

**MEETING
Town of Little Elm
100 W Eldorado Parkway
Little Elm, Texas 75068-5060**

**214-975-0404
<http://www.littleelmtx.us>**

Workshop, Public Hearings & Regular Council

**Tuesday, September 6, 2016 - 6:00 PM
Town Council Chambers
100 West Eldorado Parkway
Little Elm, TX 75068**

1. Call to Order Council Work Shop at 6:00 p.m.
 - A. Items to be withdrawn from Consent Agenda.
 - B. Emergency Items if posted.
 - C. Request by the Town Council for items to be placed on a future agenda for discussion, and recognition of excused absences.
 - D. Presentation of monthly updates from department heads concerning law enforcement activities, municipal court, customer service, emergency medical services, fire department response, fire prevention activities, emergency management, ongoing economic development projects, building permits, code enforcement activities, library activities, human resources updates, information technology report, revenue and expenditure report, street construction status, sanitation services, highway construction status, utility operations, parks and recreation activities, as well as facility and fleet updates.
 - E. Council to highlight items on the agenda needing further discussion or comments prior to the regular session.
2. Roll Call/Call to Order Regular Town Council Immediately Following Council Workshop.
3. Pledge to the Flags:
 - A. United States Flag
 - B. Texas Flag:
Honor the Texas Flag I pledge allegiance to thee Texas,
one state under God, one and indivisible.

4. Announcements/Presentations:
 - A. Robert Medigovich Municipal Coordinator for Community Waste Disposal (CWD) to present awards. 9
 - B. Mayor Pro-tem Michael McClellan read and present Proclamation for National Payroll Week. 10
 - C. Mayor Pro-tem Michael McClellan to read and present Proclamation for Constitution Week. 11
5. Public Comments: Persons may address the Town Council on any issue. This is the appropriate time for citizens to address the Council on any concern whether on this agenda or not. In accordance with the State of Texas Open Meeting Act, the council may not comment or deliberate such statements during this period, except as authorized by Section 551.072, Texas Government Code.
6. Consent Agenda: All matters listed under the Consent Agenda are considered to be routine by the Town Council and require little or no deliberation. There will not be a separate discussion of these items and the agenda will be enacted by one vote. If the Council expresses a desire to discuss a matter listed, that item will be removed from the consent agenda and considered separately:
 - A. Minutes of the August 16, 2016 Workshop, Public Hearings and Regular Meeting. (Town Secretary Kathy Phillips) 12
 - B. Minutes of the August 9, 2016 Budget Workshop. (Town Secretary Kathy Phillips) 16
 - C. Agreement for Architectural Consulting Services for the Service Center Expansion to Hidell & Associates Architects in an amount not to exceed \$93,400.00. (Purchasing Agent Dawn Berry) 17
 - D. Final Plat Paloma Creek 3C from Petitt Barraza, generally located along Yellowthroat Drive and east of Spoonbill Drive, within Little Elm's ETJ. (Town Planner Lisa Reich) 92
 - E. Annual Update to Valencia Public Improvement District (PID) and Assessment Plan and Assessment Roll. (Chief Financial Officer Karla Stovall) 95
 - F. Purchase of the software license renewals for the period of August 1, 2016 to July 2017 at the unit prices listed. (Purchasing Agent Dawn Berry) 116
 - G. Authorize the Town Manager to execute any and all contract documents associated with the renewal of employee benefits Blue Cross Blue Shield of Texas, Humana, Superior Vision and Mutual of Omaha. (HR Director Deidre Hale) 121

7. ANNOUNCEMENT: Council will now recess and convene into meeting of the TIRZ #3 Board. Will reconvene Regular Council Meeting immediately following adjournment of the TIRZ #3 Board.
8. Discussion and Action to adopt Ordinance No. 1346 an Ordinance of the Town of Little Elm, Texas, annexing adjacent and contiguous territory, as described in attached legal description and as depicted in the attached location map, to the Town of Little Elm, Texas; finding that all necessary and required legal conditions have been satisfied; providing that such area shall become a part of the Town and that the owners and inhabitants thereof shall be entitled to the rights and privileges of other citizens and be bound by the acts, ordinances, resolutions, and regulations of the Town of Little Elm now in effect and to be hereafter adopted; approving and adopting a Service Plan for the annexed area; further providing for amending and correcting the official boundaries of the Town as heretofore adopted; providing a savings clause; correcting the official zoning maps; providing a severability clause; providing a repealer clause; and providing an effective date. (Lincoln Park North) (Town Planner Lisa Reich) 132
9. Public Hearing regarding town initiated request to zone approximately 2.9 acres of land to Light Commercial (LC) and zone approximately 17.35 acres of land to Multi-family (MF), generally located on the northeast corner of University Drive and Oak Grove Parkway, outside Little Elm's town limits. All citizens are welcome to attend the hearing and participate in same. (Town Planner Lisa Reich)
 - A. Staff Comments:
 - B. Open Public Hearing:
 - C. Receive Public Comments:
 - D. Close Public Hearing:
 - E. Discussion and Action to adopt Ordinance No. 1347 an Ordinance of the Town of Little Elm, Texas, amending the Comprehensive Zoning Ordinance of the Town of Little Elm, Texas, by zoning approximately 2.9 acres of land to Light Commercial District (LC) and designating a Retail/Office Future Land Use Plan Category, and zoning approximately 17.35 acres of land to Multi-Family District (MF) and designating a High Density Residential Future Lane Use Plan Category, generally located on the northeast corner of Oak Grove Parkway and University Drive, and a sliver located south of University Drive and East of Oak Grove Parkway, outside of Little Elm's town limits; providing a saving clause; correcting the official zoning map; providing a penalty; providing a severability clause; providing a repealer clause; and providing an effective date. (Town Planner Lisa Reich) 146
10. Public Hearing on the request to rezone approximately 28.3 acres of land to Planned Development – Single Family (PD-SF), and rezone approximately 13.765 acres from

Agricultural (AG) to Planned Development-Single Family (PD-SF) to allow for expansion of Hillstone Pointe subdivision, generally located on the northeast corner of University Drive and Oak Grove Parkway, outside and within, respectively, the town limits of Little Elm, Denton County, Texas. All citizens are welcome to attend the hearing and participate in same. (Town Planner Lisa Reich)

A. Staff Comments:

B. Open Public Hearing:

C. Receive Public Comments:

D. Close Public Hearing:

E. Discussion and Action to adopt Ordinance No. 1348 an Ordinance of the Town of Little Elm, Texas, amending the Comprehensive Zoning Ordinance, herefore amended, by zoning approximately 28.3 acres of land to Planned Development-Single Family (PD-SF4), and rezoning approximately 13.765 acres of land from Agriculture District (AG) to Planned Development-Single Family District (PD-SF4) to allow for the expansion of Hillstone Pointe Subdivision (Ordinance No. 1261), and assigning the Future Lane Use Plan Category Low Density Residential to the total area of approximately 42.065 acres, generally located on the northeast corner of University Drive and Oak Grove Lane; providing a savings clause; correcting the official zoning map; providing a penalty; providing a severability clause; providing a repealer clause; and providing an effective date. (Town Planner Lisa Reich) 152

11. Public Hearing regarding request for a Specific Use Permit for self-storage on approximately 1.99 acres of land generally located north of Old Witt Road and approximately 300 feet west of FM 423, currently zoned Light Industrial (LI). All citizens are welcome to attend the hearing and participate in same. (Town Planner Lisa Reich)

A. Staff Comments:

B. Open Public Hearing:

C. Receive Public Comments:

D. Close Public Hearing:

E. Discussion and Action to adopt Ordinance No. 1349 an Ordinance of the Town of Little Elm, Texas amending the Comprehensive Zoning Ordinance of the Town on Little Elm, Texas, herefore amended, by issuing a Specific Use Permit for Self-Storage Use on approximately 1.99 acres of land currently zoned Light Industrial District (LI), generally located north of Old Witt Road and approximately 300 feet west of FM 423, providing that the Specific Use Permit is established subject to certain conditions as 160

set forth herein; providing a savings clause; correcting the official zoning map; providing a penalty; providing a severability clause; providing a repealer clause; and providing for an effective date. (Town Planner Lisa Reich)

12. Public Hearing: Conduct Public Hearing to receive public comments and take necessary action on the Proposed Budget for the Town of Little Elm FY 2017. All interested citizens are welcome to attend the hearing and participate in same. (Chief Financial Officer Karla Stovall) 171
 - A. Staff Comments:
 - B. Open Public Hearing:
 - C. Receive Public Comments:
 - D. Close Public Hearing:
 - E. Discussion and Action to postpone the final budget vote until the September 13, 2016 Council Meeting at 6:00 p.m. at Town Hall at 100 W. Eldorado Parkway, Little Elm, Texas 75068.
13. Public Hearing: Conduct 2nd public hearing on the Town's proposed Property Tax Rate for the Town of Little Elm for Fiscal Year 2017. All interested citizens are welcome to attend the hearing and participate in same. (Chief Financial Officer Karla Stovall) 196
 - A. Staff Comments:
 - B. Open 2nd Public Hearing:
 - C. Receive Public Comments:
 - D. Announcement: "The Little Elm Town Council will consider the Ordinance to adopt the Tax Rate for the Town of Little Elm Fiscal Year 2017 at the September 13, 2016 Council Meeting at 6:00 p.m. at the Town Hall located at 100 W. Eldorado Parkway, Little Elm, Texas 75068. Members of the public are encouraged to attend the hearings and express their views to the Mayor and Council".
 - E. Close 2nd Public Hearing.
14. Public Hearing: to discuss a proposal by the Town to add amenities to Little Elm Park, which will include activities in the 100-year floodplain. The 100-year floodplain is the land that is predicted to flood during a 100-year storm, which has a 1% change of occurring in any given year. The Town proposes to request grant-funding from the Texas Parks and Wildlife Department to install additional amenities at Little Elm Park, including, but not limited to overnight campsites and restrooms. The minimal anticipated environmental impacts to the 100-year floodplain will be discussed and open for public comments during

the meeting. The Town will take action regarding authorizing by resolution the submittal of the application to the Texas Park and Wildlife Department at this meeting. People who may be affected by activities in the floodplain and those who have an interest in the protection of the natural environment will be given the opportunity to express their concerns and providing information about these areas. Staff will be available at the meeting to provide clarification and address any questions. (Director of Development Services Jason Laumer)

A. Staff Comments:

B. Open Public Hearing:

C. Receive Public Comments:

D. Close Public Hearing:

E. Discussion and Action to adopt Resolution No. 09061603 a Resolution by the Town of Little Elm designating the Town Director of Development as responsible for, acting for, and on behalf of the Town of Little Elm in dealing with the Texas Parks and Wildlife Department for the purpose of participating in the Local Park Grant Program, herein after referred to as the “Program”; certifying that the Town of Little Elm is eligible to receive program assistance; certifying that the Town of Little Elm matching share is readily available; and dedicating the proposed site for permanent (or for the term of the lease of the property) Public Park and Recreational Uses. (Director of Development Services Jason Laumer) 198

15. Reports and requests for Town Council consideration and appropriate action:

A. Discussion and Action to approve Resolution No. 09061602 a Resolution of the Town Council of the Town of Little Elm, Texas giving consent to the Issuance of Unlimited Tax Road Bonds by Highway 380 Municipal Management District No. 1, a Conservation and Reclamation District located with the corporate boundaries of the Town. (Director of Development Services Jason Laumer) 203

B. Discussion and Action to approve Resolution No. 09061604 a Resolution by the Town of Little Elm to prohibit drilling or mining or the reopening of any abandon well or mine in the public parkland located within Little Elm Park. (Director of Development Services Jason Laumer) 206

C. Discussion and Action to approve the 380 Economic Development Program and Agreement Amendment #2 between the Town of Little Elm and Palladium USA International, Inc. and authorize the Town Mayor to execute agreement for the same. (Director of Development Services Jason Laumer) 209

16. Council will convene in Executive Session pursuant to Texas Government Code:

- A. Section 551.071 for private consultation with the Town Attorney to seek legal advice with respect to pending and contemplated litigation and including all matters on this agenda to which the Town Attorney has a duty under the Texas Rules of Discipline and Professional conduct regarding confidential communication with the Town Council.
 - 1. Matters relating to City of Lakewood Village and Boundary Adjustments.
 - B. Section 551.072 to discuss certain matters regarding real property.
 - C. Section 551.076 to discuss security matters.
 - D. Section 551.087 to discuss Economic Development.
17. Reconvene into Open Session: Discussion and consideration to take any action necessary as the result of the Executive Session.
- A. Section 551.071 for private consultation with the Town Attorney to seek legal advice with respect to pending and contemplated litigation and including all matters on this agenda to which the Town Attorney has a duty under the Texas Rules of Discipline and Professional conduct regarding confidential communication with the Town Council.
 - 1. Matters relating to City of Lakewood Village and Boundary Adjustments.
 - B. Section 551.072 to discuss certain matters regarding real property.
 - C. Section 551.076 to discuss security matters.
 - D. Section 551.087 to discuss Economic Development.
18. Adjourn Work Shop and Regular Meeting.

Pursuant to the Texas Open Meeting Act, (Chapter 551, Texas Government Code), one or more of the above items will be taken or conducted in open session following the conclusion of the executive closed session.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aide of service such as interpreters for the hearing impaired, reader or large print are requested to contact the secretary at 214-975-0404 two days prior to the meeting so appropriate arrangements can be made. **BRaille IS NOT PROVIDED.**

Respectfully,

Town Secretary

This is to certify that the above notice was posted on the bulletin board at the Town Hall Center this 2nd day of September 2016.

ROBERT MEDIGOVICH

Municipal Coordinator

Community Waste Disposal (CWD)

(will be present to make presentation)

PROCLAMATION

NATIONAL PAYROLL WEEK

Whereas, the American Payroll Association and its 21,000 members have launched a nationwide public awareness campaign that pays tribute to the more than 156 million people who work in the United States and the payroll professionals who support the American system by paying wages, reporting worker earnings and withholding federal employment taxes; and

Whereas, payroll professionals in Little Elm, Texas play a key role in maintaining the economic health of Little Elm, carrying out such diverse tasks as paying into the unemployment insurance system, providing information for child support enforcement, and carrying out tax withholding, reporting and depositing; and

Whereas, payroll departments collectively spend more than \$15 billion annually complying with myriad federal and state wage and tax laws; and

Whereas, Payroll professionals play an increasingly important role ensuring the economic security of American families by helping to identify non-custodial parents and making sure they comply with their child support mandates; and

Whereas, payroll professionals have become increasingly proactive in educating both the business community and the public at large about the payroll tax withholding systems; and

Whereas, payroll professionals meet regularly with federal and state tax officials to discuss both improving compliance with government procedures and how compliance can be achieved at less cost to both government and businesses; and

Whereas, the week in which Labor Day falls has been proclaimed National Payroll Week, I hereby give additional support to the efforts of the people who work in Little Elm, Texas and of the payroll profession by proclaiming the first full week of September as "Payroll Week" in Little Elm, Texas.

