trust granted for the benefit of Seller at Closing.
- f. **Assignability:** Only with Seller’s prior written consent, which may be withheld by Seller, in Seller’s sole discretion.
- g. **No Liens or Encumbrance.** For so long as the Note and Deed of Trust are outstanding, Purchaser will take no action resulting in the assessment of additional taxes or assessments or the creation of a lien on all or any portion of the Property.

In the event the parties have not agreed to the form of the Loan Documents on or before the last day of the Inspection Period, this Agreement shall automatically terminate without further notice and the Earnest Money, less the Option Fee, shall be refunded to Purchaser, whereupon neither party shall have any further rights or obligations hereunder except as to those rights or obligations which are stated to expressly survive the termination of this Agreement. The parties agree that notwithstanding anything contained herein to the contrary, the Seller may reject the form and substance of all Loan Documents in Seller’s sole and absolute discretion.

14. **Miscellaneous.**

(a) **Entireties.** This Agreement contains the entire agreement of the parties pertaining to the purchase and sale of the Property. The parties agree there are no oral agreements, understandings, representations or warranties made by the parties that are not expressly set forth in this Agreement. Any prior written agreements, understandings, representations or warranties between the parties will be deemed merged into and superseded by this Agreement, unless it is clear from the written document that the intent of the parties is for the previous written agreement, understanding, representation or warranty to survive the execution of this Agreement.

(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 without first obtaining the prior written consent of Seller, which consent may be withheld by Seller in Seller’s sole

discretion. Any permitted assignee must execute an assumption of the obligations of Purchaser hereunder in form reasonably acceptable to Seller at least five (5) days before the Closing Date. Any assignment in contravention of this provision shall be void.

(d) Effective Date. The Effective Date of this Agreement shall be the date on which the following conditions have been satisfied:

- (i) authorized representatives of the parties have signed this Agreement; and
- (ii) a fully signed copy of this Agreement has been delivered to and received by the Title Company.

(e) 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 holiday, then the end of such period shall be extended to the next business day.

(f) Brokers. Purchaser and Seller represent and acknowledge 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.

(g) 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.

(h) 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.

(i) 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 Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

(j) 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.

(k) Time of the Essence. Time is of the essence with respect to each provision of this Agreement. Strict compliance with the times for performance is required.

