

YOUR EMPLOYEES WANT TO LIVE HERE

**KELLER**

TEXAS

YOUR BUSINESS WILL THRIVE HERE

**CITY OF KELLER**  
**AUCTION FOR SALE AND**  
**REQUEST FOR PROPOSALS**



# City of Keller Auction for Sale and Request for Proposals

Development of Keller exclusive waterfront acreage

RFP # 23-004

Issued: October 27, 2022

Proposals Due: November 14, 2022, 12:00 PM

## Company Information:

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Company Representative Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Company Representative Printed Name

\_\_\_\_\_  
City, State & Zip

\_\_\_\_\_  
Date

\_\_\_\_\_  
Area code & telephone number

\_\_\_\_\_  
Company Representative E-Mail

# RFP #23-004: DEVELOPMENT OF EXCLUSIVE WATERFRONT ACREAGE

## QUICK SUMMARY OF OFFER

The City of Keller wishes for a developer/business enterprise to purchase and develop a vacant tract of land in Keller for the purpose of developing a unique, mixed-use, experiential retail/restaurant establishment. Proposals for this RFP should include a purchase offer price for the property, respondent's prior experience and qualifications, detailed concept plan, business plan including pro forma, and determination of financial feasibility. Please see page seven for more details.



### 541 KELLER PARKWAY

(AKA FM 1709)

**1.022 ACRES** of Usable Space

**RAW LAND**

**AESTHETIC WATERFRONT** Feature

**RETAIL ZONING** (PD-1323)

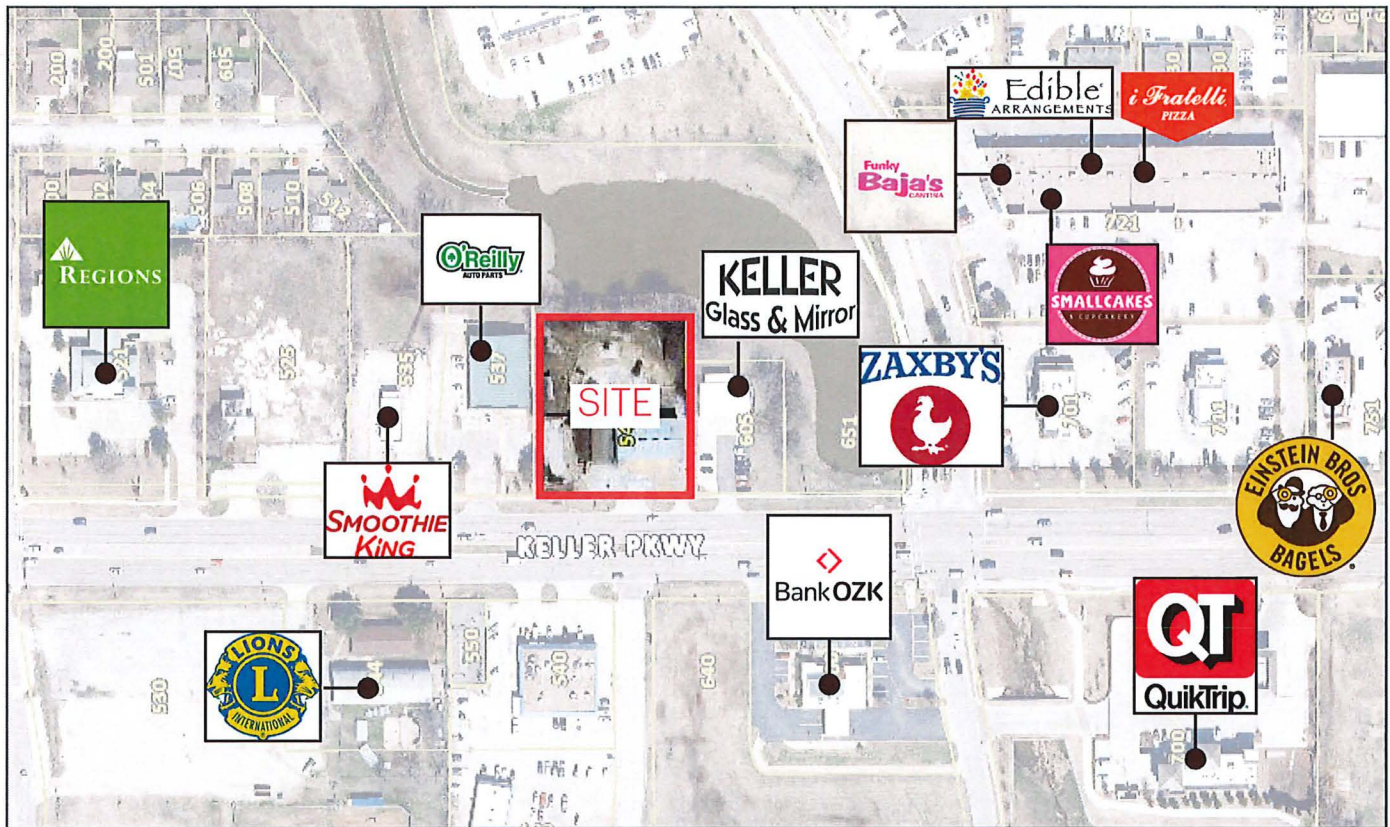
**8" WATER LINE** in Keller Parkway

**8" WASTEWATER LINE** in Keller Parkway

**FIRE HYDRANTS** located within 10' of the property on Keller Parkway

**PAVED ROAD FRONTAGE** with two state-approved curb-cuts and driveways accessing Keller Parkway.

# SURROUNDING RETAIL



# DESIRED CONCEPT

Restaurant/Entertainment development proposals are preferred. Image provided as conceptual example.