*In official recognition whereof,
I hereby affix my signature this the
6 day of September, 2016*

SEAL

David Hillock, Mayor
Town of Little Elm, Texas

PROCLAMATION

Constitution Week – September 17 through 23, 2016

Whereas, September 17, 2016 marks the two hundred and twenty-eighth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

Whereas, it is fitting and proper to officially recognize this magnificent document and the anniversary of its creation; and

Whereas, it is fitting and proper to officially recognize the patriotic celebrations **which will commemorate the occasion; and**

Whereas, public law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as constitution week;

NOW, THEREFORE, I, Mayor Pro Tem Michael McClellan of the Town of Little Elm do hereby proclaim September 17 through 23, 2016 to be Constitution Week In Little Elm, and ask our citizens to reaffirm the ideals the Framers of the Constitution had in 1787.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the Town of Little Elm on this six day of September in the year of our Lord two thousand sixteen.

In official recognition whereof, I hereby affix my signature
On the 6th day of September, 2016
Michael McClellan, Mayor Pro Tem _____
Town of Little Elm, Texas

MINUTES
Town of Little Elm
214-975-0404
<http://www.littleelm.org>

WORKSHOP, PUBLIC HEARINGS AND REGULAR TOWN COUNCIL MEETING
Tuesday August 16, 2016-6:00 p.m.

Present: David Hillock Mayor, Michael McClellan Mayor Pro-tem, Council members James Dominy, Neil Blais, Chip Norman, Nick Musteen, and Stephanie Shoemaker. **Staff:** Robert Brown, Matt Mueller, Kathy Phillips, Karla Stovall, Jason Laumer, Jennette Killingsworth, Mike Green, Kevin Mattingly, Chad Hyde, Jeremy Wilson, and Rodney Harrison.

1. Call to Order Council Work Shop at 6:00 p.m.

- a. Invocation:
- b. Items to be withdrawn from Consent Agenda. *Council member Blais* asked that item I be pulled as he needs to abstain due to conflict of interest.
- c. Emergency Items if posted. *None*
- d. Request by the Town Council for items to be placed on a future agenda for discussion, and recognition of excused absences. *Mayor Hillock* requested that the renaming of Clark Street to Lakefront Drive be placed on the September 20th workshop for discussion.
- e. Presentation of possible Joint Venture for cabins in Little Elm Park: Parks Director Chad Hyde introduced *Brian Wolff & Mark Broberg* who gave power point presentation regarding “Tiny” Homes” this proposal is supporting the Little Elm “Staycation” initiative. Council directed staff to move forward to determine real cost, deal points, etc. and present to council at future meeting.
- f. Presentation of monthly updates from department heads: *None*
- g. Council to highlight items on the agenda needing further discussion or comments prior to the regular session. *None*

2. Roll Call/Call to Order Regular Town Council Immediately Following Council Workshop.

3. Pledge to the Flags:

- a. United States Flag
- b. Texas Flag

4. Public Comments: *None*

5. Upon motion by Council member Shoemaker and second by Council member Blais the members *voted 7-0* to approve the Consent Agenda as presented:

- a. **Minutes** of the August 2, 2016 Workshop, Public Hearings and Regular Meeting.

- b. **Final Plat** Union Park West from Jones & Carter, generally located along Union Park Boulevard West and Fish Trap Road within Little Elm's town limits.
 - c. **Final Plat** Valencia on the Lake 2A from Petitt Barraza, generally located along Chiva Drive and Benavitas Drive, within town limits.
 - d. **Final Plat** Frisco Hill 2A from Petitt Barraza, generally located along Frisco Hills Boulevard and Sundrop Drive, within Little Elm's ETJ.
 - e. **Final Plat** Paloma Creek South 8E from Petitt Barraza, generally located south of Eppright Drive and east of Villa Paloma Boulevard, within Little Elm's ETJ.
 - f. **Re-appointment** of Council member James Dominy to the Community Development Corporation for two year term ending 08-16-18.
 - g. **Authorize** the purchase for Registers and meters for HydroPro Solutions at the unit prices listed.
 - h. **Interlocal** Cooperation Agreement for Public Safety Application Support and Maintenance between the Town of Little Elm and Denton County.
 - i. Upon motion by Council member McClellan and second by Council member Norman the members **voted 6-1** (abstain-Council member Blais due to conflict of interest) to approve Resolution No. 08161602 a Resolution of the Town Council of the Town of Little Elm, Texas, approving Amendment #1 to the Local Transportation Project Advance Funding Agreement with the State of Texas and authorizing the Town Manager to execute such agreement for the Town. (Lakefront Trail)
6. **Public Hearing:** regarding proposed annexation of approximately 47.56 acres of land, generally located on the northeast corner of Oak Grove Parkway and University Drive, within the extraterritorial jurisdiction of Little Elm.
- a. Staff Report: Director of Development Services Jason Laumer stated that on June 7, 2016 Council adopted Resolution No. 06071601 that directed staff to prepare a service plan and schedule public hearings for the annexation. The first and second public hearings are for discussion only, and the final meeting, for discussion and action, is scheduled for September 6, 2016. This is the second of the two required public hearings.
 - b. Opened 2nd Public Hearing **at 7:04 p.m.**
 - c. Received Public Comments. **None**
 - d. Closed 2nd Public Hearing **at 7:04 p.m.**
7. **Public Hearing:** The Town Council will conduct the first "Public Hearing" on the Proposed Tax Rate for the Town of Little Elm for Fiscal Year 2017.
- a. Staff Comments: **Chief Financial Officer Karla Stovall** informed Council that in accordance with the "Truth in Taxation" laws of the State of Texas, if any entity's proposed tax rate exceeds the effective rate, the entity is required to vote to place a proposal for adoption of budget and tax rate, publish notice and conduct two public hearings. The Town Council will conduct the first of the two required public hearing. The second public hearing had been scheduled for September 6, 2016. The Council cannot take any action regarding the tax rate at these public hearings. The sole

purpose of the public hearing is to provide the public an opportunity to address council regarding the proposed Tax Rate.

- b. Opened 1st Public Hearing *at 7:06 p.m.*
- c. Received Public Comments: *None*
- d. **Announcement: “The Little Elm Town Council will consider the Ordinance to adopt the Tax Rate for the Town of Little Elm Fiscal Year 2017 at the September 13, 2016 Council Meeting at 6:00 p.m. at the Town Hall located at 100 W. Eldorado Parkway, Little Elm, Texas 75068. Members of the public are encouraged and attend the hearings and express their views to the Mayor and Council”.**
- e. Closed 1st Public Hearing *at 7:07 p.m.*

8. Reports and requests for Town Council consideration and appropriate action:

- a. Upon motion by Council member McClellan and second by Council member Shoemaker the members **voted 7-0** to adopt Resolution No. 08161601 a Resolution appointing Jim Carter to the Board of Managers of the Denco 9-1-1 District.
- b. Upon motion by Council member Norman and second by Council member Blais the members **voted 7-0** to adopt Ordinance No. 1344 an Ordinance of the Town of Little Elm, Texas, amending provisions throughout Chapter 18, “Animals,” of the Code of Ordinances related to animals at large or running at large, impoundment of prohibited animals, impounded animals, quarantined animals, failure to comply with conditions imposed on dangerous animals, failure to comply with conditions imposed on dangerous dogs, and impounded livestock to provide for the termination of an owner’s right to reclaim an animal, dog or livestock, extinguish the owner’s property rights of such animal, and transfer ownership of such animal to the Town of Little Elm; repealing all conflicting ordinances; providing a severability clause; providing a penalty clause; and providing for publication and an effective date.
- c. Upon motion by Council member Dominy and second by Council member Blais the members **voted 7-0** to adopt Ordinance No. 1345 an Ordinance of the Town of Little Elm, Texas, amending the Code of Ordinances of the Town, by amending Chapter 98 (Traffic & Vehicles) Article V (Parking, Driveways, and Vehicular Use Areas) to revise Section 98-104 to modify policies on residential district parking; providing a saving clause; providing a penalty; providing a severability clause; providing a repealer clause; and providing an effective date.

9. FYI: (All matters are provided to the Town Council for informational purposes only)

- a. Town Secretary Monthly Report for July 2016.
- b. Development Services Monthly Report for July 2016.
- c. Police Department Monthly Reports for July 2016.
- d. Parks, Recreation and Library Monthly Reports for July 2016.
- e. Texas Association of School Boards Recognition.

10. Council convened in Executive Session *at 7:15 p.m.* pursuant to Texas Government Code:

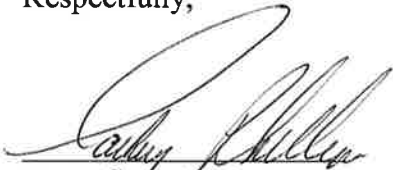
- Section 551.071 for private consultation with the Town Attorney to seek legal advice with respect to pending and contemplated litigation and including all matters on this agenda to which the Town Attorney has a duty under the Texas Rules of Discipline and Professional conduct regarding confidential communication with the Town Council.
- Section 551.072 to discuss certain matters regarding real property.
- Section 551.076 to discuss security matters.
- Section 551.087 to discuss Economic Development.

11. Reconvened into Open Session *at 7:54 p.m.* Discussion and consideration to take any action necessary as the result of the Executive Session.

- Section 551.071 for private consultation with the Town Attorney to seek legal advice with respect to pending and contemplated litigation and including all matters on this agenda to which the Town Attorney has a duty under the Texas Rules of Discipline and Professional conduct regarding confidential communication with the Town Council. ***No Action Taken***
- Section 551.072 to discuss certain matters regarding real property. ***No Action Taken***
- Section 551.076 to discuss security matters. ***No Action Taken***
- Section 551.087 to discuss Economic Development. ***No Action Taken***

12. Adjourned Work Shop and Regular Meeting *at 7:55 p.m.*

Respectfully,



Town Secretary

Passed and approved this _____ day of _____ 2016.

MINUTES
Town of Little Elm
214-975-0404
<http://www.littleelmtx.us>

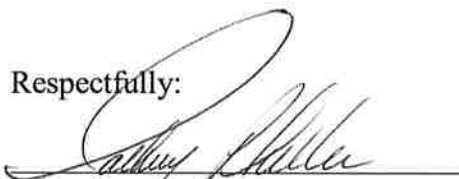
BUDGET WORK SHOP

Tuesday August 9, 2016---6:00 p.m.

Present: David Hillock Mayor, Michael McClellan Mayor Pro-tem, Council members James Dominy, Neil Blais, and Nick Musteen. **Absent:** Council members Chip Norman and Stephanie Shoemaker. **Staff:** Matt Mueller, Doug Peach, Joe Florentino, Kathy Phillips, Dee Dee Hale, Karla Stovall, Dianne Lawson, Jennette Killingsworth, Jason Laumer, Kevin Mattingly, Jeremy Wilson, and Rodney Harrison.

1. Call to Order Budget Work Shop *at 6:00 p.m.*
2. **Presentation and Discussion:** Town Manager Matt Mueller gave council power point presentation on the proposed Budget for the 2017-2021 Fiscal Years. Stating that the 2017 budget was balanced and the years 2018-2021 were balanced; but were a financial plan for the town and subject to change each budget year. He gave council an overview of the budget philosophy, revenues, tax rate, operation budget, one-time expenses, capital improvements, fund balance and reserves, current employees, new employees, utility fund, parks and recreation fund, TIRZ #3 fund, landscape fund, drainage fund, and solid waste fund, VERF, street and maintenance and PEG fund. Also reported on debt funding. The consensus of the Council was that the Thursday August 11th workshop would not be needed.
3. Adjourned Workshop *at 8:15 p.m.*

Respectfully:


Town Secretary

Passed and approved this _____ day of _____ 2016.

**Finance**

Dawn Berry, Purchasing Agent
214-975-0411
dberry@littleelm.org

Town Council Agenda-Consent**September 6, 2016****PROJECT**

Service Center Design Expansion

BACKGROUND

On February 22, 2016 the Town Manager authorized conceptual planning services for the expansion of the Service Center to Hidell and Associates Architects. Staff is requesting authorization to enter into an agreement with Hidell and Associates Architects for the design of the service center expansion. The project includes a pre-engineered metal building that will consist of approximately 5,800 SF structure with four service bays and approximately 1200 SF of office space and 3,300 SF of covered vehicle storage. The existing fuel tanks will be relocated to allow for new fuel dispensing station and additional site paving/parking.

BUDGET IMPACT

Funding is available in the 2016 Bond sale budget: 641-6727-76-42

641-6727-76-42 \$ 93,400.00

Expenditures will not exceed funds appropriated. Funds will be committed at the issuance of a purchase order.

RECOMMENDED ACTION

Staff recommends approving the agreement for Architectural Consulting Services for the Service Center Expansion to Hidell and Associates Architects in an amount not to exceed \$93,400.00.

ATTACHMENTS

- Agreement

Initial:

Town Manager	<input type="checkbox"/>	Finance	<input type="checkbox"/>	Library	<input checked="" type="checkbox"/>	HR	<input type="checkbox"/>	Public Works	<input type="checkbox"/>
Town Secretary	<input type="checkbox"/>	Police	<input type="checkbox"/>	Parks	<input type="checkbox"/>	Fire	<input type="checkbox"/>	Dev Services	<input type="checkbox"/>



TOWN OF LITTLE ELM, TEXAS

ARCHITECTURAL SERVICES AGREEMENT

For the consideration hereinafter set forth, Hidell and Associates Architects (“Architect”), a Texas corporation with an office in Carrollton, Texas, agrees to provide architectural services to the TOWN OF LITTLE ELM, TEXAS (“Town” or “Owner”), for the project(s) and work identified in this Architectural Services Agreement (“Agreement”). This Agreement is effective as of July 25, 2016, and unless earlier terminated pursuant to the provisions hereof, shall continue through the completion of performance of the Work specified hereunder.