**SIGNED AND AGREED** this \_\_\_ day of \_\_\_\_\_, 2020.

**SELLER: SEAGOVILLE ECONOMIC  
DEVELOPMENT CORPORATION**

**By:** \_\_\_\_\_

**Jose Hernandez, Chairman**

**SIGNED AND AGREED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

**PURCHASER: SEAGOVILLE TRINITY  
PLAZA, LLC**

**By:** \_\_\_\_\_  
**Gezim “Andy” Rushiti, Manager**

**RECEIPT OF AGREEMENT**

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

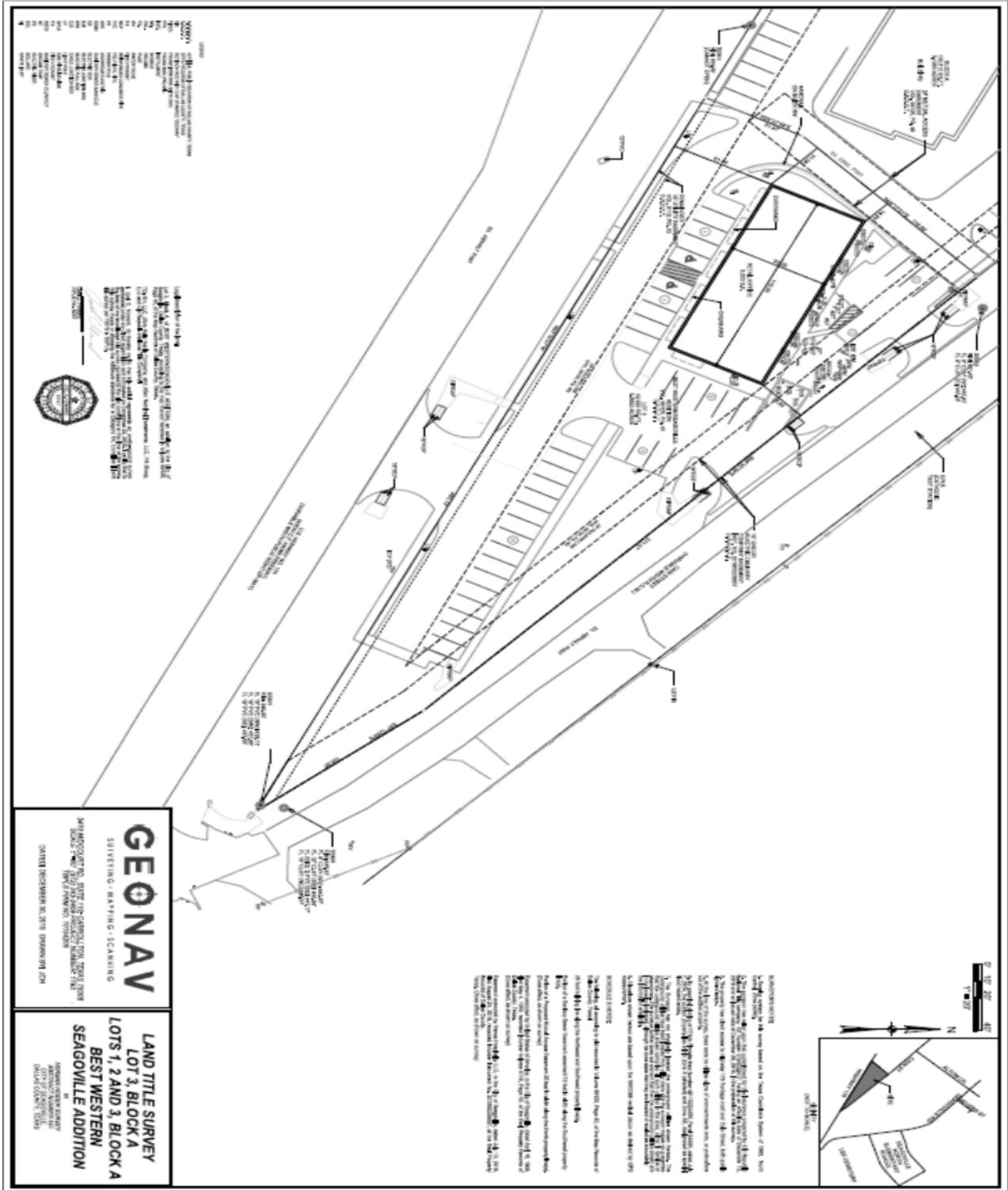
By: \_\_\_\_\_

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

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

Town Square Title Company  
310 N. 9<sup>th</sup> Street, Suite A  
Midlothian, Texas 76065

**EXHIBIT "A"**  
**[Survey showing Improvements]**



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

This Economic Development Incentive Agreement (“Agreement”) is made by and between Seagoville Trinity Plaza, LLC, a Texas limited liability company (“Trinity Plaza” or “Company”), and the Seagoville Economic Development Corporation, a Texas non-profit corporation (“SEDC”), each acting by and through their respective authorized representatives. SEDC and Trinity Plaza may be referred to herein each as a “Party” and collectively as the “Parties”.

**WITNESSETH:**

**WHEREAS**, Trinity Plaza intends to expand its restaurant business operations and desires to purchase the Property located at 1880 N. Highway 175, Seagoville, Texas 75159, including the Improvements located thereon, as identified on the survey attached hereto as Exhibit “A” (the “Property”), from SEDC and intends to complete the construction finish out of said Improvements (as hereafter defined) on the Property and specifically devote the Restaurant Portion of the Improvements to expand its restaurant business operations and locate a Starwood Café restaurant therein and operate that business for the Required Uses (as hereafter defined); and

**WHEREAS**, the Company intends to make a Capital Investment of approximately Three Hundred Thousand Dollars (\$300,000.00) in the Restaurant Improvements, in the form of finish-out of construction and installation of personal property, to be located on the Property and, as Company is able to secure tenants for the remaining portion of the Improvements, to also finish out the remaining portion of the improvements; and

**WHEREAS**, Company has advised SEDC that a contributing factor that would induce Company to purchase the Property, complete construction, including finish-out work, of the Restaurant Portion of the Improvements and, as tenants are secured, the remaining portion of the Improvements, and open and operate a Starwood Café in the Restaurant Portion of the Improvements on the Property would be an agreement by SEDC to provide an economic development loan to Company to finance and be applied to the Purchase Price of the Property; and

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

**WHEREAS**, the Development Corporation Act, Chapter 501-505 of the Texas Local Government Code (the “Act”) authorizes the SEDC to provide economic development incentives for the creation, promotion and expansion of new or expanded business opportunities in the City; and

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

**WHEREAS**, the SEDC has determined that providing the Loan to Company in accordance with this Agreement will further the objectives of SEDC, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City.

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

### **Article I Definitions**

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

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

“City” shall mean the City of Seagoville, Texas.

“Capital Investment” shall mean the aggregate of the total costs of design and Finish Out Work, including installation of personal property necessary for the Required Uses, for the Restaurant Portion of the Improvements (inclusive of all hard and soft costs) but not including costs related to the purchase of the Property.