## RECENT AWARDS

**Best Small Cities to Live in America** - WalletHub (2021)

**Top 100 Safest Cities in the US** - Neighborhood Scout (2021)

**Best Places to Raise a Family in Texas** - Niche (2021)

**Top 10 Best Places to Live in Texas** - HomeSnacks (2021)

**Safest Place in Texas** - Alarms.org (2021)

*Big-City Comforts,  
Small-Town Charm*



## FINE ARTS FRIENDLY

12 ANNUAL **ART EVENTS**

5 ANNUAL **TOWN HALL ART GALLERY SHOWS**

11 SCULPTURES **ROTATING ART PROGRAM**

14 PERMANENT **SCULPTURES**

## OFFICE SPACE AVAILABILITY

101K SF AVAILABLE **OFFICE SPACE**

7.2% **VACANCY RATE**

\$28.82/SF **MARKET RENT**

77 ACRES OF RAW LAND AVAILABLE **CORPORATE BUILD-OUT**

## 341 ACRES OF PARK LAND

27 MILES OF **TRAILS**

140-ACRE **SPORTS PARK**

**150 EVENTS** ANNUALLY

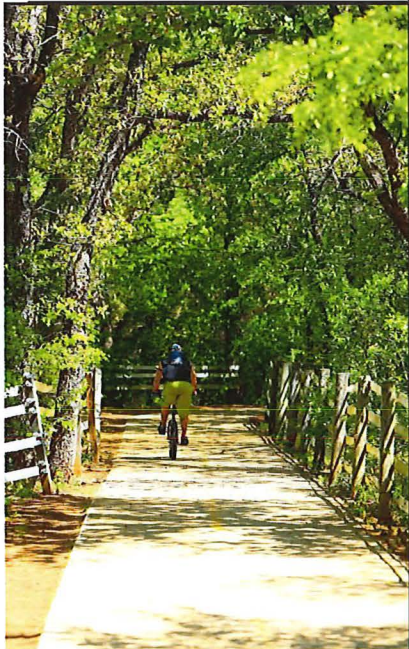
92K SQUARE-FOOT **FITNESS CENTER**



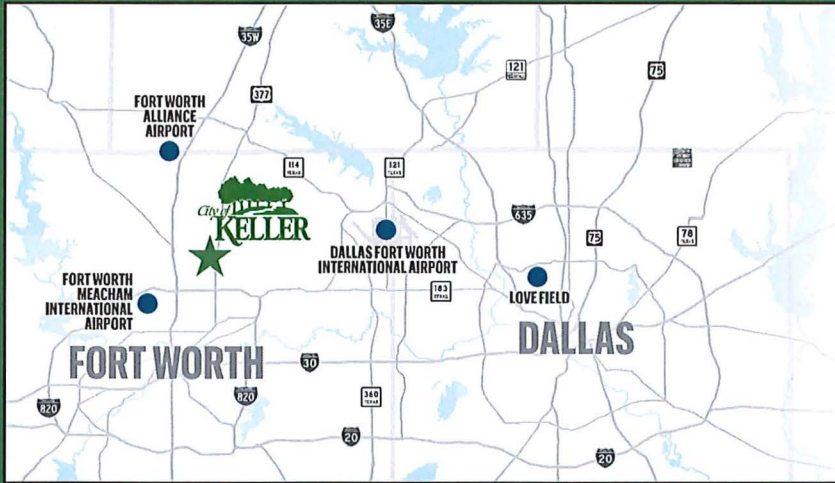
## AN EDUCATED WORKFORCE

 **39%**  
BACHELOR'S DEGREE

 **20%**  
MASTERS DEGREE



The **City of Keller** is conveniently located in the Dallas-Fort Worth metroplex, offering easy connections to three major airports within a 30 mile radius and access to multiple major highways. Downtown Fort Worth is easily accessible by jumping onto I-35 W and Highway 114 will take you straight into Downtown Dallas. Ranking #3 on the National Council for Home Safety and Security's list of "The Safest Cities in Texas," Keller provides a safe and welcoming atmosphere with an excellent school system and outstanding quality of life. Locating to the City of Keller will provide an opportunity for your business to thrive in a unique and growing community within minutes of Circle T Ranch and the Alliance Corridor.



## ACCESS TO EVERYTHING

ALLIANCE AIRPORT – **9 MILES**

DFW INTERNATIONAL AIRPORT – **11 MILES**

DOWNTOWN FORT WORTH – **18 MILES**

DALLAS LOVE FIELD – **30 MILES**

DOWNTOWN DALLAS – **32 MILES**

## CITY OF KELLER

POPULATION: **45,660**

HOUSEHOLDS: **15,770**

MEDIAN HOUSEHOLD INCOME: **\$160,224**



## PRIMARY RETAIL TRADE AREA

POPULATION: **158,619**

HOUSEHOLDS: **650,629**

MEDIAN HOUSEHOLD INCOME: **\$128,242**



## ADDITIONAL CONSIDERATIONS

- Minimum purchase price considered will be \$200,000. The highest offer above the required minimum will be considered.
- Title policy will not be furnished by the city, but may be purchased, at buyer's sole expense.
- Restaurant/Entertainment development proposals are preferred.
- Supportive documents, including zoning, easements, legal background, etc. may be reviewed online at [www.cityofkeller.com](http://www.cityofkeller.com) or in-person at the front counter in the Community Development Department.
- Once this agreement is executed, no additional economic incentives will be considered.