WHEREAS, Owner desires to obtain professional architectural services from Architect for the expansion of the Little Elm Service Center Facility project (“Project”); and

WHEREAS, Architect is an architectural firm selected to provide such services, based upon Architect’s municipal experience, references and qualifications, and is willing to undertake the performance of such services for Owner in exchange for payment and fees as hereinafter specified.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and in the Contract Documents, and subject to the terms and conditions hereinafter stated, Owner and Architect do mutually agree as follows:

ARTICLE 1. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

The term “Contract Documents” shall include and consist of the following documents:

1. This Agreement;
2. Standard Form of Agreement Between Owner and Architect, AIA Document B101-2007, and Exhibit A attached thereto;
3. General Conditions of the Contract for Construction, AIA Document A201-2007;
4. Supplementary Conditions to AIA Documents B101-2007, and AIA Document A201-2007; and
5. Other amendments and/or modifications to the above documents as are agreed upon by Architect and Owner.

These Contract Documents are incorporated by reference into this Agreement as if set out herein in their entirety. The Contract Documents are intended to be complimentary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed above.

ARTICLE 2. EMPLOYMENT OF ARCHITECT

Architect will perform as an independent contractor all services under this Agreement to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the architectural profession, both public and private, currently practicing in the North Texas area under similar conditions including, but not limited to, the exercise of reasonable, informed judgments and prompt, timely action. If Architect is representing that it has special expertise in one or more areas to be utilized in this Agreement, then Architect agrees to perform those special expertise services to the appropriate local, regional and national professional standards.

ARTICLE 3. SCOPE OF SERVICES

Architect shall perform such services as are necessary to the Project specifically including, but not necessarily limited to, the tasks enumerated more fully in the Contract Documents.

ARTICLE 4. ARCHITECT'S LIABILITY

A. Acceptance of the final plans, instruments of service, or other deliverable documents and products by Owner shall not constitute nor be deemed a release of the responsibility and liability of Architect, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by Owner for any defect in the designs, working drawings, specifications or other documents and work prepared by said Architect, its employees, associates, agents or subconsultants.

B. If at any time during the term of this Agreement, Architect shall fail to commence the Work in accordance with the provisions of this Agreement or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Agreement or fail to use an adequate number of quality or quality of personnel to complete the Work or fail to perform any of its obligations under this Agreement, then Owner shall have the right, if Architect shall not cure any such default after thirty (30) days written notice thereof, to terminate this Agreement. Any such act by Owner shall not be deemed a waiver of any other right or remedy of Owner. If, after exercising any such remedy due to Architect's non-performance under this Agreement, the cost to Owner to complete the Work to be performed under this Agreement is in excess of that part of the Agreement sum which has not theretofore been paid to Architect hereunder, Architect shall be liable for and shall reimburse Owner for such excess.

C. Owner may deduct from any amounts due or to become due to Architect any sum or sums owing by Architect to Owner. In the event of any breach by Architect of any provision of this Agreement or in the event of any claim against Owner arising out of Architect's performance under this Agreement, Owner shall have the right to retain out of any payment due or to become due to Architect an amount determined by Owner to be sufficient to protect Owner from any and all loss, damage or expense therefrom, until the breach or claim has been satisfactorily remedied or adjusted by Architect.

ARTICLE 5. CONFIDENTIAL INFORMATION

Architect hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Agreement, which is of a confidential, non-public or proprietary nature. Architect shall treat any such information received in full confidence and will not disclose or appropriate such confidential information for its own use or the use of any third party at any time during or subsequent to this Agreement. As used herein, "confidential information" means all oral and written information concerning Owner, its affiliates and subsidiaries, and all oral and written information concerning Owner, or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies, or other documents, whether prepared by Architect or others, which contain or otherwise reflect such information. The term "confidential information" shall not include such materials that are or become generally available to the public other than as a result of disclosure by Architect, or are required to be disclosed by a governmental authority under applicable law.

ARTICLE 6. INDEMNITY

Notwithstanding any other provision in the Contract Documents to the contrary:

- A. Architect shall defend, indemnify and hold harmless Owner, its Town Council, officers, employees and agents from and against all citations, claims, costs, damages, demands, expenses, fines, judgments, losses, penalties or suits, which in any way arise out of, relate to, or result from the performance of the Work or which are caused by the intentional acts or negligent acts or omissions of Architect or its subcontractors, and any other third parties for whom or which Architect is legally responsible (the "Indemnified Items"). By way of example, the Indemnified Items may include personal injury and death claims and property damage claims, including those for loss of use of property. Indemnified Items shall include attorney's fees and costs of court, court costs, and settlement costs. Indemnified Items shall also include any expenses, including attorney's fees and expenses, incurred by an indemnified individual or entity in attempting to enforce this indemnity.
- B. In its sole discretion, the Town shall have the right to approve counsel to be retained by Architect in fulfilling its obligation to defend and indemnify the Town. Architect shall retain approved counsel for the Town within seven (7) business days after receiving written notice from the Town that it is invoking its right to indemnification under this Agreement. If Architect does not retain counsel for the Town within the required time, then the Town shall have the right to retain counsel and the Architect shall pay these attorney's fees and expenses. The Town retains the right to provide and pay for any and all costs of defending Indemnified Items, but it shall not be required to do so.
- C. The obligations set forth in this Article shall survive the expiration or termination of this Agreement.
- D. Architect shall cause all contracts for subcontracted services to include a like indemnity that shall cover both the Owner and Architect. Nothing herein shall

limit the insurance requirements or applicability of same set forth in this Agreement and the Contract Documents.

- E. The above indemnity is a business understanding between the parties and applies to all different theories of recovery, including breach of contract or warranty, tort including negligence, statutory liability or any other cause of action.

ARTICLE 7. MISCELLANEOUS

§7.1 Severability

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceable provisions shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein; and it is the intention of the parties that in lieu of each provision that is found to be illegal, invalid, or unenforceable, the parties seek to reasonably negotiate a new provision to this Agreement which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

§7.2 Notice

Except as otherwise provided in this Agreement or the Contract Documents, all notices and other communications required or permitted to be given under this Agreement, shall be in writing, addressed to the parties at their respective addresses as provided below, and may be delivered in person, sent by overnight express mail or courier service, or by certified mail, postage prepaid, return receipt requested. The addresses of each party are as follows:

If to the Owner: Town of Little Elm
 Town Manager
 100 West Eldorado Parkway
 Little Elm, Texas 75068

If to Architect: Hidell and Associates Architects
 3033 Kellway Drive
 Suite 120
 Carrollton Texas 75006

Each party may from time to time change its address for receipt of notices by sending notice thereof in the manner provided herein to the other party. Each notice given by certified mail shall be deemed delivered on the date of delivery as shown on the return receipt, or if delivery is attempted, at the last address specified and the notice is returned, notice shall be deemed delivered on the date the notice was originally sent. Each notice delivered in any other manner shall be deemed delivered as of the time of actual receipt thereof. The parties acknowledge and agree to provide to the other party within seventy-two (72) hours of transmission such notice documents bearing the original signatures.

§7.3 Unsatisfactory Work

Nothing contained in this Agreement shall require Owner to pay for any work that is unsatisfactory as determined by Owner or which is not submitted in compliance with the terms of this Agreement, nor shall such failure to withhold payment pursuant to the provisions of this Section constitute a waiver of any right, at law or in equity, which Owner may have if Architect is in default, including the right to bring legal action for damages or for a specific performance of this Agreement.

§7.4 No Respondeat Superior

Architect will have exclusive control of and the exclusive right to control the details of the Work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers, and the doctrine of *respondeat superior* shall not apply as between Owner and Architect, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between Owner and Architect.

§7.5 Conflict of Interest

Architect covenants and agrees that Architect and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Agreement. All activities, investigations and other efforts made by Architect pursuant to this Agreement will be conducted by employees, associates or subcontractors of Architect.

§7.6 Non-Waiver

The failure of either party to insist upon or enforce strict performance by the other party of any provision of this Agreement, or to exercise any right under this Agreement, shall not be construed as a waiver or relinquishment to any extent of any such party's right to assert or rely upon any such provision or right in that or any other instance, rather, the same shall be and remain in full force and effect.

§7.7 Signatures

The undersigned officers and/or agents of the parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary motions, resolutions or other act extending such authority have been duly passed and are now in full force and effect.

IN WITNESS WHEREOF, the parties execute below:

TOWN OF LITTLE ELM, TEXAS

Hidell and Associates Architects

Matt Mueller, Town Manager



William Hidell, Principal

Date: _____

Date: July 25 2016

AIA Document B101TM – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Town of Little Elm
100 W. Eldorado Parkway
Little Elm Texas 75068

and the Architect:
(Name, legal status, address and other information)

Hidell and Associates Architects
3033 Kellway Drive
Suite 120
Carrollton Texas 75006

for the following Project:
(Name, location and detailed description)

Little Elm DPW Service Center Expansion
1600 block Mark Tree Lane Little Elm Texas 75068
The project scope includes a Pre Engineered Metal Building that will consist of an approximate 5,800 sf structure with four bay vehicle service bays and approximately 1,200 sf office and a 3,300 sf covered vehicle storage building. The existing fuel tanks will be relocated to allow for a new fuel dispensing station and additional site paving and parking

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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TABLE OF ARTICLES

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

.2 Substantial Completion date:

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

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§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

\$1,000,000 per occurrence and \$1,000,000 General Aggregate

.2 Automobile Liability

\$1,000,000 per occurrence

.3 Workers' Compensation

\$100,000 each accident and by disease \$100,000 per employee with a per policy aggregate of \$500,000

.4 Professional Liability

\$1,000,000 per claim, \$2,000,000 annual aggregate

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and

such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations

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and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with

reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™-2009)	Not Provided	
§ 4.1.2 Multiple preliminary designs	Not Provided	
§ 4.1.3 Measured drawings	Not Provided	
§ 4.1.4 Existing facilities surveys	Not Provided	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Not Provided	
§ 4.1.6 Building Information Modeling (E202™-2008)	Not Provided	

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§ 4.1.7	Civil engineering	Architect	Included in base fee
§ 4.1.8	Landscape design	Architect	Included in base fee
§ 4.1.9	Architectural Interior Design (B252™–2007)	Architect	Included in base fee
§ 4.1.10	Value Analysis (B204™–2007)	Not Provided	
§ 4.1.11	Detailed cost estimating	Not Provided	
§ 4.1.12	On-site Project Representation (B207™–2008)	Not Provided	
§ 4.1.13	Conformed construction documents	Not Provided	
§ 4.1.14	As-Designed Record drawings	Architect	Included in base fee
§ 4.1.15	As-Constructed Record drawings	Contractor	
§ 4.1.16	Post occupancy evaluation	Not Provided	
§ 4.1.17	Facility Support Services (B210™–2007)	Not Provided	
§ 4.1.18	Tenant-related services	Not Provided	
§ 4.1.19	Coordination of Owner’s consultants	Architect	Included in base fee
§ 4.1.20	Telecommunications/data design	Owner	
§ 4.1.21	Security Evaluation and Planning (B206™–2007)	Not Provided	
§ 4.1.22	Commissioning (B211™–2007)	Not Provided	
§ 4.1.23	Extensive environmentally responsible design	Not Provided	
§ 4.1.24	LEED® Certification (B214™–2012)	Not Provided	
§ 4.1.25	Fast-track design services	Not Provided	
§ 4.1.26	Historic Preservation (B205™–2007)	Not Provided	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™–2007)	Not Provided	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner’s schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner’s consultants or contractors;
- .5 Preparing digital data for transmission to the Owner’s consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or

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- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (Two) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 weekly (weekly) visits to the site by the Architect over the duration of the Project during construction
- .3 two (two) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 two (two) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within eighteen (eighteen) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and

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contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work

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to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other (Specify)

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§ 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to

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perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Stipulated Sum of \$93,400.00

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Hourly upon approval of the Owner

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus 10% percent (10% %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Fourteen	percent (14	%)
Design Development Phase	Twenty	percent (20	%)
Construction Documents Phase	Forty four	percent (44	%)
Bidding or Negotiation Phase	Four	percent (4	%)
Construction Phase	Seventeen	percent (17	%)
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate
Principal	\$200/HR
Project Architect	\$175/HR
Architect	\$140/HR
CADD	\$120/HR

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus At actual cost percent (At actual cost %) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

6% % per annum

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Town of Little Elm Architectural Services Agreement
Town of Little Elm Supplementary Conditions to AIA Document B101-2007 and A 201-2007
AIA Document A201-2007

This Agreement entered into as of the day and year first written above.

OWNER

(Signature)

Matt Mueller Town Manager

(Printed name and title)

ARCHITECT

(Signature)

William Hidell, Principal

(Printed name and title)

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AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Little Elm DPW Service Center Expansion
1600 block Mark Tree Lane Little Elm Texas 75068

THE OWNER:

(Name, legal status and address)

Town of Little Elm
100 W Eldorado Parkway
Little Elm Texas 75068

THE ARCHITECT:

(Name, legal status and address)

Hidell and Associates Architects
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

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§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and

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completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the

Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount

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for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or

encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

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§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment

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property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by

such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.



THE TOWN OF LITTLE ELM, TEXAS

SUPPLEMENTARY CONDITIONS TO AIA DOCUMENTS B101-2007 AND A201-2007

These Supplementary Conditions are incorporated into the Architectural Services Agreement between Hidell and Associates, Hidell and Associates Architects (“Architect”) and the TOWN OF LITTLE ELM, TEXAS (“Town” or “Owner”), dated July 25, 2016. The following terms and conditions supplement and modify the “Standard Form of Agreement Between Owner and Architect,” AIA Document B101-2007, and the “General Conditions of the Contract for Construction,” AIA Document A201-2007, which is incorporated by reference in AIA Document B101-2007. Where a portion of AIA Documents B101-2007 or A201-2007 are modified or deleted by these Supplementary Conditions, the unaltered portions of AIA Documents B101-2007 or A201-2007 shall remain in effect.

SUPPLEMENTARY CONDITIONS TO AIA DOCUMENT B101-2007

ARTICLE 1 INITIAL INFORMATION

§1.3 In the second line, replace “shall appropriately” with “may.”

ARTICLE 2 ARCHITECT’S RESPONSIBILITIES

§2.2 Add at the end of the section, “and, in any event, in accordance with such schedule as is specified in this Agreement.”

§2.3 Add at the end of the section: “If at any time after entering into this Agreement, the Town has any objection to the Architect’s representative or to any of Architect’s personnel, or any objection to any personnel of consultants retained by Architect and assigned to the Project, Architect shall promptly propose substitutes to whom the Town has no objection.”

§2.4 Delete from the second line “reasonably appear to.”

§2.5 Delete second sentence. Add the following regarding types and limits of insurance coverage:

The Architect shall, at its own expense, procure, pay for and maintain during the term of this Agreement the following insurance written by companies approved by the State of Texas and acceptable to Owner. The Architect shall furnish to the Owner certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, and expiration dates in compliance with all applicable required provisions.

.1 General Liability: Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000.00 per occurrence, \$1,000,000.00 Products/Completed Operations Aggregate, and

\$1,000,000.00 General Aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.