“Commencement of Finish Out Work” shall mean that (1) the Finish Out Plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for the Finish Out (as defined herein) of the Restaurant Portion of the Improvements, (2) all necessary permits for the Finish Out of the Restaurant Portion of the Improvements have been issued by all applicable governmental authorities, and (4) on-site work on the Finish Out of the Restaurant Portion of the Improvements has commenced at the Improvements.

“Completion of Finish Out Work” shall mean that the (1) Finish Out of the Restaurant Portion of the Improvements has been substantially completed, (2) a final, permanent certificate of occupancy for the Restaurant Portion of the Improvements has been issued, and (3) a Starwood Café restaurant operated by Trinity Plaza is open and conducting business during normal business hours utilizing the Restaurant Portion of the Improvements.

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

“Expiration Date” shall mean (i) the Maturity Date of the Note, or (ii) the date all amounts of principal, interest, and/or other amounts due on the Note have been paid, whichever is earlier.

“Finish Out Plans” shall mean the plans and specifications sufficient for the construction and other Finish Out Work on the Restaurant Portion of the Improvements on the Property (including civil, architectural, grading and site plans) in accordance with the Zoning and any design plans approved by the City.

“Finish Out Work” shall mean all work necessary for issuance of a certificate of occupancy by the City for the Restaurant Portion of the Improvements.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages, and periods during a pandemic when restaurants and similar businesses are required by federal, state, or local law to limit customer occupancy to less than 75% of maximum legally allowed occupancy load.

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

“Improvements” shall mean the approximately 5,500 square foot structure currently constructed and located on the Property.

“Loan” shall mean an economic development loan in the amount of \$600,000.00, to be repaid as set forth in accordance with the Note, and to provide funds solely for the purpose of being applied at closing of the sale of the Property by SEDC to Company to the Purchase Price of the Property.

“Note” shall mean that certain “Promissory Note (Secured) setting forth the terms of repayment of the Loan substantially in the form set forth in Exhibit “B” hereto.

“Property” shall mean an approximately 0.9853 acre tract being Lot 3, Block A of Best Western/Seagoville Addition, an addition to the City of Seagoville, Dallas County, Texas, according to the map thereof recorded in Volume 99125, Page 40, of the Map Records of Dallas County, Texas the boundaries of which are determined by the survey

attached hereto and incorporated herein by reference as Exhibit “A”; together with all right, title and interest of Seller, if any, in and to any (i) buildings, improvements and fixtures; (ii) rights, privileges, and appurtenances pertaining to the Property, including Seller’s right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores and rights-of-way (iii) land lying in or under the bed of adjacent streets, alleys, roads or rights of way, (iv) easements or rights of way appurtenant to or otherwise benefitting said tract, (v) all permits and approvals relating to said tract, (vi) all development rights relating to said tract, (vii) all reversionary rights related to said tract, and (viii) all other rights and appurtenances of any kind related to said tract (the “Property”).

“Real Estate Purchase Agreement” means that certain Real Estate Purchase Agreement between the Parties, as amended from time to time, providing for the sale of the Property by SEDC to Company for the purchase price of \$603,314.00.

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

“Required Use” shall mean the development, use and operation of the Restaurant Portion of the Improvements after Completion of Finish Out Work by Company as a for-profit Starwood Café or similar caliber restaurant business entity opened to the public and operating on the Property in the Restaurant Portion of the Improvements and serving the citizens of the City.

“Restaurant Portion of the Improvements” shall mean that portion of the Improvements, not less than 2,500 square feet in area, which Company agrees to finish out and devote to the Required Use under the terms and conditions of this Agreement.

“SEDC” shall mean the Seagoville Economic Development Corporation.

“Trinity Plaza” or “Company” shall mean Seagoville Trinity Plaza, LLC, a Texas limited liability company, and its officers, agents, successors, and permitted assigns.

## **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**

### **Economic Development Loan**

3.1 Loan Amount; Note and Deed of Trust. Subject to the agreement of Company to repay the Loan pursuant to the terms of the Note, and the continued satisfaction of all the terms and conditions of this Agreement and any Related Agreements by Owner, SEDC agrees to loan to Company the amount of Six Hundred Thousand Dollars (\$600,000.00), the proceeds of said

Loan to be applied by SEDC to the purchase price of the Property upon the Closing of Company's purchase of the Property in accordance with the provisions of the Real Estate Purchase Agreement and delivery to SEDC by Company of (a) a fully signed Note by Company to SEDC and (b) a Deed of Trust granting to Kevin B. Laughlin and Victoria W. Thomas, Co-Trustees for the benefit of the SEDC, a lien against the Property to secure repayment of the Note.