# REQUEST FOR PROPOSALS (RFP) OUTLINE AND SELECTION PROCESS OVERVIEW

The City of Keller is seeking qualified parties interested in purchasing and developing the property located at 541 Keller Parkway being 1.022 acres, more or less. The 1.022 acre parcel offers single street frontage on Keller Parkway with utilities and infrastructure available to the site.

The selection process involves three (3) phases: an auction in the form of this RFP, with a minimum required purchase price, Project/Development Planning, and selection of respondent to negotiate a best value to the city. This RFP is the first phase.

- Phase 1 - RFP: Respondents must submit a firm auction price to be paid in cash at closing along with closing costs and proposals as described in the section for Instructions for Respondents. After the auction price and responses from this RFP are received and reviewed, the City will select up to three respondents from this RFP process to proceed to the second phase;
- Phase 2 - Finalist Presentations: The City will discuss Keller vision and requirements with each finalist separately and hear each finalist's concept plans and objectives to achieve and maintain this vision with growth. Their prior experience, business plan, incentive requirements, qualified general contractor selection process, timeline for development from award date, and financial strength.
- Phase 3 - Selection: Following discussions between the City and finalists, the City will select a lead respondent who, in the sole opinion of the city, would provide the best value to the City.

## HOW TO RESPOND TO THIS RFP

The intent of this auction and RFP is to allow all interested parties to provide a sufficient amount of data that will enable the City of Keller to select the best value use of the property. To this end, respondents shall provide, at their own expense, the following:

1. An offer of a minimum of \$200,000.
2. Respondent's prior experience and qualifications;
3. Development team biographies, including all owners, managers, and general contractor;
4. References from other cities with which the respondent has worked;
5. Detailed vision for the concept plan and objectives to achieve and maintain this vision with growth;
6. Business plan including pro forma;
7. Incentive requirements;
8. Qualified general contractor selection process;

9. Timeline for development from award date;
10. Financial strength and stability including five years previous financial statements;
11. A letter confirming pre-approved financing; and
12. Sign the Executed Purchase Agreement (Exhibit A);

Submission will include one copy in electronic (.pdf) format and two hard copies presented in bound format (booklet or notebook are acceptable). Submittals will be indexed and paginated. Submittals may be hand delivered or mailed. Please note the different address, depending on chosen delivery method.

By submitting a proposal in response to this solicitation, the respondent accepts the evaluation process and acknowledges and accepts that the determination of the “best value” will require subjective judgments by the city.

Deadline to receive submissions is November 14, 2022, 12:00 PM. Late submissions will not be considered.

**Hand Deliver/UPS/FedEx:**

Finance Department  
Attn: Karla Parker  
1100 Bear Creek Parkway  
Keller, TX 76248

**USPS:**

Finance Department  
Attn: Karla Parker  
P.O. Box 770  
Keller, TX 76244-0770



## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the "Agreement") is made and entered into by and between **The City of Keller, Texas, a home rule municipality**, ("Seller") and \_\_\_\_\_ ("Purchaser").

### ARTICLE I

#### Defined Terms

- 1.1 **Terms.** The following terms shall have the meanings respectively indicated:
- A. "Closing" means the consummation of the purchase of the Property by Purchaser from Seller in accordance with the terms and provisions of this Agreement.
  - B. "Closing Date" means the date specified in Section 7.1 on which the Closing will be held.
  - C. "Earnest Money" means the portion of the Purchase Price deposited in escrow with the Title Company at the time and in the amount specified in Section 3.2, plus any accrued interest thereon.
  - D. "Effective Date" means the date following City Council of Keller approval and a fully executed copy of this Agreement is deposited with the Title Company together with the Earnest Money.
  - E. "Permitted Exceptions" means: (i) restrictive covenants affecting the Property; (ii) any discrepancies, conflicts or shortages in area or boundary lines, or any encroachments, or any overlapping of improvements; (iii) taxes for the current and subsequent years, and subsequent assessments for prior years due to a change in land usage or ownership; (iv) existing building and zoning ordinances; (v) rights of parties in possession; (vi) liens created or assumed as security for the sale consideration; (vii) any covenants, conditions, reservations, exceptions and easements, and all oil, gas and mineral conveyances, and leases, if any, in effect and shown of record in the county clerk's office where the Property, or any part thereof, is located; and (viii) Seller's reservation of minerals currently owned by Seller.
  - F. "Property" means Lot 3, Block 1, Foote's Addition, City of Keller, Tarrant County, Texas, and more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes, and all improvements and fixtures presently attached to and situated on the Property, but with all of Seller's interest in the minerals in and under the Property excepted and reserved.

G. "Title Company" means Title Company, as further described in Section 3.2, acting by and through its agent.

## ARTICLE II

### Agreement of Purchase and Sale

Upon the terms and conditions contained in this Agreement, Seller agrees to convey the Property to Purchaser by special warranty deed and Purchaser, in consideration of the performance of the agreements of Seller, agrees to take the Property "as is" and to pay the Purchase Price (as hereinafter defined) to Seller in accordance with Article III.

**THE PROPERTY WILL BE CONVEYED "AS-IS", "WHERE-IS" AND WITH ALL FAULTS AND SELLER MAKES NO WARRANTY, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY, THE AVAILABILITY OF UTILITIES, ACCESS TO PUBLIC ROADS OR ITS PHYSICAL AND ENVIRONMENTAL CONDITION. NO WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, MATERIALS, WORKMANSHIP OR APPLIANCES HAS BEEN MADE OR IS EXPRESSED OR IMPLIED BY THIS AGREEMENT. SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OF HABITABILITY, GOOD AND WORKMANLIKE CONSTRUCTION, SUITABILITY, OR DESIGN.**

## ARTICLE III

### Purchase Price

3.1 **Purchase Price.** The Purchase Price (herein so called) to be paid by Purchaser to Seller for the Property is U.S. \$ \_\_\_\_\_ (\_\_\_\_\_ Dollars), to be paid in cash at Closing, from current funds of Purchaser.