.2 Automobile Liability: Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000.00 per occurrence.

.3 Worker's Compensation: Worker's Compensation insurance with statutory limits; and Employer's Liability coverage with minimum limits for bodily injury: (a) by accident, \$100,000.00 each accident, and (b) by disease, \$100,000.00 per employee, with a per policy aggregate of \$500,000.00.

.4 Professional Liability: Professional Liability insurance to provide coverage against any claim which the Architect and all consultants engaged or employed by the Architect become legally obligated to pay as damages arising out of the performance of professional services caused by error, omission or negligent act with minimum limits of \$2,000,000.00 per claim, \$2,000,000.00 annual aggregate.

If the insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of this Agreement and acceptance by Owner.

With reference to the foregoing required insurance, the Architect shall endorse applicable insurance policies as follows: (1) a waiver of subrogation in favor of Owner, its officials, employees and officers shall be contained in the Workers' Compensation insurance policy; (2) the Owner, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader; and (3) all insurance policies shall be endorsed to the effect that Owner will receive at least thirty (30) days notice prior to cancellation, non-renewal, termination, or a material change of the policies. All insurance shall be purchased from an insurance company that meets a financial rating of B+IV or better as assigned by A. M. Best Company or equivalent.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§3.1.3 In the sixth line, delete "except for reasonable cause." In the seventh line, replace "shall" with "may."

§3.1.4 Add at the end of the section, "which approval shall not be unreasonably withheld."

§3.1.7 Add this new subsection, to read as follows: "Architect shall provide Owner copies of all subcontracts and agreements with subcontractors who perform Work on the Project. Owner approval of all subcontractors performing Mechanical/Equipment/Plumbing work, Civil Engineering work, Electrical Engineering work, Structural Engineering work, and Landscape Architecture work is required."

§3.1.8 Add this new subsection, to read as follows: “Architect shall coordinate with Owner the establishment and identification of benchmark(s)/datum elevation(s) for use on the Project. Architect shall be responsible for coordinating and providing accurate and complete benchmark information to all contractors during construction of the Project.

§3.6 CONSTRUCTION PHASE SERVICES

§3.6.1.2 In the sixth line, delete “negligent.”

§3.6.2.1 In the sixth line, delete “reasonably.”

§3.6.2.3 Delete from the end of the section, “or otherwise with reasonable promptness.”

§3.6.2.4 Replace the second sentence with the following sentence, “When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, and shall not show partiality to either, and shall not be liable for Contractor’s performance of interpretations or decisions.”

§3.6.4.4 Replace the fourth sentence with the following, “The Architect’s response to such requests shall be made in writing within forty-eight (48) hours of receipt.”

§3.6.6.5 Add the following at the end of the section, “Said meeting shall occur at the facility during the eleventh (11th) month after the date of Substantial Completion.

ARTICLE 4 ADDITIONAL SERVICES

§4.2 Add the following: “If additional design sets of drawings provided hereunder are required, Architect shall provide same over and above the number of design sets already provided as part of Architect’s Work under this Agreement. Architect shall be paid by Owner for each additional design set of drawings over and above the number of sets provided as part of this Agreement, in the agreed upon amounts per set as stated in the scope of work.”

§4.3.1.1 Add at the end of the subsection, “except pursuant to §1.3.”

§4.3.1.4 Delete the subsection and replace with the following, “Services necessitated by decisions or any other failure of performance on the part of the Owner’s consultants or contractors;”.

§4.3.1.5 Delete this subsection.

§4.3.1.6 Delete this subsection.

§4.3.1.7 Delete this subsection.

§4.3.1.8 Delete this subsection.

§4.3.1.9 Delete this subsection.

§4.3.1.10 Replace “cause” with “casualty.”

§4.3.2.3 Delete this subsection.

§4.3.2.4 Delete this subsection.

§4.3.2.6 Replace “60” with “90.”

§4.3.4 In the last line, replace “shall” with “may.”

ARTICLE 5 OWNER’S RESPONSIBILITIES

§5.2 Add in the first line, after the word “update” the following: “the Architect regarding.”

§5.4 Replace “Owner” with “Architect.”

§5.6 In the third line, replace “shall” with “may.”

ARTICLE 6 COST OF THE WORK

§6.4 In the first line, replace “90” with “120.” In the last line, replace “shall” with “may.”

§6.5 Add at the end of the section, “Notwithstanding any provision herein to the contrary, this provision does not guarantee or authorize any automatic adjustment to the Cost of the Work, and the Owner’s decision on any adjustment shall be final.”

ARTICLE 7 COPYRIGHTS AND LICENSES

§§7.1, 7.2, 7.3, 7.3.1, and 7.4 Delete these sections and replace with the following:

“All materials, documents and ‘Instruments of Service’ prepared or assembled by the Architect under this Agreement shall become the sole property of the Owner and shall be delivered to the Owner without restriction on future use. The Architect may retain in its files copies of all drawings, specifications and other pertinent information for the work. The Architect shall have no liability for changes made to any materials or other documents by others subsequent to the completion of this Agreement.”

ARTICLE 8 CLAIMS AND DISPUTES

§8.1 GENERAL

§8.1.1 Delete the following phrase from the third and fourth lines of the first sentence: “. . . but in any case not more than 10 years after the date of Substantial Completion of the Work.”

§8.1.2 Delete this section.

§8.1.3 Delete this section.

§8.2 MEDIATION

§8.2.1 Delete the second sentence of this section.

§8.2.2 Delete the first sentence of this section, and replace with the following sentence: “The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them first, informally and, second, by mediation.” Delete the last sentence of this section, and replace with the following: “The parties shall have fifteen (15) days after receipt of a request for mediation to agree on a mediator. If the parties are unable to agree on a mediator within fifteen (15) days, each party shall have an additional five (5) days to designate a mediator. The two mediators so designated shall then designate a third unbiased mediator who shall be the mediator to conduct the mediation. The decision of the mediator shall be non-binding.

§8.2.4 Select the box “Litigation in a court of competent jurisdiction.”

§8.3 ARBITRATION

Delete this section. It is understood and agreed that arbitration is not agreed to as a dispute resolution method under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§9.1 In the fourth line, replace “seven days” with “ten days.” Replace the last sentence with the following: “Before resuming services, the Architect shall be paid all sums due prior to suspension.”

§9.2 In the second and fourth lines, replace “shall” with “may.”

§9.3 In the second line, replace “seven days” with “thirty days.”

§9.4 In the first line, replace “seven days” with “thirty days.”

§9.5 In the first line, replace “seven days” with “thirty days.”

§9.6 Delete this section and insert the following: “In the event of termination that is not the fault of the Architect, the Architect shall be compensated for services performed prior to termination.”

§9.7 Delete this section.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§10.1 Delete this section and replace with the following: “This Agreement shall be governed by the law of the State of Texas, and venue for any dispute shall be in any court of competent jurisdiction in Denton County, Texas.”

§10.3 Add “prior” before “written” in the second line of this section. Put a period after the word “other” in the third line, and delete the remaining language from the last two lines of this section.

ARTICLE 11 COMPENSATION

§11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§11.8.1 Delete this section.

§11.8.2 Delete this section.

§11.9 COMPENSATION FOR USE OF ARCHITECT’S INSTRUMENTS OF SERVICE

Delete this section.

§11.10 PAYMENTS TO THE ARCHITECT

§11.10.3 Delete this section.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Add: “Town of Little Elm, Texas Architectural Services Agreement; and these Supplementary Conditions.”

ARTICLE 13 SCOPE OF THE AGREEMENT

§13.2.3 Add: “Town of Little Elm, Texas Architectural Services Agreement and contract documents referenced therein, and the order of precedence provisions stated therein.”

SUPPLEMENTARY CONDITIONS TO AIA DOCUMENT A201-2007

ARTICLE 1 GENERAL PROVISIONS

§1.1 BASIC DEFINITIONS

§1.1.1 Add as a new second sentence, the following: “When used herein, the term “Contract” or “Agreement” means Agreement between the Architect and Owner, and all Contract Documents that form a part of or are included in such Agreement. Except where

expressly stated otherwise, the term “Contractor” means “Architect.” Delete subparts 3 and 4 from this section.

§1.1.2 In the first line, replace “Contract for Construction” with “Agreement between Owner and Architect.” Delete subparts 3 and 4 from this section.

§1.1.3 Delete the words “construction and” from the first line of this section.

§1.1.8 Place a period after the word “claims” and delete the remainder of this section.

§1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§1.5.1 Delete the first sentence of this section.

§1.5.2 Delete the last two sentences of this section.

ARTICLE 2 OWNER

§2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§2.2.1 Delete this section.

§2.4 OWNER’S RIGHT TO CARRY OUT THE WORK

Delete from the sixth line, “and compensation for the Architect’s additional services.” Delete the third sentence of this section.

ARTICLE 3 CONTRACTOR

§3.1 GENERAL

§3.1.3 Delete from the second line of this section, “either by activities or duties of the Architect in the Architect’s administration of the Contract, or.”

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§3.2.2 Replace “Architect” with “Owner” in the seventh and eighth lines of this section. Delete the last sentence of this section.

§3.2.3 Replace “Architect” with “Owner” in the third and fourth lines of this section.

§3.2.4 Replace “Architect” with “Owner” in the second and sixth lines of this section. Replace “Article 15” with “the Contract Documents” in the third line of this section.

§3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§3.3.1 Delete “and Architect” from the ninth line, and replace “Architect” with “Owner” in the tenth line of this section.

§3.4 LABOR AND MATERIALS

§3.4.2 Replace “Architect” with “Owner” in the first and third lines of this section.

§3.5 WARRANTY

Delete “and Architect” from the first line of this section, and replace “Architect” with “Owner” in the last line of this section.

§3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§3.7.4 Delete “and the Architect” from the fifth line of this section, and replace “Architect” with “Owner” in the sixth, ninth, tenth and eleventh lines of this section. Delete “Owner and” from the eleventh line of this section, and replace “Article 15” with “the Contract Documents” in the last line of this section.

§3.7.5 Replace “Article 15” with “the Contract Documents” in the last line of this section.

§3.9 SUPERINTENDENT

§3.9.2 Delete “through the Architect” in the second line of this section. Replace “Architect” with “Owner” in the second and fourth lines of this section. Delete “or the Architect” from the third line of this section.

§3.9.3 Delete “or Architect” from the first line of this section.

§3.10 CONTRACTOR’S CONSTRUCTION SCHEDULES

§3.10.1 Delete “and Architect’s” from the first and second lines of this section.

§3.10.2 Delete “Architect” and replace with “Owner” in the second, third and fourth lines of this section.

§3.10.3 Delete “and Architect” from the second line of this section.

§3.11 Delete the last sentence of this section.

§3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§3.12.4 Replace “Architect” with “Owner” in the fourth and fifth lines of this section.

§3.12.5 Replace “Architect” with “Owner” in the second and third lines of this section.

§3.12.6 Delete “and Architect” from the second line of this section.

§3.12.8 Replace “Architect” with “Owner” in the second, third, fourth and seventh lines of this section.

§3.12.9 Replace “Architect” with “Owner” in the second and third lines of this section.

§3.12.10 Delete “and the Architect” from the seventh and twelfth lines of this section. Replace “Architect” with “Owner” in the twelfth and fifteenth lines of this section. Replace “and Architect have” with “has” in the fourteenth line of this section.

§3.16 ACCESS TO WORK

Delete “and Architect” from this section.

§3.17 ROYALTIES, PATENTS AND COPYRIGHTS

Delete “and Architect” from the second line of this section, and delete “or Architect” from the fifth line of this section. Replace “Architect” with “Owner” in the last line of this section.

§3.18 INDEMNIFICATION

§3.18.1 Delete this section.

§3.18.2 Replace “Section 3.18” with “Agreement” in this first line of this section. Replace “Section 3.18.1” with “this Agreement” in the third line of this section.

ARTICLE 4 ARCHITECT

§4.2 ADMINISTRATION OF THE CONTRACT

§4.2.8 Place a period after “Directives” in the first line and delete the remainder of the section.

§4.2.12 Add at the end of the section, “except as otherwise set forth in the Contract Documents.”

§4.2.14 Replace the second sentence with the following, “The Architect’s response to such requests shall be made in writing within forty-eight (48) hours of receipt.”

ARTICLE 5 SUBCONTRACTORS

§5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§5.2.3 Replace “shall” with “may” in the third line of this section.

§5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§5.4.2 Replace “shall” with “may” in the second line of this section.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§6.2 MUTUAL RESPONSIBILITY

§6.2.3 Delete the second sentence of this section.

§6.3 OWNER’S RIGHT TO CLEAN UP

Replace “Architect” with “Owner” in the last line of the section.

ARTICLE 8 TIME

§8.1 DEFINITIONS

§8.1.1 Delete “Substantial” from the second line of this section.

§8.1.3 Delete “Substantial” from this section, replace “Architect” with “Owner,” put a period after the word “Owner,” and delete the remainder of this section.

§8.2 PROGRESS AND COMPLETION

§8.2.3 Delete “Substantial” from this section.

§8.3 DELAYS AND EXTENSIONS OF TIME

§8.3.1 Delete “or Architect” from the second line of this section. Replace “Architect” with “Owner” in the fifth line of this section, replace “shall” with “may” in the fifth line of this section, place a period after the word “extended” in the fifth line of this section, and delete the remainder of the section.

§8.3.2 Replace “Article 15” with “the Contract Documents” in this section.

ARTICLE 9 PAYMENTS AND COMPLETION

§9.2 SCHEDULE OF VALUES

Replace “Architect” with “Owner” in the second and fourth lines of this section.

§9.3 APPLICATIONS FOR PAYMENT

§9.3.1 Replace “Architect” with “Owner” in the second and fourth lines of this section.

§9.7 FAILURE OF PAYMENT

Delete entire section.

§9.9 PARTIAL OCCUPANCY OR USE

§9.9.1 Place a period after the word “Contractor” in the last line of the section, and delete the rest of the section.

§9.10 FINAL COMPLETION AND FINAL PAYMENT

§9.10.1 Replace “Architect” with “Owner and Architect” in the second, third, fourth, fifth and seventh lines of this section.

§9.10.2 Replace “Architect” with “Owner” in the second line of this section.

§9.10.3 Delete the first sentence and replace with the following: “If final completion of the Work is materially delayed through no fault of the Architect, and the Owner so confirms, the Owner shall, upon application by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted.” Replace “Architect” with “Owner” in the seventh line of this section.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§10.2 SAFETY OF PERSONS AND PROPERTY

§10.2.5 Delete “or Architect” from the fifth line of this section, and replace “either of them” with “Owner” in both places in the sixth line of this section.