3.2 Loan from Available Funds; No Payments to Third Parties. The Loan shall be made solely from lawfully available funds that have been appropriated by SEDC. SEDC shall have no obligation or liability to provide any Loan except as allowed by law. 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 in favor of any commercial lender and/or similar financial institution without the prior written consent of the SEDC.

#### **Article IV Conditions to Economic Development Loan**

Trinity Plaza shall during the term of this Agreement satisfy and comply with the terms and conditions of this Agreement and specifically, each term and condition of this Article IV. The obligation of SEDC to provide the Loan or any portion thereof shall be conditioned upon Trinity Plaza's compliance with and satisfaction of the terms and conditions of this Agreement and each of the conditions set forth in this Article IV.

4.1 Good Standing. Trinity Plaza shall not have an uncured breach or default of this Agreement or a Related Agreement.

4.2 Commencement of Finish Out Work. Commencement of Finish Out Work, as that term is defined herein, shall occur not later than thirty (30) days after the closing of the sale of the Property by SEDC to Company.

4.3 Completion of Finish Out Work. Completion of Finish Out Work, as that term is defined herein, shall occur not later than one (1) year after the closing of the sale of the Property by SEDC to Company

4.4 Required Use of Proceeds. The proceeds of the Loan shall only be used by Company for payment of the purchase price of the Property at the closing of the sale of the Property by SEDC to Company.

4.5 Capital Investment. Company's Capital Investment for the Finish Out Work for the Restaurant Portion of the Improvements, as of the Completion of Finish Out Work, shall be not less than Three Hundred Thousand (\$300,000.00) Dollars. Within five business days of Completion of Finsih Out Work, Company shall notify SEDC in writing of said completion. At SEDC's option, SEDC may, within fifteen (15) business days of receipt of said notice, request that Company provide and deliver to SEDC copies of all records, contracts, receipts, invoices, bills and such other information as SEDC may reasonably request to document compliance with the required Capital Investment and Company will deliver those documents to SEDC within

fifteen (15) days of receipt of the request. In the event the final total cost of the Finish Out Work, on the Restaurant Portion of the Improvements as reasonably verified by SEDC, is less than Three Hundred Thousand Dollars (\$300,000.00), the Company shall, at SEDC's option, pay the SEDC the difference in value between \$300,000.00 and the final total cost of the Finish Out Work as reasonably verified by SEDC, up to a maximum amount of \$100,000.00.

4.6 Required Uses for the Restaurant Portion of the Improvements. Beginning on the Completion of Finish Out Work and continuing thereafter until the Expiration Date or earlier termination, the Restaurant Portion of the Improvements, being at least two thousand, five hundred (2,500) square feet of the area of the Improvements, shall not be used for any purpose other than the Required Uses and the Company shall not allow the operation of that portion of the Restaurant Portion of the Improvements in conformance with the Required Uses to cease for a period of more than thirty (30) consecutive days, except in connection with and to the extent of an event of Casualty or Force Majeure. With regard to the remaining portion of the Improvements, following finish out in compliance with all City, State and federal Codes and regulations, Company shall be allowed to operate any legally allowed for-profit business operation or establishment therein in compliance with all local, state and federal laws, or may lease the same to one or more third-parties.

4.7 Casualty and Condemnation. If the Improvements are damaged partially or destroyed by casualty, regardless of the extent of the damage or destruction, Company shall, subject to events of Force Majeure and the availability of adequate insurance proceeds, within two hundred seventy (270) days from the date of such casualty commence to repair, reconstruct or replace the damaged or destroyed portion of the Improvements, as applicable, and pursue the repair, reconstruction, or replacement with reasonable diligence so as to restore the Improvements to substantially their condition immediately prior to the Casualty.

## **Article V Termination; Repayment**

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

- (a) by mutual written agreement of the Parties;
- (b) by SEDC in the event Company breaches any of the terms or conditions of this Agreement or a Related Agreement and such breach is not cured within thirty (30) days after written notice thereof;
- (c) upon written notice by SEDC, if any Impositions owed to SEDC, City or the State of Texas by Trinity Plaza shall have become delinquent (provided, however, Trinity Plaza retains the right to timely and properly protest and contest any such taxes or Impositions), and such delinquency is not cured within thirty (30) days following Trinity Plaza's receipt of written notice thereof;
- (d) by SEDC, if Trinity Plaza suffers an event of Bankruptcy or Insolvency;

- (e) 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;
- (f) upon full payment of the Note and delivery to SEDC of all documents required under this Agreement and any Related Agreement.