3.2 **Earnest Money.** Purchaser shall, contemporaneously with the delivery by Purchaser to Seller of three (3) original copies of this Agreement executed by Purchaser, deliver to Seller a check made payable to Seller in the amount of \$250.00 (Two Hundred Fifty Dollars), as Earnest Money. A true and correct copy of this Agreement, along with a copy of the Earnest Money payment shall be forwarded to \_\_\_\_\_ Title Company, \_\_\_\_\_, Texas \_\_\_\_\_. If the purchase and sale hereunder is consummated in accordance with the terms and provisions of this Agreement, then the entire Earnest Money shall be applied by the Title Company as partial payment of the Purchase Price due at the Closing. If Closing does not occur, the entire Earnest Money is non-refundable to Purchaser and shall be conveyed to the Seller.

## ARTICLE IV

### Title

4.1 **Title Commitment.** Within five (5) business days after the Effective Date of this Agreement, Purchaser may request, at Purchaser's sole discretion and cost, that the Title Company issue, for the benefit of Purchaser, a current Owner's Title Policy Commitment (the "Title Commitment"), setting forth the state of title to the Property, together with all exceptions or conditions to such title, including, without limitation, all easements, restrictions, rights-of-way, covenants, reservations and all other encumbrances affecting the Property which would appear in an Owner's Title Policy, if issued, and containing the express commitment of the Title Company to issue the Title Policy (as hereinafter defined) to Purchaser in the amount of the Purchase Price. **The Purchaser will pay all expenses related to the Title Commitment.**

4.2 **Title Policy.** At Closing, Purchaser may cause an Owner's Title Policy (the "Title Policy") to be furnished to Purchaser. The Title Policy shall be issued by the Title Company in the amount of the Purchase Price and shall insure good and indefeasible fee simple title to the Property in Purchaser. The Title Policy shall contain the Permitted Exceptions, but shall contain no additional exceptions to title to the Property other than standard printed exceptions on the form of Owner's Policy of Title Insurance currently promulgated by the State Board of Insurance of the State of Texas and Seller's reservation of mineral rights. Purchaser hereby waives any and every claim or cause of action against Seller relating to or arising out of the Property, including those relating to the title thereto (including all implied warranties), and Purchaser hereby agrees to proceed solely and exclusively against the Title Company in the event of any claim. **The Purchaser will pay all expenses related to the Title Policy.**

4.3 **Survey.** If desired by Purchaser, and at Purchaser's sole expense, Purchaser shall be responsible for obtaining a current survey ("Survey") consisting of field notes prepared by a licensed surveyor. For purposes of the property description to be included in the special warranty deed to be delivered pursuant to this Agreement, any field notes prepared by the surveyor shall be incorporated herein by this reference upon their approval by Purchaser. In the event Purchaser elects to vacate and re-plat the Property, a plat prepared for this purpose may serve as the Survey, provided that a metes and bounds description is provided.

4.4 **Review of Title Commitment and Survey.** Purchaser shall have a period of ten (10) days from receipt of the Title Commitment and Survey to review the Title Commitment and Survey and to deliver in writing such objections as Purchaser may have to anything contained or set forth in the Title Commitment and/or Survey.

4.5 **Seller's Option to Cure Objections.** If exceptions to the title or Survey to the Property have been raised in the Title Commitment, Survey, or other accompanying documents and Purchaser timely delivers written objections thereto to Seller in accordance with the provisions of Section 4.4, then Seller may, but shall not be obligated to, within fifteen (15) days after the receipt of any such objections, satisfy such objections. Seller shall not be obligated to pay any sum of money to any third party to satisfy such objections or commence litigation to

clear title to the Property. If Seller fails to cure the objections within the time period specified above, Purchaser, as its sole and exclusive remedy, may either (i) waive such objections and close this Agreement, acquiring the Property subject to such matters without reduction to the Purchase Price, or (ii) terminate this Agreement within five (5) days after the end of the fifteen (15) day cure period. In the latter event, Purchaser shall receive a refund of the Earnest Money and Purchaser and Seller shall have no further obligations or liabilities to each other. If Purchaser fails to give notice of Purchaser's election to terminate within the required five (5) day period, Purchaser will be deemed to have waived any such objection.

## ARTICLE V

### Conditions Precedent to Purchaser's Performance

5.1 **Satisfaction of Objections to Title Commitment.** Purchaser shall not be obligated to purchase the Property if within the fifteen (15) day period specified in Section 4.5, Seller shall fail to cure any valid title objections timely made by Purchaser, except those waived by Purchaser pursuant to Section 4.5.

5.2 **No Condemnation.** Purchaser shall not be obligated to purchase the Property if on the Closing Date any substantial portion of the Property has been condemned or sold under threat of condemnation, or is the subject of condemnation proceedings.

5.3 **Waiver of Conditions Precedent.** Purchaser may, however, elect to waive any of the conditions precedent to performance of Purchaser's obligations contained in this Agreement by giving notice to Seller of Purchaser's election to waive any such condition precedent. In the event of any waiver of any condition precedent to Purchaser's obligations, this Agreement shall continue in full force and effect and the obligations of Purchaser and Seller hereunder shall be unaffected by such waiver.