§10.2.6 Delete “and Architect” from the last line of this section.

§10.3 HAZARDOUS MATERIALS

§10.3.1 Delete “and Architect” from the last line of this section.

§10.3.2 Delete “and Architect” from the fourth line of this section, and delete “and the Architect” from the sixth and seventh lines of this section. Delete “or Architect” from the ninth line of this section, and replace “and Architect have” with “has” in the ninth line of this section. In the eleventh line, replace “shall” with “may.”

§10.3.3 Delete this section.

§10.3.6 Delete this section.

§10.4 EMERGENCIES

Replace “shall” with “may” in the last line of this section.

ARTICLE 11 INSURANCE AND BONDS

§11.1 CONTRACTOR'S LIABILITY INSURANCE

§11.1.4 Delete "the Architect and the Architect's consultants" from the second line of this section, and replace "insureds" with "insured" in the second line of this section.

§11.3 PROPERTY INSURANCE

§11.3.1.1 Delete "Architect's and" from the fifth line of this section.

§11.3.3 Delete the last sentence of this section.

§11.3.9 Delete this section.

§11.3.10 Delete the last sentence of this section.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§12.1 UNCOVERING WORK

§12.1.1 Delete this section.

§12.1.2 Delete this section.

§12.1 CORRECTION OF WORK

§12.2.1 Replace "Architect" with "Owner" in the first line of this section. Delete "Substantial" from the second line of this section, and replace "Architect's services and" with "Owner's" in the fourth line of this section.

§12.2.2.1 Delete "Substantial" from the second line of this section.

§12.2.2.2 Delete "Substantial" from the second line of this section.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§13.1 GOVERNING LAW

Delete this section.

§13.4 RIGHTS AND REMEDIES

§13.4.2 Delete "Architect" from the first line of this section.

§13.5 TESTS AND INSPECTIONS

§13.5.1 Replace “Architect” with “Owner” in the fifth and sixth lines of this section.

§13.5.2 Replace “Architect” with “Owner” in the second, fourth and fifth lines of this section. Delete “Architect” from the first line of this section, and delete “upon written authorization from the Owner” from the second and third lines of this section.

§13.5.3 Replace “Architect’s” with “Owner’s” in the third line of this section.

§13.5.4 Replace “Architect” with “Owner” in the last line of this section.

§13.5.5 Replace “Architect” with “Owner” in the first and second lines of this subsection.

§13.6 INTEREST

Delete this section.

§13.7 TIME LIMITS ON CLAIMS

Place a period after the word “law” in the third line of this section, and delete the remainder of this sentence.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

Delete this section.

ARTICLE 15 CLAIMS AND DISPUTES

Delete this section.

TOWN OF LITTLE ELM

Town Council

Staff Report

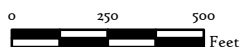


PROJECT:	16-FP-023	Paloma Creek South Phase 3C
HEARING DATES:	Planning & Zoning Commission:	8-18-16
	Town Council:	9-6-16
REQUEST:	Proposal to final plat 126 residential lots	
PROPOSED USE:	Low Density Residential	
LOCATION:	The subject property is generally located along Yellowthroat Drive and Spoonbill Drive, within Little Elm's ETJ.	
SIZE:	Approximately 22.858 acres	
CURRENT ZONING:	ETJ	
EXISTING USE / SITE ATTRIBUTES:	Undeveloped	
APPLICANT:	Petitt Barraza	
PROPERTY OWNER:	Bloomfield Homes, LP	
PLANNING ANALYSIS:	The proposed plat is in compliance with Little Elm's subdivision regulations.	
RECOMMENDED ACTION:	Staff recommends approval of the Final Plat. <i>On August 18th, 2016, the Planning & Zoning Commission unanimously recommended approval of the proposed final plat.</i>	
TOWN CONTACT:	Lisa Reich – Town Planner	
ATTACHMENTS:	Location Map Final Plat	



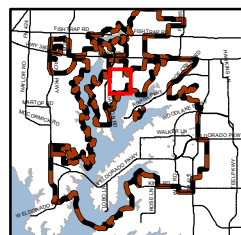
Location Map

Paloma Creek South Ph 3C
Town of Little Elm
Denton County, TX
Date: 7/21/2016



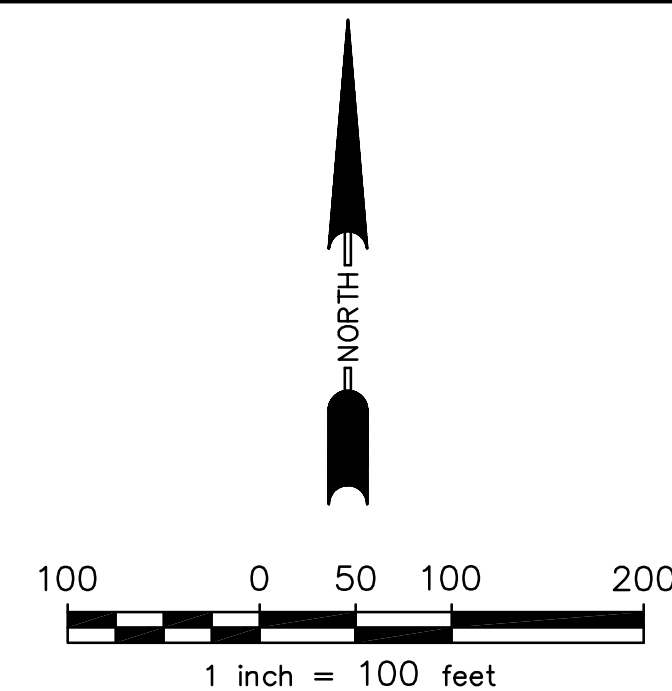
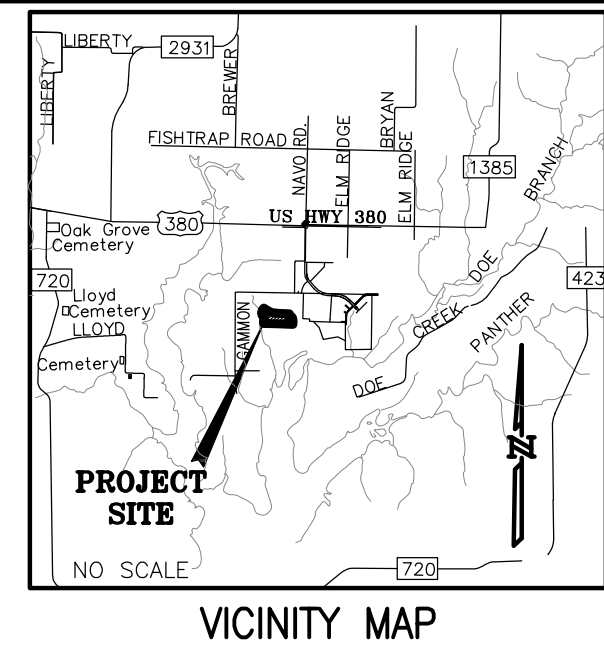
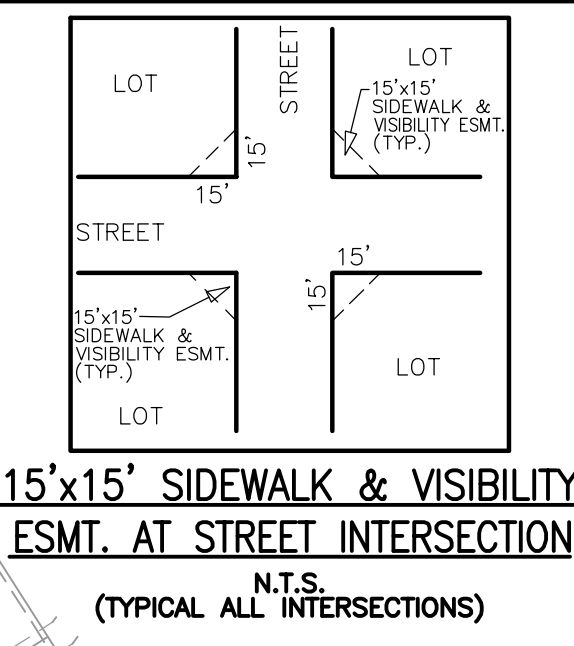
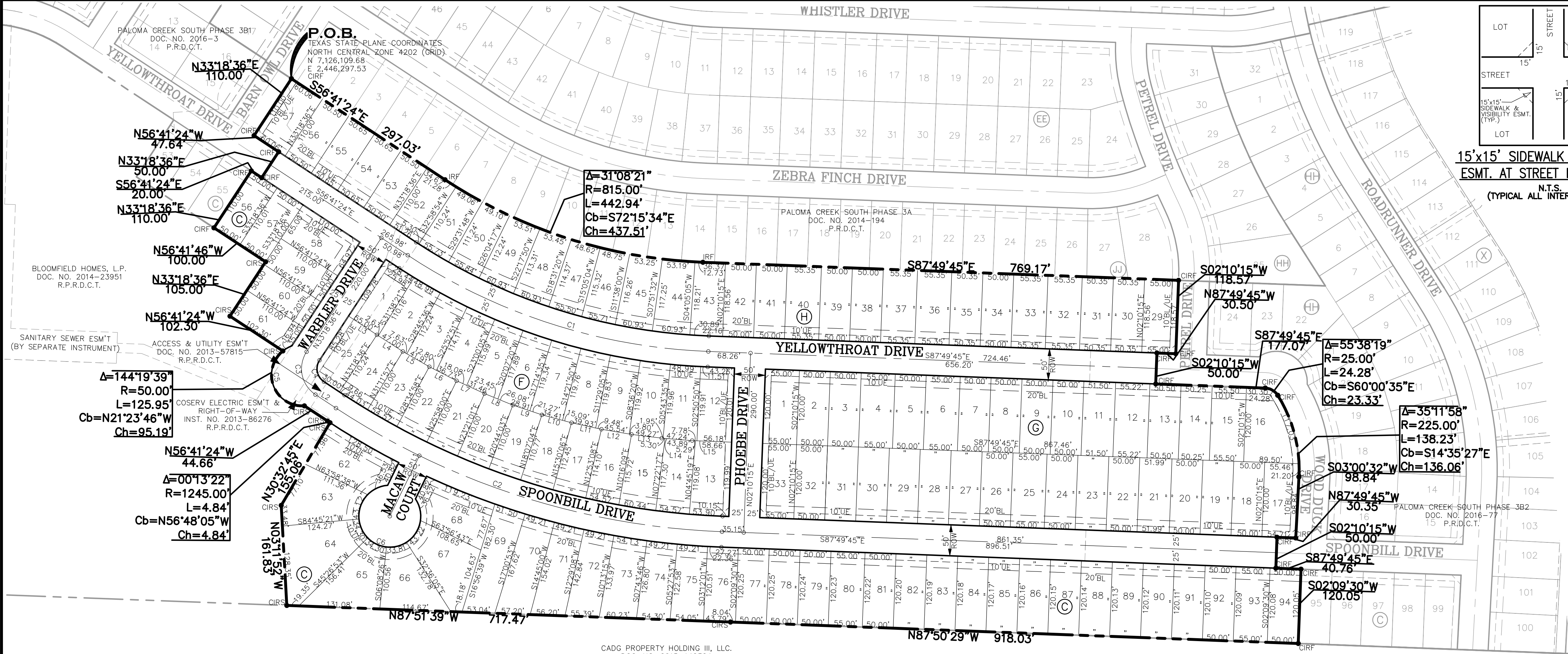
Legend

- Roads
- ▨ Paloma Creek South Ph 3C
- ▤ Town Limit
- ▧ ETJ



This map is the property of the Town of Little Elm, and is not to be reproduced by any means, mechanical or digital, without written consent of the Town.

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



- NOTES:
- WATER SERVICE TO BE PROVIDED BY DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 11--A
 - UTILITY PROVIDERS:
 - ELECTRIC & GAS SERVICE:

COSERV
7701 SOUTH STEMMONS, CORINTH, TEXAS 75065
PHONE: 1-800-274-4014
AT&T
2301 RIDGEVIEW DRIVE, PLANO, TEXAS 75025
PHONE: (972) 569-3084
 - TELEPHONE SERVICE:
 - SANITARY SEWER TO BE HANDLED BY FACILITIES APPROVED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY.
 - THE MAINTENANCE OF PAVING, GRADING AND DRAINAGE IMPROVEMENTS AND/OR EASEMENTS SHOWN ON THIS PLAT IS THE RESPONSIBILITY OF DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 11--A. APPROVAL OF THIS PLAT BY DENTON COUNTY DOES NOT CONSTITUTE ACCEPTANCE OF SAME FOR MAINTENANCE PURPOSES.
 - ALL UTILITY EASEMENTS AND RIGHTS-OF-WAY SHOWN HEREON ARE HEREBY DEDICATED BY THIS PLAT FOR THE EXCLUSIVE USE OF DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 11--A AND FRANCHISE UTILITIES UNLESS OTHERWISE NOTED.
 - SUBJECT PROPERTY LIES WITHIN ZONE X (UN-SHADED AREA), DEFINED AS "AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN", ACCORDING TO FEDERAL EMERGENCY MANAGEMENT AREA FLOOD INSURANCE RATE MAP FOR DENTON COUNTY, TEXAS AND INCORPORATED AREAS ~ MAP NUMBER 4812C04056, REVISION DATE APRIL 18, 2011.
 - PERIMETER BOUNDARY CORNERS ARE 5/8-INCH IRON ROD WITH CAPS MARKED "PETITT-RPLS 4087" SET, UNLESS NOTED OTHERWISE. WHEN A RETAINING WALL OR SCREENING FENCE HAS BEEN PLACED AT THE REAR LOT CORNER, A 5/8-INCH IRON ROD MAY BE SET FIVE FEET (5') FROM THE REAR LOT CORNER ALONG THE SIDE LOT LINE.
 - PROPOSED SITE IS WITHIN THE EXTRA TERRITORIAL JURISDICTION OF THE TOWN OF LITTLE ELM, DENTON COUNTY, TEXAS.
 - THIS PROPERTY MAY BE SUBJECT TO CHARGES RELATED TO IMPACT FEES AND THE APPLICANT SHOULD CONTACT THE TOWN REGARDING ANY APPLICABLE FEES DUE.
 - NOTICE--SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS IS A VIOLATION OF TOWN ORDINANCE AND STATE LAW AND IS SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
 - THIS PLAT DOES NOT ALTER OR REMOVE EXISTING DEED RESTRICTIONS, IF ANY, ON THIS PROPERTY.
 - ALL LOTS DESIGNATED AS "X" LOTS WILL BE OWNED AND MAINTAINED BY THE HOA.
 - THE BEARINGS SHOWN AND RECITED HEREON ARE REFERENCED TO THE MONUMENTED EAST LINE OF PALOMA CREEK LAKEVIEW PHASE 2C, RECORDED IN DOCUMENT NO. 2015-288, PLAT RECORDS OF DENTON COUNTY, TEXAS (S012730'W).