5.2 Repayment due to Termination Under Section 5.1(b), (c) or (d). In the event the Agreement is terminated by SEDC pursuant to Section 5.1 (b), (c), or (d), Trinity Plaza shall, for each such breach, immediately refund to SEDC \$3,000.00, said amount being 0.50% (one half of one percent) of the total Loan amount of \$600,000.00. The obligations of the Trinity Plaza set forth in this Section 5.2 shall survive termination of this Agreement.

## **Article VI Miscellaneous**

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon and inure to the benefit of the officers, successors, affiliates, administrators, executors, and permitted assigns of the respective Parties. Neither this Agreement nor the Note or Deed of Trust may be assigned or assumed without the prior written consent of the SEDC.

6.2 Limitation on Liability. It is understood and agreed between the Parties that Trinity Plaza and SEDC, 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.

6.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.4 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. Company represents and warrants that it is a duly formed, validly existing Texas limited liability company in good standing under the laws of the State of Texas and is authorized to transact business in the State of Texas. The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

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

If intended for SEDC, to:

Seagoville Economic Development  
Corporation  
Attn: Patrick Stallings, Exec. Director  
702 N. Highway 175  
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

If intended for Trinity Plaza:

Gezim "Andy" Rushiti  
Seagoville Trinity Plaza, LLC  
15331 Viburnum Road  
Frisco, Texas 75035

6.6 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. There is no other collateral oral or written agreement among the Parties that in any manner relates to the subject matter of this Agreement.

6.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

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

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

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

6.11 Successors and Assigns. This Agreement may not be assigned without the prior written consent of SEDC, which, upon Completion of the Finish Out Work, shall not be unreasonably withheld.

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

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

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

6.15 Employment of Undocumented Workers. During the term of this Agreement, Trinity Plaza agrees to not knowingly employ any undocumented workers, and if convicted of a violation under 8 U.S.C. Section 1324a (f), Trinity Plaza shall repay the value of the incentive provided hereunder and the costs incurred by SEDC to provide the Loan within 120 days after the date Trinity Plaza is notified by SEDC of such violation, plus interest at the rate of 4% compounded annually from the date of violation until paid. Trinity Plaza is not liable for a violation of this section in relation to any workers employed by a subsidiary, affiliate, or franchisee of Trinity Plaza or by a person with whom the Trinity Plaza contracts.

6.16 Prohibition of Boycott of Israel. Company verifies that (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the Agreement or any Related Agreement. This section does not apply if the Company is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the Company has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Contract.”

6.17 Conditions Precedent. The obligations of the Parties are expressly subject to and conditioned Company and SEDC having entered into the Real Property Purchase Agreement.

*[Two Signature Pages to Follow]*

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

**SEAGOVILLE      ECONOMIC      DEVELOPMENT  
CORPORATION**

By: \_\_\_\_\_  
Patrick Stallings, Executive Director

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

**SEAGOVILLE TRINITY PLAZA, LLC**

By: \_\_\_\_\_  
Gezim “Andy” Rushiti, Managing Member



**EXHIBIT “B”**  
**[Promissory Note]**

**PROMISSORY NOTE**

**Date:** INSERT DATE

**Borrower:** Seagoville Trinity Plaza, LLC, a Texas limited liability company

**Borrower’s Mailing Address:** 15331 Viburnum Road, Frisco, Texas 75035 15331 (Collin County)

**Lender:** Seagoville Economic Development Corporation

**Place for Payment:** Attn: Patrick Stallings, Seagoville Economic Development Corporation, 702 North Highway 175, Seagoville, Texas 75159 (Dallas County)

**Principal Amount:** SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00)

**Annual Interest Rate:** ZERO (0.0%) PERCENT

**Maturity Date:** INSERT DATE

**Annual Interest Rate on Matured, Unpaid Amounts:** Maximum allowed by law.

**Terms of Payment (principal and interest):** The principal and interest shall be paid in one hundred, seventy-nine (179) equal monthly installments of \$3,333.33 each and one final monthly installment of \$3,333.34, the first such installment being due and payable on INSERT DATE (“the Initial Payment Date”), the remaining one hundred, seventy-nine (179) installments to be due and payable on the monthly anniversary of the Initial Payment Date thereafter, with all remaining principal and interest due under this Note being due and payable in full on the Maturity Date.