5.4 **Termination if Conditions Precedent Not Satisfied or Waived.** In the event that any of the conditions precedent to the performance of Purchaser's obligations have not been satisfied by Seller or are waived or deemed to have been waived by Purchaser within the time periods for performance or waiver, then, as the sole and exclusive remedy resulting therefrom, this Agreement shall terminate and the Earnest Money shall be returned to Purchaser and neither party shall have any further rights, obligations or liabilities under this Agreement.

5.5 **Risk of Loss.** If either party notifies the other that all or a significant part of the Property has been damaged or destroyed after the date of this Agreement but before the Closing, and if Seller, at Seller's sole option exercised at any time prior to Closing, does not restore the condition of the Property to its condition as of the date of this Agreement or agree to do so within a reasonable period of time, then either Seller or Purchaser may, as the sole and exclusive remedy, by written notice given prior to Closing to the other, terminate this Agreement, in which event the Earnest Money shall be refunded to Purchaser by the Title Company and neither party shall have any further rights, obligations or liabilities under this Agreement.

5.6 **Inspection Period.** Purchaser shall not be obligated to perform under this Agreement and shall have the right to terminate this Agreement within five (5) days following the Effective Date (the "Inspection Period") unless Purchaser, in its sole discretion, shall have determined that the Property is not suitable for the Purchaser's use. Following the Effective Date, Seller agrees to permit Purchaser reasonable access to the Property for the purpose of conducting soil tests, environmental and engineering studies, and such other tests and studies as Purchaser deems necessary to determine the suitability of the Property for Purchaser's purposes. **PURCHASER SHALL, TO THE EXTENT ALLOWED BY LAW, INDEMNIFY AND HOLD SELLER HARMLESS FROM ALL MECHANICS' AND MATERIALMEN'S LIENS OR ANY AND ALL OTHER CLAIMS, DAMAGES, LIABILITIES OR EXPENSES RESULTING FROM PURCHASER'S TESTS, STUDIES, AND/OR ENTRY UPON THE PROPERTY.** In the event Purchaser has not terminated this Agreement by written notice to Seller within the Inspection Period, it shall be conclusively presumed that the conditions precedent described in this Section 5.6 have been met or that Purchaser has waived the same. In the event that Purchaser delivers written notice to Seller within the Inspection Period that Purchaser desires to terminate this Agreement, this Agreement shall terminate and the Title Company shall immediately deliver to Seller the Earnest Money Deposit and all interest accrued thereon, less \$100 of the Earnest Money, which shall be delivered to Seller as Purchaser's independent option consideration.

5.7 **Extension Period.** Purchaser shall have the right to extend the initial Inspection Period one (1) time for a period of thirty (30) days and a second extension for an additional 45 days upon written notice to Seller and an additional earnest money deposit of \$1,000.00 for the first event and \$1,500 for the second event, which shall not be refunded to Purchaser in the event the Agreement is terminated by Purchaser, but shall apply to Purchaser's closing cost.

## ARTICLE VI

### Conditions Precedent to Seller's Performance

6.1 **Purchaser's Obligations.** Seller shall not be obligated to perform under this Agreement unless and until the following conditions have been satisfied:

A. Purchaser's Earnest Money check shall have been accepted by the Seller as good funds within five (5) days of receipt thereof by the Title Company.

B. Purchaser shall have performed all of Purchaser's obligations hereunder.

6.2 **Termination.** In the event that any of the conditions precedent to the performance of Seller's obligations have not been timely satisfied by Purchaser and have not been waived by Seller, Seller may elect to terminate this Agreement under this section, whereupon the Earnest Money shall be delivered to Seller as liquidated damages for Purchaser's failure to perform hereunder. The Earnest Money is a reasonable forecast of just compensation for the harm that would be caused by Purchaser's breach.

6.3 Seller may terminate this Agreement upon written notice to Purchaser in the event that Seller is prohibited or rendered unable by law from performing its obligations hereunder. In the event of termination under this provision, neither Seller nor Purchaser shall have any further rights or obligations hereunder and Seller shall deliver the Earnest Money to Purchaser, free and clear of any claims by Seller.

## ARTICLE VII

### Closing

7.1 **Date and Place of Closing.** The Closing shall take place in the office of the Title Company. The Closing Date will be within thirty (30) days from the Effective Date of this Agreement, or at such earlier time as agreed upon between the Seller and Purchaser. Should the Inspection Period be extended by the Purchase pursuant to Section 5.7, the Closing Date shall also be extended for the same period.

#### 7.2 **Items to be delivered at the Closing.**

A. Seller shall deliver to Purchaser:

- (1) A special warranty in the form shown on attached Exhibit "B" hereto, duly executed and acknowledged by Seller, subject only to the Permitted Exceptions, which shall include, but are not limited to, the following:
  - (a) General real estate taxes and assessments for the year of closing and subsequent years, which shall be prorated as hereinafter specified;
  - (b) Matters indicated in the Survey and Title Commitment which are approved by Purchaser or as to which Purchaser's objections are waived or deemed waived;
  - (c) A partial release of lien(s) affecting the subject property to the sole satisfaction of the Purchaser;
  - (c) A reservation by Seller of all of its mineral interest in the Property, but with all rights to use the surface of the Property for mineral exploration or production purposes waived; and
- (2) If requested by Purchaser, the Owner's Policy of Title Insurance, at Purchaser's cost.
- (3) Any other documents reasonably required by the Title Company.