DEDICATION STATEMENT

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, **BLOOMFIELD HOMES, L.P.**, ACTING HEREIN BY AND THROUGH ITS DULY AUTHORIZED OFFICER, DOES HEREBY ADOPT THIS PLAT DESIGNATING THE HEREIN DESCRIBED PROPERTY AS **PALOMA CREEK SOUTH PHASE 3C**, AN ADDITION TO DENTON COUNTY, TEXAS, AND DOES HEREBY DEDICATE TO DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 11--A (THE DISTRICT), IN FEE SIMPLE, THE STREETS AND PUBLIC USE AREAS SHOWN HEREON, AND DOES HEREBY DEDICATE THE EASEMENTS SHOWN HEREON FOR THE PURPOSES INDICATED TO THE EXCLUSIVE USE FOREVER OF DISTRICT 11--A, ALL SAID DEDICATIONS BEING FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES EXCEPT AS SHOWN HEREON, NO BUILDINGS, FENCES, TREES, SHRUBS OR OTHER IMPROVEMENTS SHALL BE CONSTRUCTED OR PLACED UPON, OVER OR ACROSS THE EASEMENTS ON SAID PLAT, AT THE DISCRETION OF THE DISTRICT AND SUBJECT TO ITS WRITTEN APPROVAL. UTILITY EASEMENTS MAY ALSO BE USED FOR THE MUTUAL USE AND ACCOMMODATION OF ALL PUBLIC UTILITIES DESIRING TO USE THE SAME UNLESS THE EASEMENT LIMITS THE USE TO A PARTICULAR UTILITY OR UTILITIES, SAID USE BY PUBLIC UTILITIES BEING SUBORDINATE TO THE DISTRICT USE THEREOF. ANY PUBLIC UTILITY GIVEN THE RIGHT BY THE DISTRICT TO USE SAID EASEMENTS SHALL HAVE THE RIGHT TO: REMOVE AND KEEP REMOVED ALL OR PART OF ANY BUILDINGS, FENCES, TREES, SHRUBS OR OTHER IMPROVEMENTS OR GROWTHS WHICH IN ANY WAY ENDANGER OR INTERFERE WITH THE CONSTRUCTION, MAINTENANCE, OR EFFICIENCY OF ITS RESPECTIVE SYSTEM ON ANY OF THESE EASEMENTS; AND ANY PUBLIC UTILITY SHALL AT ALL TIMES HAVE THE RIGHT OF INGRESS AND EGRESS TO AND FROM AND UPON ANY OF SAID EASEMENTS FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, INSPECTING, PATROLLING, MAINTAINING AND ADDING TO OR REMOVING ALL OR PART OF ITS RESPECTIVE SYSTEM WITHOUT THE NECESSITY AT ANY TIME PROCURING THE PERMISSION OF ANYONE. I DO HEREBY BIND MYSELF, MY SUCCESSORS AND ASSIGNS TO FOREVER WARRANT AND DEFEND ALL AND SINGULAR THE ABOVE DESCRIBED STREETS, EASEMENTS COMES LAWFULLY CLAIMING OR TO CLAIM THE SAME OR ANY PART THEREOF, THIS PLAT APPROVED SUBJECT TO ALL THE PLATTING ORDINANCES, RULES AND REGULATIONS OF THE TOWN OF LITTLE ELM AND DENTON COUNTY.

WITNESS MY HAND THIS ____ DAY OF _____, 2016.

BLOOMFIELD HOMES, L.P.,
A TEXAS LIMITED PARTNERSHIP

BY: BLOOMFIELD PROPERTIES, INC.,
A TEXAS CORPORATION, GENERAL PARTNER

BY: DONALD J. DYKSTRA, PRESIDENT
STATE OF TEXAS §
COUNTY OF DALLAS §

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS ON THIS DAY PERSONALLY APPEARED DONALD J. DYKSTRA, KNOWN TO ME TO BE THE PERSONS AND OFFICERS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS ____ DAY OF _____, 2016.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS.

MY COMMISSION EXPIRES: _____

SURVEYOR'S CERTIFICATE

KNOW ALL ME BY THESE PRESENTS:

THAT I, **JIMMIE D. NICHOLS**, A REGISTERED PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THIS PLAT WAS PREPARED FROM AN ACTUAL SURVEY MADE ON THE GROUND OF THE LAND DESCRIBED HEREON, AND THAT THE CORNER MONUMENTS SHOWN HEREON WERE FOUND AND/OR PLACED UPON MY PERSONAL SUPERVISION IN ACCORDANCE WITH THE PLATTING RULES AND REGULATIONS OF THE TOWN OF LITTLE ELM AND DENTON COUNTY, TEXAS.

*PRELIMINARY, THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR RELIED UPON AS A FINAL SURVEY DOCUMENT.

JIMMIE D. NICHOLS
TEXAS REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5184

STATE OF TEXAS §
COUNTY OF DALLAS §

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED JIMMIE D. NICHOLS, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS ____ DAY OF _____, 2016.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS.

MY COMMISSION EXPIRES: _____

LEGEND

P.O.B.	POINT OF BEGINNING
VOL.	VOLUME
P.G.	PAGE
CAB.	CABINET
PRDCT.	PLAT RECORDS, DENTON COUNTY, TEXAS
RRDCT.	REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS
U.E.	UTILITY EASEMENT
D.E.	DRAINAGE EASEMENT
W.M.E.	WALL & FENCE MAINTAINANCE EASEMENT
BL	BUILDING SETBACK LINE
D.C.F.W.S.D.	DENTON COUNTY FRESH WATER SUPPLY DISTRICT
CIRF	CAPPED IRON ROD FOUND
CIRS	5/8-INCH IRON ROD W/CAP MARKED "PETITT-RPLS 4087" SET
R.O.W.	RIGHT-OF-WAY
(20)	DESIGNATES SUBDIVISION BLOCK
◇	DENOTES STREET NAME CHANGE

UTILITY COMPANY APPROVAL

ELECTRIC & GAS COMPANY:	
_____	DATE _____
TELEPHONE COMPANY:	
_____	DATE _____

REVIEWED AND APPROVED ON _____, 2016.

DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 11--A

APPROVED BY THE TOWN OF LITTLE ELM ON THIS ____ DAY OF _____, 2016.

TOWN OFFICIAL _____ DATE: _____
TOWN OF LITTLE ELM, TEXAS

TOWN SECRETARY _____ DATE: _____
TOWN OF LITTLE ELM, TEXAS

OWNER/DEVELOPER:
BLOOMFIELD HOMES, L.P.
1050 E. HIGHWAY 114, SUITE 210
SOUTH LAKE, TEXAS 76092
PHONE (817) 416-1572

DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO. 11--A
CONTACT: CHRISTOPHER JORDAN
3100 MCKINNON ST., STE. 1100
DALLAS, TEXAS 75201

FINAL PLAT
PALOMA CREEK SOUTH PHASE 3C

22.858 ACRES
126 RESIDENTIAL LOTS
STREET RIGHT-OF-WAY - 4.422 ACRES
SITUATED IN THE
DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 11--A
TEODORO RODRIGUEZ SURVEY ABSTRACT NO. 1068
TOWN OF LITTLE ELM'S ETJ
DENTON COUNTY, TEXAS



1651 GLENVILLE DRIVE, SUITE 208
Richardson, Texas 75081
Tel. No. (214) 221-9955
Fax No. (214) 340-3550
DATE: JULY 2016
JOB NO. 14003-3C
SCALE: 1"= 100'

Paloma Creek South Phase 3C Survey V4030303P.dwg
Jul 13, 2016 - 2:03pm



LITTLE ELM

Finance Department

Karla Stovall, Chief Financial Officer

Phone: 214-975-0415

kstovall@littleelm.org

TOWN COUNCIL CONSENT AGENDA

Date: September 6, 2016

Approval:

Consider and approve annual update to the Valencia Public Improvement District (PID) and Assessment Plan and Assessment Roll.

Comments:

The Town of Little Elm engaged MuniCap, Inc. in February 2014 to provide administrative and management support services associated with the Valencia Public Improvement District. There scope of service includes the annual determination of the special assessments to be collected from the property within the PID boundaries as well as updating the service and assessment plan and special assessment roll. Further, MuniCap Inc. is to provide a report of the PID Bond Accounts and PID Improvements Sources and Uses of Funds.

In compliance with Chapter 372, Texas Local Government Code, the "Service and Assessment Plan must be reviewed and updated annually." MuniCap, Inc. has provided their Valencia PID Annual Service Plan Update Report.

Fiscal Impact:

N/A

Recommended Action:

The Finance Department recommends approval by consent.

Attachments:

- Valencia PID Annual Service Plan – Fiscal Year – October 1, 2016-September 30, 2017

Initial:

Town Manager ☐ Finance ☒ Library ☐ Public Works ☐ Parks ☐

Town Secretary ☐ Police ☐ Fire ☐ HR ☐ Development Services ☐

APPROVED ☐ DENIED ☐ TABLED ☐ WITHDRAWN ☐

VALENCIA PUBLIC IMPROVEMENT DISTRICT

LITTLE ELM, TEXAS

ANNUAL SERVICE PLAN UPDATE - II

August 31, 2016

VALENCIA PUBLIC IMPROVEMENT DISTRICT

LITTLE ELM, TEXAS

ANNUAL SERVICE PLAN UPDATE - II

A. Introduction

The Valencia Public Improvement District (the “PID”) was created pursuant to the PID Act and a resolution of the Town Council on September 13, 2013 to finance certain public improvement projects for the benefit of the property in the PID. The Town of Little Elm, Texas Special Assessment Revenue Bonds, Series 2014 (Valencia Public Improvement District Phase #1 Project) (the “Phase #1 Bonds”) in the aggregate principal amount of \$4,000,000, The Town of Little Elm, Texas Special Assessment Revenue Bonds, Series 2014 (Valencia Public Improvement District Phases #2-5 Major Improvement Project) (the “Phases #2-5 Bonds”) in the aggregate principal amount of \$12,240,000, were issued to finance, refinance, provide or otherwise assist in the acquisition, construction and maintenance of the public improvements provided for the benefit of the property in the PID. In addition, reimbursement obligations for the Phase #1 Reimbursement Agreement in the aggregate principal amount of \$3,435,000 are secured by special assessments.

A service and assessment plan (the “Service and Assessment Plan”) was prepared at the direction of the Town identifying the public improvements (the “Authorized Improvements”) to be provided by the PID, the costs of the Authorized Improvements, the indebtedness to be incurred for the Authorized Improvements, and the manner of assessing the property in the PID for the costs of the Authorized Improvements. Pursuant to Chapter 372, Texas Local Government Code, the Service and Assessment Plan must be reviewed and updated annually. This document is the second annual update of the Service and Assessment Plan for 2016 (the “Annual Service Plan Update - II”).

The Town also adopted assessment rolls (the “Assessment Rolls”) identifying the assessments on each parcel within the PID, based on the method of assessment identified in the Service and Assessment Plan. According to the Developer, the original proposed mix and total number of residential dwelling units shown in the original SAP have changed. The Developer requested a reallocation of the Assessments for each of the current Parcels in Phases #2-5 based on the revised development plan. These parcel related changes were reflected in the Annual Service Plan Update – I approved on August 2, 2016. This Annual Service Plan Update is the second update related to the annual budget for the payment of PID obligations in 2017.

B. Update of the Service Plan

Annual Budget for the Public Improvements

The current total estimated costs of the Major Improvements is equal to \$11,407,019 and the total estimated cost of the Phase #1 Improvements Costs (including the proportional share of the Major Improvement Costs) is equal to \$5,977,992, which remain the same as the budget estimates included in the original Service and Assessment Plan. According to

the Developer, there have been no budget line item amount revisions for the Authorized Improvements reported by the Developer and therefore no changes for the Annual Service Plan Update.

As shown by Table A below, the PID has incurred indebtedness in the total amount of \$19,675,000 in the form of the Bonds and reimbursement agreements, which are to be repaid from assessments.

Table A
Sources and Uses of Funds
Public Improvements

Sources of Funds	Phase #2 - 5 Major Improvement Bonds	Phase #1A Bonds	Phase #1 Reimbursement Agreement	Total
Estimated Bond par amount	\$12,240,000	\$4,000,000	\$3,435,000	\$19,675,000
Total Sources	\$12,240,000	\$4,000,000	\$3,435,000	\$19,675,000
Uses of Funds				
<i><u>Major Improvements</u></i>				
Road improvements	\$3,393,436	\$721,517	\$0	\$4,114,953
Water distribution system improvements	\$1,320,115	\$280,685	\$0	\$1,600,800
Sanitary sewer improvements	\$1,368,555	\$290,984	\$0	\$1,659,539
Storm drainage improvements	\$372,086	\$79,114	\$0	\$451,200
Other soft and miscellaneous costs	\$2,952,716	\$627,811	\$0	\$3,580,527
Subtotal	\$9,406,909	\$2,000,110	\$0	\$11,407,019
<i><u>Phase I Improvements</u></i>				
Road improvements	\$0	\$505,870	\$1,294,090	\$1,799,960
Water distribution system improvements	\$0	\$131,573	\$336,582	\$468,155
Sanitary sewer improvements	\$0	\$168,766	\$431,727	\$600,493
Storm drainage improvements	\$0	\$104,557	\$267,473	\$372,030
Other soft and miscellaneous costs	\$0	\$207,199	\$530,046	\$737,245
Subtotal	\$0	\$1,117,965	\$2,859,918	\$3,977,883
Estimated Bond issue costs	\$2,833,091	\$881,926	\$575,082	\$4,290,099
Total Uses	\$12,240,000	\$4,000,000	\$3,435,000	\$19,675,000

⁽¹⁾ Phase #1 Improvements include the Authorized Improvements listed under this heading plus the estimated \$2.0M pro rata share of the Major Improvements allocated to Phase #1.

A service plan must cover a period of five years. All of the Authorized Improvements are expected to be built within a period of five years. The anticipated budget for the Authorized Improvements over a period of five years and the indebtedness expected to be incurred for these costs is shown by Table B.