**Security for Payment:** This Note is secured by a lien described in that certain deed of trust of even date hereto signed by Borrower to Seagoville Economic Development Corporation for the benefit of Lender (“Deed of Trust”), said Deed of Trust lien attaching to the real property located in Dallas County, Texas, and described more fully in Exhibit “A”, attached hereto and incorporated herein by reference (“the Property”), together with all (i) buildings, improvements and fixtures located on the Property, (ii) strips and gores between said tract and abutting properties, (iii) land lying in or under the bed of adjacent streets, alleys, roads or rights of way, (iv) easements or rights of way appurtenant to or otherwise benefiting said tract, (v) utility capacities, commitments, reservations and other rights and capacities (including but not limited to storm water detention rights) related to said tract, (vi) all licenses, permits and approvals relating to said tract, (vii) all development rights relating to said tract, (viii) all rights to credits, refunds and reimbursements associated with said tract, (ix) all water and drainage rights associated with said tract, (x) all reversionary rights related to said tract, (xi) all leases and rents for all or a part of the Property, and (xii) all other rights and appurtenances of any kind related to said tract.

**Other Security for Payment:** Vendor’s Lien retained by Lender as Grantor in Special Warranty Deed of even date herewith conveying the Property to Borrower as Grantee.

Borrower promises to pay to the order of Lender the Principal Amount plus interest at the Annual Interest Rate. This Note is payable at the Place for Payment and according to the Terms of Payment. All unpaid amounts are due by the Maturity Date. After maturity, Borrower promises to pay any unpaid principal balance plus interest at the Annual Interest Rate on Matured, Unpaid Amounts.

If Borrower defaults in the payment of this Note or in the performance of any obligation in any instrument securing or collateral to this Note, Lender may declare the unpaid principal balance, earned interest, and any other amounts owed on this Note immediately due. Borrower and each surety, endorser, and guarantor waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.

Borrower also promises to pay reasonable attorney's fees and court and other costs if this Note is placed in the hands of an attorney to collect or enforce this Note. These expenses will bear interest from the date of advance at the Annual Interest Rate on Matured, Unpaid Amounts. Borrower will pay Lender these expenses and interest on demand at the Place for Payment. These expenses and interest will become part of the debt evidenced by this Note and will be secured by any security for payment.

Interest on the debt evidenced by this Note will not exceed the maximum rate or amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the Principal Amount or, if the Principal Amount has been paid, refunded. On any acceleration or required or permitted prepayment, any excess interest will be canceled automatically as of the acceleration or prepayment or, if the excess interest has already been paid, credited on the Principal Amount or, if the Principal Amount has been paid, refunded. This provision overrides any conflicting provisions in this Note and all other instruments concerning the debt.

In the event any installment shall become overdue for a period in excess of thirty (30) days, a charge of one percent (1.0%) of the installment payment so overdue may be charged by Lender for the purpose of defraying the expense incident to handling such delinquent payments. This charge is in addition to and not in lieu of Lender's other rights and remedies that it may have available.

A default exists under this Note if (1) (a) Borrower or (b) any other person liable on any part of this Note or who grants a lien or security interest on any property as security for any part of this Note (an "Other Obligated Party") fails to timely pay or perform any obligation or covenant in any written agreement between Lender and Borrower or any Other Obligated Party; (2) any warranty, covenant, or representation in this Note or in any other written agreement between Lender and Borrower or any Other Obligated Party is materially false when made; (3) a receiver is appointed for Borrower, any Other Obligated Party, or any property on which a lien or security interest is created as security (the "Collateral Security") for any part of this Note; (4) any Collateral Security is assigned for the benefit of creditors; (5) a bankruptcy or insolvency proceeding is commenced by Borrower, a partnership of which Borrower is a general partner, or an Other Obligated Party; (6) (a) a bankruptcy or insolvency proceeding is commenced against Borrower, a partnership of which Borrower is a general partner, or an Other Obligated Party and (b) the proceeding continues without dismissal for sixty days, the party against whom the proceeding is commenced admits the material allegations of the petition against it, or an order for relief is entered; (7) any of the following parties is dissolved, begins to wind up its affairs, is authorized to dissolve or wind up its affairs by its governing body or persons, or any event occurs or condition exists that permits the dissolution or winding up of the affairs of any of the following parties: Borrower, a partnership of which Borrower is a general partner, or an Other Obligated Party; or (8) any Collateral Security is impaired by loss, theft, damage, levy and execution, issuance of an official writ or order of seizure, or destruction,

unless it is promptly replaced with collateral security of like kind and quality or restored to its former condition.

Borrower and each surety, endorser, and guarantor waive demand, notice of intent to demand, presentment for payment, notice of nonpayment, protest, notice of protest, grace, notice of dishonor, notice of intent to accelerate maturity, notice of acceleration of maturity, and diligence in collection. Failure by the holder of this Note to exercise its option to accelerate upon any default shall not constitute a waiver of the holder's right to exercise such option in the event of any subsequent default.

Borrower hereby represents and warrants that this Note has been duly and validly executed and delivered by Borrower, and constitutes the legal, valid and binding agreement of Borrower enforceable against Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws from time-to-time in effect affecting the enforcement of creditor's rights generally and to general equitable principles.