B. At the Closing, Purchaser shall deliver to Seller the following items:

- (1) The Purchase Price; and
- (2) If the Property is located in a utility district, such notices as may be necessary to acknowledge the existence of the utility district and its tax rates.
- (3) Any other documents reasonably required by the Title Company.

7.3 **Adjustments at Closing.** No adjustments for ad valorem taxes and assessments relating to the Property for the current calendar year shall be made between Seller and Purchaser as of the Closing Date. Purchaser shall be solely responsible for all ad valorem taxes and assessments attributable to the Property for the period of time following Closing, or subsequent assessments for periods preceding Closing, due to change in land usage or ownership.

7.4 **Possession.** Possession of the Property shall be delivered to Purchaser at Closing and Funding.

7.5 **Costs of Closing.** Except for costs expressly attributed to one party by the terms of this Agreement, Purchaser shall be responsible for the total closing costs, excluding paying the fees of the Seller's legal counsel in negotiating, preparing, and closing this transaction.

## ARTICLE VIII

### Defaults and Remedies

#### 8.1 **Seller's Defaults.**

A. Seller shall be deemed to be in default if Seller shall fail to meet, comply with, or perform any covenant, agreement, or obligation on Seller's part required within the time limits and in the manner required in this Agreement, providing all conditions precedent to Seller's performance have been fully satisfied; provided however, any failure of Seller to cure timely objections made by Purchaser pursuant to Sections 4.4 and 4.5 of this Agreement shall not constitute a default herein.

B. In the event Seller shall be deemed to be in default, Purchaser shall transmit notice of such default to Seller, and Seller shall have ten (10) days from date of receipt of such notice to cure such default. Should Seller fail to timely cure such default, Purchaser may, as its sole and exclusive remedy, terminate this Agreement and shall be excused from further performance of its purchase obligation hereunder, and upon written notice by Purchaser to Seller and the Title Company, the Earnest Money will be returned to Purchaser.

C. Under no circumstances shall Seller be liable to Purchaser for damages, whether the same are contemplated hereby or not.

#### 8.2 **Purchaser's Defaults.**

A. Purchaser shall be deemed to be in default if Purchaser shall fail to deliver, at the Closing, the items required to be delivered by Purchaser to Seller for any reason other than a default by Seller.

B. In the event Purchaser shall be deemed to be in default, as Seller's sole and exclusive remedy for such default, Seller may terminate this Agreement, whereupon Seller shall be entitled to the Earnest Money and further, Seller shall have the option to repurchase the property from the purchaser for the purchase price and reasonable cost of improvements made as of the date of repurchase., which the Title Company shall deliver to Seller on receipt of written notice from Seller that Purchaser has defaulted. The notice need not be accompanied by any other document or consent of any other party, it being agreed between Purchaser and Seller that the Earnest Money shall be liquidated damages for a default of Purchaser hereunder because of the difficulty, inconvenience, and uncertainty of ascertaining actual damages for such default.

## ARTICLE IX

### Brokerage Commission

9.1 **Brokers Identified.** Seller and Purchaser hereby represent and warrant to the other that neither has contacted any real estate broker, finder or other party in connection with this transaction, to whom any real estate brokerage, finders, or other fees may be due or payable with respect to the transaction contemplated by this Agreement. Purchaser agrees to indemnify and hold Seller harmless from any other real estate sales commissions negotiated by or resulting from or incident to any contacts made by Purchaser and relating to the sale and purchase of the Property contemplated hereby.

9.2 **Notice to Seller and Purchaser.** If a title policy is to be obtained, Purchaser should obtain a commitment for title insurance, which should be examined by an attorney of Purchaser's choice at or prior to Closing. If the Property is situated in a utility district, Section 50.301 of the Texas Water Code requires the Purchaser to sign and acknowledge the statutory notice from Seller relating to the tax rate and bonded indebtedness of the District.

## ARTICLE X

### Miscellaneous

10.1 **References.** All references to "Article," "Section," or "Sections" are, unless specifically indicated otherwise, references to Articles and Sections of this Agreement.

10.2 **Exhibits.** All references to an "Exhibit" are references to exhibits attached to this Agreement, if any, all of which are made a part hereof for all purposes. The exhibits hereto are:

Exhibit "A"    Legal Description of Property  
Exhibit "B"    Form of Deed



10.3 **Captions.** The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

10.4 **Number and Gender of Words.** When, in this Agreement, the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

10.5 **Notices.** All notices, demands, requests, and other communications required or permitted in this Agreement shall be in writing, and shall be deemed to have been delivered if delivered personally or upon the deposit of same in a regularly maintained receptacle of the United States Postal Service, registered or certified mail, postage prepaid, addressed to the Seller and/or Purchaser at the below addresses or to such other address the notice of change of which is appropriately given:

If to Seller:                    Mr. Mark Hafner  
    City Manager  
    1100 Bear Creek Parkway  
    Keller, Texas 76248

Copy to:                         L. Stanton Lowry  
(which shall not                Boyle & Lowry, L.L.P.  
constitute notice)               4201 Wingren Drive, Suite 108  
    Irving, Texas 75062  
    Fax: 972-650-7105

If to Purchaser:                \_\_\_\_\_  
    \_\_\_\_\_  
    \_\_\_\_\_

10.6 **Governing Law.** This Agreement is executed, delivered and is intended to be performed in the county of the Seller's principal office and the laws of the State of Texas shall govern the validity, construction, enforcement, and interpretation of this Agreement. Proper and exclusive venue for any action arising under or relating to the Agreement shall be in state district court in Tarrant, Texas.