Table B
Authorized Improvements
PID Sources and Uses of Funds
2014 - 2018

Year	Annual Projected Cost	Annual Projected Indebtedness	Sources other than PID Bonds
2014	\$19,675,000	\$19,675,000	\$0
2015	\$0	\$0	\$0
2016	\$0	\$0	\$0
2017	\$0	\$0	\$0
2018	\$0	\$0	\$0
	\$19,675,000	\$19,675,000	\$0

Debt Service and Collection Costs

Phase #1 - Annual Installments

The Assessment imposed on any parcel may be paid in full at any time. If not paid in full, the Assessment shall be payable in thirty annual installments of principal and interest beginning with the tax year following the issuance of the Bonds and/or execution of the Phase #1 Reimbursement Agreement.

Pursuant to the Service and Assessment Plan, each Assessment shall bear interest at the rate on the Bonds commencing with the issuance of the Bonds. The effective interest rate on the Phase #1A Bonds is 6.84 percent and the interest rate applicable to the Phase #1 Reimbursement Agreement is 7.25 percent per annum. Pursuant to Section 372.018 of the PID Act, the interest rate for that assessment may not exceed a rate that is one-half of one percent higher than the actual interest rate paid on the debt. Accordingly, the effective interest rate on the Phase #1A Bonds (6.84%) plus an additional interest of one-half of one percent are used to calculate the interest on the Assessments. These payments, the "Annual Installments" of the Assessments, shall be billed by the Town in 2016 and will be delinquent on February 1, 2017.

Pursuant to the Service and Assessment Plan, the Annual Service Plan Update shall show the remaining balance of the Assessments, the Annual Installment due for 2016 and the Administrative Expenses to be collected from each Parcel. Administrative Expenses shall be allocated to each Parcel pro rata based upon the amount the Annual Installment on a Parcel bears to the total amount of Annual Installments in the PID as a whole that are payable at the time of such allocation. Each Annual Installment shall be reduced by any credits applied under applicable documents including the Service and Assessment Plan and Bond Ordinance, such as the Tax Increment Reinvestment Zone No. 4. (the "TIRZ") incremental taxes available to the PID (the "TIRZ Credit"), capitalized interest and interest earnings on any account balances and by any other funds available to the PID.

Annual Budget for the Repayment of Indebtedness

Debt service will be paid on the Phase #1A Bonds and Phase #1 Reimbursement Agreement from the collection of the Annual Installments. In addition, Administrative Expenses are to be collected with the Annual Installments to pay expenses related to the collection of the Annual Installments. The additional interest collected with the Annual Installments will be used to pay the prepayment and delinquency reserve amounts as described in the Service and Assessment plan and applicable Trust Indenture.

Phase #1 Annual Installments to be collected for 2016

The budget for Phase #1 of the PID will be paid from the collection of Annual Installments collected for 2016 as shown by Table C.

Table C
Budget for the Phase #1 Annual Installments
To be collected for 2016

	<u>Phase #1A</u>	<u>Phase #1</u>	
	<u>Bonds</u>	<u>Reimbursement</u>	<u>Total</u>
		<u>Agreement</u>	
Interest payment on March 1, 2017	\$143,743	\$133,106	\$276,849
Interest payment on September 1, 2017	\$143,743	\$133,106	\$276,849
Principal payment on September 1, 2017	\$90,000	\$0	\$90,000
Subtotal debt service on bonds	\$377,485	\$266,213	\$643,698
Annual collection costs	\$4,522	\$3,968	\$8,490
Subtotal Expenses	\$382,007	\$270,180	\$652,187
Available TIRZ Revenues	\$0	\$0	\$0
Available reserve fund income	\$0	\$0	\$0
Available capitalized interest account	\$0	\$0	\$0
Available Administrative Expense account	\$0	\$0	\$0
Subtotal funds available	\$0	\$0	\$0
Annual Installments	\$382,007	\$270,180	\$652,187

As shown in Table C above, the total Annual Installment for 2016 is equal to \$652,187. The total debt service payments on the Phase #1A Bonds and the Phase #1 Reimbursement Agreement and the Administrative Expenses for 2016 are shown as \$643,698 and \$8,490 respectively.

According to the Service and Assessment Plan, the Annual Installments shall be collected in an amount sufficient to pay principal and interest on the Phase #1 Bonds, to fund the prepayment reserve and delinquency reserve described in Section V, and to cover Administrative Expenses of Phase #1. The Annual Installment for each Parcel shall be calculated by taking into consideration any TIRZ Credit applicable to the Parcel. The TIRZ Credit for each Parcel shall be calculated using the following formula:

$$A = B \times (C \div D)$$

Where the terms have the following meanings:

- A = the TIRZ Credit amount for a Parcel
- B = the total TIRZ Revenues collected for the preceding year
- C = the total Equivalent Unit of the Parcel
- D = the total Equivalent Units of all Parcels

The TIRZ Revenues collected in any given year shall be used to calculate the TIRZ Credit in the following year (i.e., TIRZ Revenues collected in 2015 shall be used to calculate the TIRZ Credit applicable to Annual Installments to be collected in 2016). TIRZ Credits shall be calculated for those Parcels that are subject to Assessments by the PID. The total TIRZ Revenues collected from all Parcels in each Phase shall be used to calculate the TIRZ Credit applicable to each Parcel within the Phase based on the above formula. The total TIRZ increment amount generated by all Phase #1 Assessed Property will be divided by the total Equivalent Units in Phase #1 to determine the TIRZ credit applicable to each Phase #1 Assessed Property. The total TIRZ increment amount generated by all Phase #2-5 Assessed Property will be divided by the total Equivalent Units in Phase #2 - 5 Assessed Property to determine the TIRZ credit applicable to each Phase #2 - 5 Assessed Property. The Equivalent Units to be used for the calculation of the TIRZ Credit shall be determined by the Administrator based on the information available to the Administrator at the time of such calculations.

The TIRZ was created in 2013. There were Parcel subdivisions in 2015 in Phase 1. However, there were no TIRZ Revenues collected from the newly subdivided Parcels for 2015 that can be used as TIRZ Credit in 2016.

According to the Developer, 210 units representing 177.89 total Equivalent Units are expected to be built within Phase #1 of the PID. Accordingly, the principal and interest portion of Annual Installment to be collected from each Equivalent Unit will be \$3,618.51 (i.e. $\$643,698 \div 177.89 = \$3,618.51$) and the Administrative Expenses to be collected from each Equivalent Unit will be \$47.72 (i.e. $\$8,490 \div 177.89 = \47.72). As a result, the total Annual Installment to be collected from each Equivalent Unit within Phase #1 will be \$3,666.24 (i.e. $\$3,618.51 + \$47.72 = \$3,666.24$). The Annual Installment to be collected from each Parcel within Phase #1 is calculated by multiplying the Annual Installment for each Equivalent Unit of \$3,666.24 by the total estimated Equivalent Units for each Parcel in Phase #1. Accordingly, the Annual Installment to be collected from each Lot Type 1 (80 Ft Lot) in Phase 1 is equal to \$3,666.24 (i.e. $\$3,666.24 \times 1.00 = \$3,666.24$) and The Annual Installment to be collected from each Lot Type 3 (60 Ft Lot) in Phase 1 is equal to \$2,969.65 (i.e. $\$3,666.24 \times 0.81 = \$2,969.65$).

The list of parcels within Phase #1 of the PID, the estimated number of units to be developed on the current residential parcels, the corresponding total Equivalent Units, the total Assessment, the Annual Assessment, the Administrative Expenses and the Annual Installment to be collected for 2016 are shown in the assessment roll summary attached hereto as Appendix A-2.

Phases #2-5 - Annual Installments

The Assessment imposed on any parcel may be paid in full at any time. If not paid in full, the Assessment shall be payable in thirty annual installments of principal and interest beginning with the tax year following the issuance of the Bonds.

Pursuant to the Service and Assessment Plan, each Assessment shall bear interest at the rate on the Bonds commencing with the issuance of the Bonds. The effective interest rate on the Phases #2-5 Major Improvement Bonds is 6.97 percent. Pursuant to Section 372.018 of the PID Act, the interest rate for that assessment may not exceed a rate that is one-half of one percent higher than the actual interest rate paid on the debt. Accordingly, the effective interest rate on the Phases #2-5 Bonds (6.97%) plus an additional interest of one-half of one percent are used to calculate the interest on the Assessments. These payments, the "Annual Installments" of the Assessments, shall be billed by the Town in 2016 and will be delinquent on February 1, 2017.

Pursuant to the Service and Assessment Plan, the Annual Service Plan Update shall show the remaining balance of the Assessments, the Annual Installment due for 2016 and the Administrative Expenses to be collected from each Parcel. Administrative Expenses shall be allocated to each Parcel pro rata based upon the amount the Annual Installment on a Parcel bears to the total amount of Annual Installments in the PID as a whole that are payable at the time of such allocation. Each Annual Installment shall be reduced by any credits applied under an applicable Bond Ordinance, such as TIRZ Credit, capitalized interest and interest earnings on any account balances and by any other funds available to the PID.

Annual Budget for the Repayment of Indebtedness

Debt service will be paid on the Phases #2-5 Bonds from the collection of the Annual Installments. In addition, Administrative Expenses are to be collected with the Annual Installments to pay expenses related to the collection of the Annual Installments. The additional interest collected with the Annual Installments will be used to pay the prepayment and delinquency reserve amounts as described in the Service and Assessment plan and applicable Trust Indenture.

Phases #2-5 Annual Installments to be collected for 2016

The budget for Phases #2-5 of the PID will be paid from the collection of Annual Installments collected for 2016 as shown by Table D.

Table D
Budget for the Phases #2-5 Annual Installments
To be collected for 2016

	<u>Total</u>
Interest payment on March 1, 2017	\$437,079
Interest payment on September 1, 2017	\$437,079
Principal payment on September 1, 2017	\$590,000
Subtotal debt service on bonds	\$1,464,158
Annual collection costs	\$25,978
Subtotal Expenses	\$1,490,136
Available TIRZ Credit	\$11,167
Available reserve fund income	\$0
Available capitalized interest account	\$0
Available Administrative Expense account	\$0
Subtotal funds available	\$11,167
Annual Installments	\$1,478,969

As shown in Table C above, the total Annual Installment for 2016 is equal to \$1,478,969. The total debt service payments on the Phases #2-5 Bonds (net of the available TIRZ Credit) and the Administrative Expenses for 2016 are shown as \$1,452,991 (\$1,464,158 - \$11,167) and \$25,978, respectively.

According to the Town, the amounts of TIRZ Revenues collected for 2015 that can be used as TIRZ Credit in 2016 from Parcels R38646 and R43806 were \$4,439 and \$6,728, respectively, for a total available TIRZ credit amount of \$11,167. Such amounts will be made available to pay a portion of the Bond debt service in 2017.

According to the revised development plan approved in 2016, 1,099 units representing 854.86 total Equivalent Units are estimated to be built within Phases #2-5 of the PID. Accordingly, the principal and interest portion of Annual Installment to be collected from each Equivalent Unit will be \$1,699.68 (i.e. $\$1,452,991 \div 854.86 = \$1,699.68$) and the Administrative Expenses to be collected from each Equivalent Unit will be \$30.39 (i.e. $\$25,978 \div 854.86 = \30.39). As a result, the total Annual Installment to be collected from each Equivalent Unit within Phases #2-5 will be \$1,730.07 (i.e. $\$1,699.68 + \$30.39 = \$1,730.07$). The Annual Installment to be collected from each Parcel within Phases #2-5 is calculated by multiplying the Annual Installment for each Equivalent Unit of \$1,730.07 by the total estimated Equivalent Units for each Parcel in Phases #2-5.

The list of parcels within Phases #2-5 of the PID, the estimated number of units to be developed on the current residential parcels, the total Assessment, the Annual Assessment, the Administrative Expenses and the Annual Installment to be collected for 2016 are shown in the assessment roll summary attached hereto as Appendix A-3.

C. Update of the Assessment Plan

The Service and Assessment Plan adopted by the Town Council provided that the Authorized Improvement Costs shall be allocated to the Assessed Property equally on the basis of the number of residential dwelling units anticipated to be built on each Parcel once such property is fully developed, and that such method of allocation will result in the imposition of equal shares of the Authorized Improvement Costs to Parcels similarly benefited.

This method of assessing property has not been changed other than those described in the initial Annual Service Plan Update for 2016 approved on August 2, 2016 and Assessed Property will continue to be assessed as provided for in the Service and Assessment Plan.

D. Update of the Assessment Roll

Pursuant to the original Service and Assessment Plan, the Assessment Roll shall be updated each year to reflect:

- (i) the identification of each Parcel (ii) the Assessment for each Parcel of Assessed Property, including any adjustments authorized by this Service and Assessment Plan or in the PID Act; (iii) the Annual Installment for the Assessed Property for the year (if the Assessment is payable in installments); and (iv) payments of the Assessment, if any, as provided by Section VI.H of this Service and Assessment Plan.

The summary Assessment Rolls are shown in Appendix A-2 and A-3. Each parcel in the PID is identified, along with the Assessment on each Parcel and the Annual Installment to be collected from each parcel. Assessments are to be reallocated for the subdivision of any parcels.

According to the Service and Assessment Plan, upon the subdivision of any Parcel, the Administrator shall reallocate the Assessment for the Parcel prior to the subdivision among the new subdivided Parcels according to the following formula:

$$A = B \times (C \div D)$$

Where the terms have the following meanings:

- A = the Assessment for each new subdivided Parcel.
- B = the Assessment for the Parcel prior to subdivision.
- C = the estimated Equivalent Units to be built on each newly subdivided Parcel
- D = the sum of the estimated Equivalent Units to be built on all of the new subdivided Parcels

The calculation of the estimated number of units to be built on a Parcel shall be performed by the Administrator and confirmed by the Town Council based on the information available regarding the use of the Parcel. The estimate as confirmed shall be conclusive. The number of units to be built on a Parcel may be estimated by net land area and reasonable density ratios.

According to the Developer, there 210 Lots have been subdivided in 2015 from Parcel R38646 and Parcel R43806 within Phase #1 of the PID that are applicable to the Annual Installments to be collected in 2016.

According to the Developer, 41 Lot Type 1 (80 Ft Lots) and 169 Lot Type 3 (60 Ft Lots) have been subdivided from Parcels R38646 and R43806. The total outstanding Phase #1 Assessment allocated to Parcels R38646 and R43806 and the total Equivalent Units for Phase #1 were \$7,305,000 and 177.89, respectively. The Phase #1 Assessment reallocated to each of the newly subdivided Lot Type 1 Lots is, therefore, calculated to be \$41,318 [i.e. $\$7,305,000 \times (1.00 \div 177.89) = \$41,318$] using the above shown formula. The Phase #1 Assessment reallocated to each of the newly subdivided Lot Type 3 Lots is also calculated to be \$33,467 [i.e. $\$7,305,000 \times (0.81 \div 177.89) = \$33,467$] using the above shown formula. Table E below shows a summary of the Phase #1 Assessments before and after the subdivision.