Each right, power and remedy of the Lender as provided for in this Note or now or hereafter existing under any applicable law shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Note or now or hereafter existing under applicable law, and the exercise or beginning of exercise by the Lender of any one or more of such rights, powers or remedies, shall not preclude the simultaneous or later exercise by the Lender of any and all such other rights, powers or remedies. No failure or delay by the Lender to insist upon the strict performance of any term, condition, covenant or agreement of this Note, or to exercise any right, power or remedy consequent upon a breach hereof, shall constitute a waiver of any such term, condition, covenant, agreement or breach or preclude the Lender from exercising any such right, power or remedy at a later time or times. By accepting payment after the due date of any amount payable under the terms of this Note, the Lender shall not be deemed to waive the right to either require prompt payment when due of all other amounts payable under the terms of this Note, or to declare an event of default for the failure to effect such prompt payment of any such other amount. No course of dealing or conduct shall be effective to amend, modify, release or change any provisions of this Note.

**Prepayment.** Borrower reserves the right to prepay, at any time prior to maturity, all or any part of the principal of this Note without penalty. Any prepayments shall be applied first to accrued interest and then to principal. Borrower will provide written notice to the holder of this Note of any such prepayment of all or any part of the principal at the time thereof. All payments and prepayments of principal or interest on this Note shall be made in lawful money of the United States of America in immediately available funds, at the address of Lender indicated above, or such other place as the holder of this Note shall designate in writing to Borrower. All partial prepayments of principal shall be applied to the last installments payable in their inverse order of maturity.

This Note is non-assignable by Borrower without the Lender's prior written consent.

Borrower is responsible for all obligations represented by this Note.

Borrower hereby represents and warrants to Lender that Borrower has no defenses under this Note or the Deed of Trust, and that this Note and the Deed of Trust represent the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with the terms thereof and hereof.

When the context requires, singular nouns and pronouns include the plural.

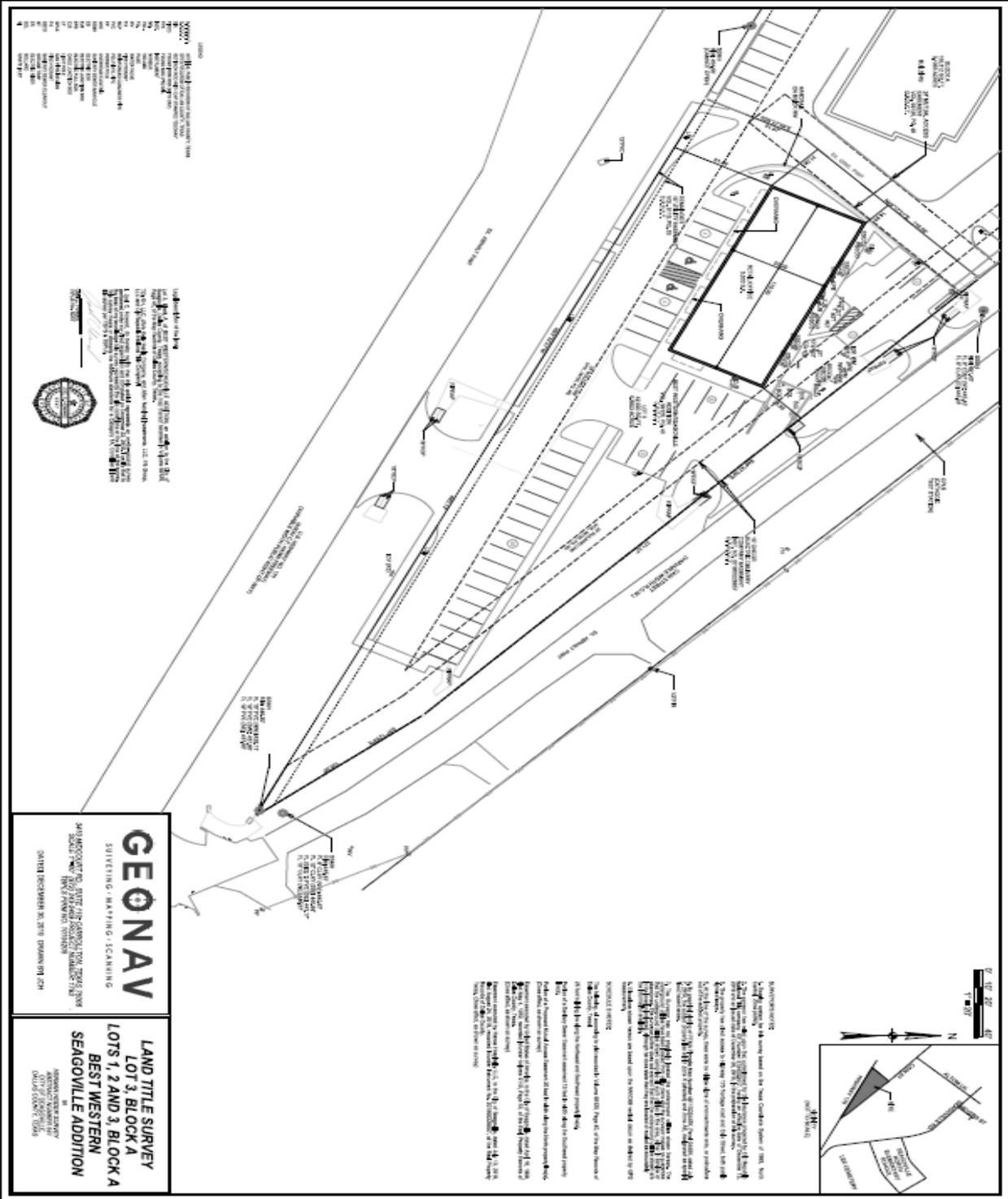
BORROWER:

SEAGOVILLE TRINITY PLAZA, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Gezim "Andy" Rushiti, Managing Member

**Exhibit "A" to Promissory Note  
Description of Property**

A 0.9853 ± acre tract legally described as Lot 3, Block A, of Best Western/Seagoville Addition, an addition to the City of Seagoville, Dallas County, Texas, according to the map thereof recorded in Volume 99125, Page 40, of the Map Records of Dallas County, Texas the boundaries of which are generally depicted on this Exhibit "A" as follows:



**PROMISSORY NOTE**

**Date:** INSERT DATE

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**Security for Payment:** This Note is secured by a lien described in that certain deed of trust of even date hereto signed by Borrower to Seagoville Economic Development Corporation for the benefit of Lender ("Deed of Trust"), said Deed of Trust lien attaching to the real property located in Dallas County, Texas, and described more fully in Exhibit "A", attached hereto and incorporated herein by reference ("the Property"), together with all (i) buildings, improvements and fixtures located on the Property, (ii) strips and gores between said tract and abutting properties, (iii) land lying in or under the bed of adjacent streets, alleys, roads or rights of way, (iv) easements or rights of way appurtenant to or otherwise benefiting said tract, (v) utility capacities, commitments, reservations and other rights and capacities (including but not limited to storm water detention rights) related to said tract, (vi) all licenses, permits and approvals relating to said tract, (vii) all development rights relating to said tract, (viii) all rights to credits, refunds and reimbursements associated with said tract, (ix) all water and drainage rights associated with said tract, (x) all reversionary rights related to said tract, (xi) all leases and rents for all or a part of the Property, and (xii) all other rights and appurtenances of any kind related to said tract.

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unless it is promptly replaced with collateral security of like kind and quality or restored to its former condition.

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Each right, power and remedy of the Lender as provided for in this Note or now or hereafter existing under any applicable law shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Note or now or hereafter existing under applicable law, and the exercise or beginning of exercise by the Lender of any one or more of such rights, powers or remedies, shall not preclude the simultaneous or later exercise by the Lender of any and all such other rights, powers or remedies. No failure or delay by the Lender to insist upon the strict performance of any term, condition, covenant or agreement of this Note, or to exercise any right, power or remedy consequent upon a breach hereof, shall constitute a waiver of any such term, condition, covenant, agreement or breach or preclude the Lender from exercising any such right, power or remedy at a later time or times. By accepting payment after the due date of any amount payable under the terms of this Note, the Lender shall not be deemed to waive the right to either require prompt payment when due of all other amounts payable under the terms of this Note, or to declare an event of default for the failure to effect such prompt payment of any such other amount. No course of dealing or conduct shall be effective to amend, modify, release or change any provisions of this Note.

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When the context requires, singular nouns and pronouns include the plural.

**BORROWER:**

SEAGOVILLE TRINITY PLAZA, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Gezim “Andy” Rushiti, Managing Member

**Exhibit "A" to Promissory Note  
Description of Property**

A 0.9853 ± acre tract legally described as Lot 3, Block A, of Best Western/Seagoville Addition, an addition to the City of Seagoville, Dallas County, Texas, according to the map thereof recorded in Volume 99125, Page 40, of the Map Records of Dallas County, Texas the boundaries of which are generally depicted on this Exhibit "A" as follows:



## ***Regular Session Agenda Item: 12***

**Meeting Date: December 21, 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: 13***

**Meeting Date:** December 21, 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