10.7 **Entirety and Amendments.** This writing embodies the entire Agreement between the parties and supersedes all prior oral and written agreements and understandings, if any, relating to the Property, and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. No salesman, employee or agent of Seller has any authority whatsoever to make any reference, representation or agreement not contained in this Agreement and only the references, representations and/or agreements contained in this Agreement shall be binding upon Seller or in any way affect the validity of any

part of this Agreement. Purchaser acknowledges that no representations have been made by Seller or any of Seller's agents or employees other than as expressly set forth in this Agreement.

**10.8 Invalid Provisions.** If any provision of this Agreement, except the provisions relating to Seller's obligation to convey the Property and Purchaser's obligation to pay the Purchase Price, the invalidity of either of which shall cause this Agreement to be null and void, is held to be illegal, invalid, or unenforceable under present or future laws, then such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

**10.9 Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts shall be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one (1) Agreement, but, in making proof of this Agreement, it shall not be necessary to produce or account for more than one (1) such counterpart.

**10.10 Parties Bound.** This Agreement shall be binding upon and inure to the benefit of Seller and Purchaser, and their respective heirs, personal representatives, successors, and permitted assigns. Purchaser may not assign this Agreement or Purchaser's rights hereunder without Seller's express written approval. Execution hereof by Purchaser alone shall constitute only an offer to purchase. Upon execution of this Agreement by an authorized officer of Seller, after the execution by Purchaser and delivery of a fully executed copy hereof to Purchaser, this document shall become a binding Agreement, subject to the provisions of Article VI.

**10.11 Recordation.** This Agreement shall not be recorded by either party. Should Purchaser record or cause a copy of this Agreement to be recorded, the same shall constitute an event of default by Purchaser, whereupon this Agreement shall terminate and the Earnest Money shall be forfeited to Seller.

**10.12 Time is of the Essence.** The obligations and undertakings of the parties hereto shall be performed within the time specified, and failure to perform within such time shall constitute an event of default on the part of the party that fails to perform.

**10.13 Waiver.** **BY ENTERING INTO THIS AGREEMENT, PURCHASER HEREBY WAIVES ANY AND ALL OF PURCHASER'S RIGHTS, WHICH EXIST NOW OR IN THE FUTURE, TO SUE OR OTHERWISE UNDERTAKE ANY LEGAL ACTION AGAINST SELLER, ITS ELECTED OFFICIALS, EMPLOYEES, ATTORNEYS OR AGENTS REGARDING THIS AGREEMENT AND/OR THE PROPERTY.**

**10.14 No Merger.** The covenants, agreements, provisions, warranties and representations contained in Article II, Section 4.2, Section 7.3, Article IX, and Section 10.13 of this Agreement shall not merge with the closing documents, but shall survive such closing.

10.15 **Execution.** This document is executed by Purchaser on the date identified on the signature page attached hereto, and shall constitute an offer that may be accepted only by execution by Seller and delivery of a fully executed original thereof to the Title Company with a copy to Purchaser. This offer shall expire at 5:00 p.m. thirty (30) calendar days thereafter if this Agreement is not executed by Seller, a copy returned to Purchaser and the original delivered to the Title Company. Purchaser acknowledges that Seller has no obligation to accept this offer, nor any other offer to purchase the Property. If Seller should accept this offer, Purchaser acknowledges that Seller may negotiate with and accept back up contracts from third parties at any time.

## ARTICLE XI

### Notice Required by Law

11.1 **Notice Regarding Possible Liability for Additional Taxes.** If for the current ad valorem tax year the taxable value of the land that is the subject of this contract is determined by a 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 is located.

**THIS AGREEMENT RAISES LEGAL ISSUES THAT PURCHASER MAY CHOOSE TO HAVE REVIEWED BY AN ATTORNEY.**

[SIGNATURE PAGE FOLLOWS]

**PURCHASER:**

\_\_\_\_\_

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

\_\_\_\_\_

Date Executed: \_\_\_\_\_

**SELLER:**

**THE CITY OF KELLER, TEXAS**

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

Mark Hafner, City Manager

STATE OF TEXAS §

§

COUNTY OF TARRANT §

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

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

**EXHIBIT "A"**  
**TO**  
**PURCHASE AND SALE AGREEMENT**

**PROPERTY DESCRIPTION**  
**METES AND BOUNDS DESCRIPTION**  
**1.022 ACRES**  
**REMAINDER OF LOT 3, BLOCK 1, FOOTE'S ADDITION**  
**IN THE S. NEEDMAN SURVEY, A-1171**  
**CITY OF KELLER, TARRANT COUNTY, TEXAS**

All that certain 1.022 acres of land, which is the remainder of Lot 3, Block 1, Foote's Addition, recorded in Volume 388-135, Page 60 in the Plat Records of Tarrant County, Texas (P.R.T.C.T.), in the S. Needman Survey, A-1171, City of Keller Worth, Tarrant County, Texas and more particularly described by metes and bounds as follows: (All bearings shown hereon are based on the Texas Coordinate System of 1983, North Central Zone)

BEGINNING at a 1/2" iron rod with a cap stamped "Coombs" found for the southwest corner of the herein described tract, common northwest corner right-of-way dedication to the State of Texas, recorded in Volume 9809, Page 1350 D212136727 in the Deed Records of Tarrant County, Texas (D.R.T.C.T.), in the west line of said Lot 3, Block 1, Foote's Addition, and common to the southeast corner of Lot 2R1, Block 1, Foote's Addition, recorded in Cabinet A, Slide 5634 P.R.T.C.T., and in the north right-of-way line of Keller Parkway (125' R.O.W., also known as F.M. Highway 1709);

THENCE North 00° 48' 29" West - 220.04' to a 5/8" iron rod with a cap stamped "KHA" found for the northwest corner of said Lot 3, Block 1, Foote's Addition, common to a point for corner of said Lot 2R1, Block 1, Foote's Addition, and common to a point of corner of Lot 2, Block A, Keller Medical Addition Plaza, recorded in Document Number D212068510 P.R.T.C.T., from which a 1/2" iron rod found for the northeast corner of said Lot 2R1, Block 1, Foote's Addition bears North 01° 08' 24" West - 109.21';

THENCE North 89° 12' 42" East - 202.51' to a 5/8" iron rod with a cap stamped "KHA" found for the northeast corner of said Lot 3, Block 1, Foote's Addition, common to a point for corner of said Lot 2, Block A, Keller Medical Addition Plaza;

THENCE South 00° 28' 27" East - 220.87' to the southeast corner of the herein described tract (communication pedestal at corner), common to the southwest corner of the 0.463 acre tract described in the deed to Eonsforeons, Inc, record in Document Number D216019489 D.R.T.C.T., and in the north right-of-way line of said Keller Parkway;

THENCE South 89° 26' 51" West - 201.23' along the north right-of-way line of said Keller Parkway, to the POINT OF BEGINNING and containing 1.022 acres of land.

**EXHIBIT "B"**  
**TO**  
**PURCHASE AND SALE AGREEMENT**  
**DEED**

**THE STATE OF TEXAS**                   §  
  §       **KNOW ALL PERSONS BY THESE PRESENTS:**  
**COUNTY OF TARRANT**               §

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

That, **THE CITY OF KELLER, TEXAS, A HOME RULE MUNICIPALITY** ("Grantor") for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantee, has GRANTED, BARGAINED, SOLD and CONVEYED and by these presents does GRANT, BARGAIN, SELL and CONVEY unto \_\_\_\_\_ ("Grantee"), and Grantee's successors and assigns, all the following described tract or parcel of land located in Tarrant County, Texas, together with all fixtures and improvements located thereon (the "Subject Property"):

A 44,502 square foot tract of land known as Lot 3, Block 1, Foote's Addition, City of Keller, Tarrant County, Texas, said land being more particularly described in metes and bounds in Exhibit "A" attached hereto and incorporated herein for all purposes.

This conveyance is made and accepted expressly subject to: (i) all applicable zoning laws, regulations, and ordinances of municipal and/or governmental authorities; (ii) the mineral reservation hereafter set forth; and (iii) all encumbrances, restrictions, easements, conditions, covenants and conveyances or exceptions to title set forth in Exhibit "B" attached hereto and incorporated herein for all purposes, or visible or apparent on the ground, applicable to and enforceable against the Subject Property, to the extent that same are valid and subsisting and affect title to the Property.

Grantor hereby excepts and reserves all of the interest currently owned by Grantor in the oil, gas and other hydrocarbon minerals (the "Minerals") in and under or that may be produced from the Subject Property. Grantor, on behalf of itself, its successors and assigns, hereby forever releases, waives and relinquishes all rights to use the surface of the Subject Property for seismic activities and for any and all other mineral exploration or production purposes including, without limitation, exploring, drilling for, developing, producing, storing, and processing Minerals from the Subject Property; provided, however, such release, waiver and relinquishment shall not be construed as a release, waiver or relinquishment by Grantor of the right to explore, drill for, develop or produce Minerals from the Subject Property (and to have access to and control of

underground mineral formations) through wells at surface locations situated outside the Subject Property.

TO HAVE AND TO HOLD the Subject Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the Grantee, its heirs, legal representatives and assigns, forever. Grantor does hereby bind itself, its heirs, legal representatives and assigns, to WARRANT and FOREVER DEFEND all and singular the Property unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**GRANTOR:**

**THE CITY OF KELLER, TEXAS**

By: \_\_\_\_\_  
Mark Hafner, City Manager

STATE OF TEXAS           §  
  §  
COUNTY OF TARRANT   §

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by Mark Hafner, City Manager.

\_\_\_\_\_  
Notary Public in and for the State of Texas

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

**After recording, please return to Grantee:**

GRANTOR'S ADDRESS:

Mrs. Kelly Ballard  
City Secretary  
City of Keller  
1100 Bear Creek Parkway  
Keller, Texas 76248



**EXHIBIT "A"**  
**TO DEED**  
**SUBJECT PROPERTY**

**METES AND BOUNDS DESCRIPTION**  
**1.022 ACRES**  
**REMAINDER OF LOT 3, BLOCK 1, FOOTE'S ADDITION**  
**IN THE S. NEEDMAN SURVEY, A-1171**  
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THENCE South 89° 26' 51" West - 201.23' along the north right-of-way line of said Keller Parkway, to the POINT OF BEGINNING and containing 1.022 acres of land.

**EXHIBIT "B"**  
**TO DEED**  
**PERMITTED EXCEPTIONS**

1. Restrictive Covenants affecting the Subject Property.
2. Any discrepancies, conflicts or shortages in area or boundary lines, or any encroachments, or any overlapping of improvements.
3. Taxes for the current and subsequent years.
4. Existing building and zoning ordinances.
5. Rights of parties in possession.
6. Liens created or assumed as security for the consideration paid for the purchase of the Subject Property.
7. Any covenants, conditions, reservations, exceptions and easements, and all oil, gas and mineral reservations, conveyances, and leases, if any, in effect and shown of record in the County Clerk's Office where the Subject Property, or any part thereof, is located.

The restrictions set out above shall be construed to be for the benefit of any person prejudiced by its violation.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*