Table E
Assessment reallocation upon Subdivision of Parcels – Phase #1

Prior to Subdivision			After Subdivision						
Parcel	Total EU	Total Assessment	New Parcel	Lot Type	No. of Units	EU	Total EU	Assessment per Unit	Total Assessment
R38646			Various	1	41	1.00	41.00	\$41,318	\$1,694,024
R43806	177.89	\$7,350,000	Various	3	169	0.81	136.89	\$33,467	\$5,655,976
Total	177.89	\$7,350,000		1.00	41.00	1.00	177.89		\$7,350,000

There have been no Assessment prepayments as of August 31, 2016.

The complete Assessment Roll is available for review at the Town hall, located at 100 W Eldorado Pkwy, Hackberry, Texas 75068.

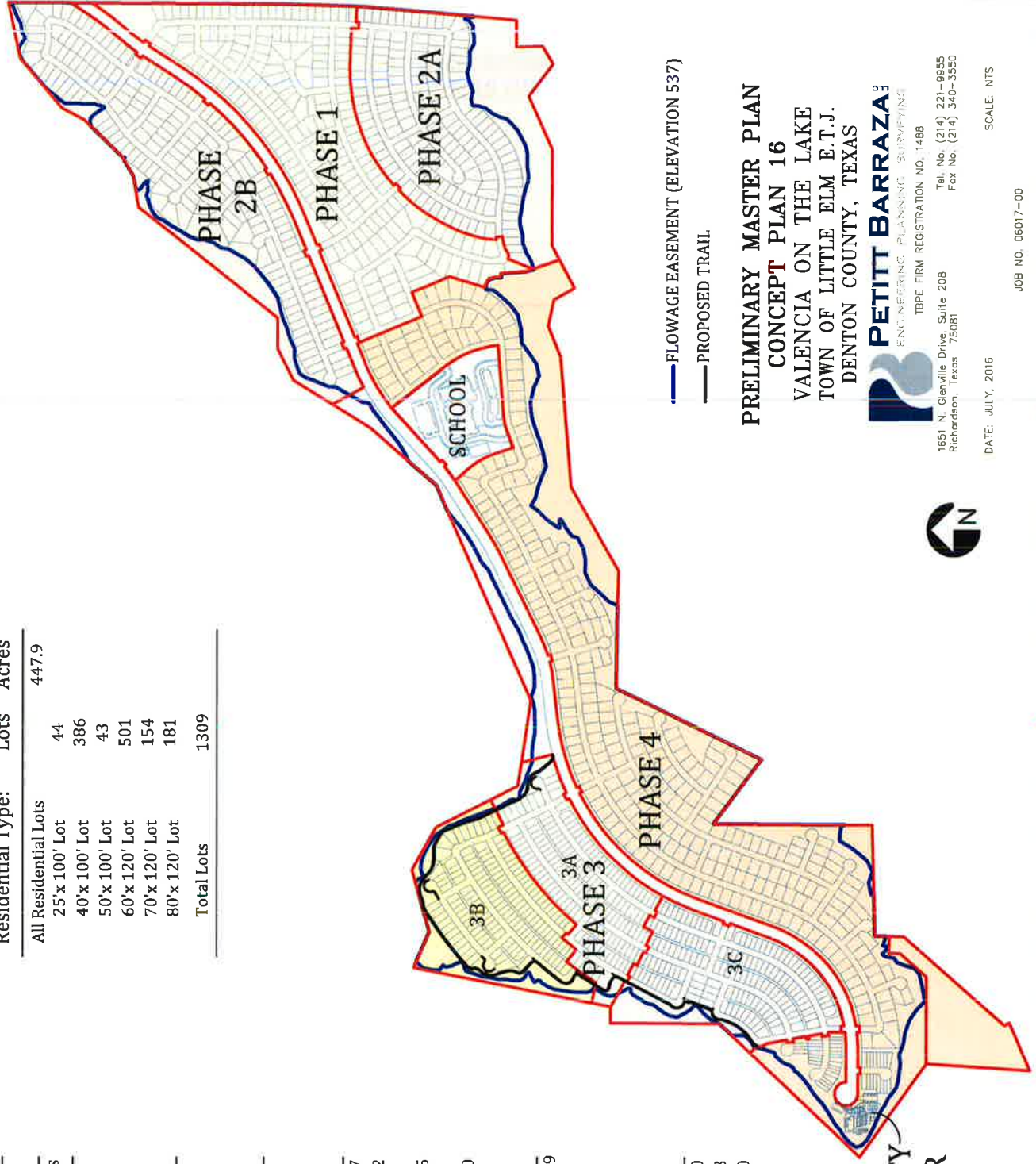
Appendix A-1
PID Map

Concept Plan 16

data summary

Residential Type:	Lots	Acres
Phase 1	169	62.4
60'x 120' Lot		
80'x 135' Lot	41	
Total Lots	210	
Phase 2A	154	51.9
60'x 120' Lot		
Total Lots	154	
Phase 2B	175	57.7
60'x 120' Lot		
Total Lots	175	
Phase 3		80.7
3A 40'x 100' Lot	126	24.2
3A 50'x 100' Lot	14	
3B 40'x 100' Lot	118	28.5
3B 50'x 100' Lot	21	
3C 40'x 100' Lot	142	28.0
3C 50'x 100' Lot	8	
Total Lots	429	
Phase 4		149.9
25'x 100' Lot	44	
60'x 120' Lot	3	
70'x 120' Lot	154	
80'x 120' Lot	140	
Total Lots	341	
Rockhill Parkway		23.0
School Site		12.3
Open Space		10.0

Residential Type:	Lots	Acres
All Residential Lots		447.9
25'x 100' Lot	44	
40'x 100' Lot	386	
50'x 100' Lot	43	
60'x 120' Lot	501	
70'x 120' Lot	154	
80'x 120' Lot	181	
Total Lots	1309	



— FLOWAGE EASEMENT (ELEVATION 537)
— PROPOSED TRAIL

PRELIMINARY MASTER PLAN CONCEPT PLAN 16 VALENCIA ON THE LAKE TOWN OF LITTLE ELM E.T.J. DENTON COUNTY, TEXAS



PETITT BARRAZA
ENGINEERING PLANNING SURVEYING
TBPE FIRM REGISTRATION NO. 1488
1651 N. Glenville Drive, Suite 208
Richardson, Texas 75081
Tel. No. (214) 221-9955
Fax No. (214) 340-3550

DATE: JULY, 2016

SCALE: NTS

JOB NO. D6017-00



Appendix A-2
Phase #1 Assessment Roll Summary – 2016

Valencia on the Lake Public Improvement District
Assessment Roll Summary - Phase #1
2016

Parcel	Estimated No. of units	Lot Type	Equivalent Unit Factor	Total Equivalent Units	Total Assessment	Annual Assessment	Administrative Expenses	Annual Installment
R662496	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662497	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662498	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662499	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662500	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662501	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662502	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662503	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662504	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662505	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662506	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662507	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662508	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662509	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662510	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662511	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662512	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662513	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662514	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662515	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662516	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662517	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662518	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662519	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662520	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662521	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662522	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662523	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662524	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662525	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662526	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662527	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662528	0	N/A	0.00	0	\$0	\$0.00	\$0.00	\$0.00
R662529	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662530	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662531	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662532	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662533	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662534	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662535	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65

Parcel	Estimated No. of units	Lot Type	Equivalent Unit Factor	Total Equivalent Units	Total Assessment	Annual Assessment	Administrative Expenses	Annual Installment
R662536	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662537	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662538	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662539	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662540	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662541	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662542	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662543	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662544	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662545	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662546	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662547	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662548	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662549	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662550	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662551	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662552	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662553	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662554	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662555	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662556	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662557	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662558	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662559	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662560	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662561	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662562	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662563	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662564	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662565	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662566	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662567	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662568	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662569	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662570	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662571	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662572	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662573	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662574	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662575	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662576	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662577	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662578	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662579	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65

Parcel	Estimated No. of units	Lot Type	Equivalent Unit Factor	Total Equivalent Units	Total Assessment	Annual Assessment	Administrative Expenses	Annual Installment
R662580	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662581	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662582	0	N/A	0.00	0	\$0	\$0.00	\$0.00	\$0.00
R662583	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662584	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662585	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662586	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662587	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662588	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662589	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662590	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662591	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662592	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662593	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662594	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662595	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662596	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662597	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662598	0	N/A	0.00	0	\$0	\$0.00	\$0.00	\$0.00
R662599	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662600	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662601	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662602	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662603	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662604	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662605	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662606	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662607	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662608	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662609	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662610	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662611	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662612	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662613	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662614	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662615	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662616	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662617	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662618	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662619	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662620	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662621	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662622	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662623	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65

Parcel	Estimated No. of units	Lot Type	Equivalent Unit Factor	Total Equivalent Units	Total Assessment	Annual Assessment	Administrative Expenses	Annual Installment
R662624	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662625	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662626	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662627	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662628	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662629	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662630	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662631	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662632	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662633	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662634	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662635	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662636	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662637	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662638	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662639	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662640	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662641	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662642	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662643	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662644	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662645	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662646	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662647	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662648	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662649	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662650	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662651	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662652	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662653	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662654	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662655	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662656	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662657	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662658	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662659	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662660	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662661	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662662	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662663	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662664	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662665	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662666	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662667	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24

Parcel	Estimated No. of units	Lot Type	Equivalent Unit Factor	Total Equivalent Units	Total Assessment	Annual Assessment	Administrative Expenses	Annual Installment
R662668	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662669	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662670	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662671	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662672	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662673	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662674	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662675	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662676	0	N/A	0.00	0	\$0	\$0.00	\$0.00	\$0.00
R662677	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662678	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662679	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662680	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662681	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662682	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662683	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662684	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662685	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662686	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662687	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662688	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662689	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662690	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662691	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662692	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662693	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662694	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662695	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662696	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662697	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662698	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662699	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662700	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662701	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662702	1	3	0.81	0.81	\$33,467	\$2,931.00	\$38.66	\$2,969.65
R662703	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662704	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662705	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662706	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662707	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662708	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662709	1	1	1.00	1	\$41,318	\$3,618.51	\$47.72	\$3,666.24
R662710	0	N/A	0.00	0	\$0	\$0.00	\$0.00	\$0.00
Total	210			177.89	\$7,350,000	\$643,697.50	\$8,489.66	\$652,187.16

Appendix A-3
Phases #2-5 Assessment Roll Summary – 2016

Valencia on the Lake Public Improvement District
Assessment Roll Summary - Phases #2-5
2016

Parcel	Estimated No. of units	Total Equivalent Units	Total Assessment	Annual Assessment	Administrative Expenses	Annual Installment
R38646	143	115.83	\$1,585,979	\$196,874.25	\$3,519.96	\$200,394.22
R43806	274	234.41	\$3,209,612	\$398,422.63	\$7,123.49	\$405,546.13
R43910	54	50.56	\$692,283	\$85,935.96	\$1,536.47	\$87,472.43
R44219	192	164.04	\$2,246,085	\$278,815.96	\$4,985.02	\$283,800.98
R584981	7	6.44	\$88,178	\$10,945.96	\$195.71	\$11,141.66
R692364	241	160.50	\$2,197,614	\$272,799.08	\$4,877.44	\$277,676.52
R692355	38	24.70	\$338,200	\$41,982.16	\$750.61	\$42,732.77
R692365	150	98.38	\$1,347,049	\$167,214.79	\$2,989.67	\$170,204.46
Total	1,099	854.86	\$11,705,000	\$1,452,990.80	\$25,978.37	\$1,478,969.17

**Finance**

Dawn Berry, Purchasing Agent

214-975-0411

dberry@littleelm.org

Town Council Agenda-Consent**September 6, 2016****PROJECT**

Software License Renewals

BACKGROUND

Software licenses are required per user for Microsoft Office 365 and Windows. Licenses are tracked and monitored through the Town's managed service provider. The renewal period is August 1, 2016 through July 31, 2017.

BUDGET IMPACT

Funding is available in the current year's budget:

112-6214-11	\$ 67,753.53	(current balance)
	\$ 50,409.50	Windows
	<u>\$ 11,372.40</u>	Office 365
	\$ 61,781.90	

Expenditures will not exceed funds appropriated. Funds will be committed at the issuance of a purchase order.

RECOMMENDED ACTION

Staff recommends authorizing the purchase of the software license renewals for the period August 1, 2016 to July 2017 at the unit prices listed

ATTACHMENTS

- Invoice

Initial:

Town Manager
Town Secretary☐ _____
☐ _____Finance
Police☐ _____
☐ _____Library
Parks116
☐ _____
☐ _____HR ☐ _____
Fire ☐ _____Public Works ☐ _____
Dev Services ☐ _____



Government Solutions
 Federal tax ID: 22-3695478
 1301 South Mopac Expressway
 Suite 375
 Austin, TX 78746
 Phone: 800-845-6801
 Fax: 512-732-0232

Please remit payment to:
 SHI Government Solutions Inc.
 P.O. Box 847434
 Dallas, TX 75284-7434
 Wire information:
 Bank of America
 a/c# 004795846371
 ABA# 111000025

Invoice No. GB00202853

Invoice date 7/29/2016
 Customer number 3002215
 Sales order GS00203193

Finance charge of 1.5% per month will be charged on past due accounts-18% per year. All returns require an RMA number supplied by your SHI GS sales team.

1576

Bill To
 TOWN OF LITTLE ELM
 100 W. ELDORADO PKWY
 ATTN: SCOTT WESTENHOEFER
 LITTLE ELM, TX 75068
 USA

Ship To
 TOWN OF LITTLE ELM
 100 West Eldorado Pkwy
 Little Elm, TX 75068
 USA
 80364/Scott Westenhoefer

Ship Date	Salesperson	Purchase Order	Ship Via	FOB	Terms
7/29/2016	Craig Bailey	80364	FEDEX GROUND	FOB DEST	NET 30

Item No. Mfg Part No.	Description	Qty Ordered	Qty Shipped	Unit Price	Extended Price
18356919 W06-01072 ESD MICROSOFT CORPORATION	CoreCAL ALNG SA MVL Pltfrm UsrCAL Windows - Multiple Windows Platform All Languages ESD Software Contract number: DIR-SDD-2503 Enrollment No.: 4739132 Agreement No.: 01E73535 Country of Usage: USA Maintenance From date: 8/1/2016 Maintenance To date: 7/31/2017	243	243	37.90	9,209.70
28278102 CX2-00093 ESD MICROSOFT CORPORATION	WinEntforSAwMDOP ALNG SA MVL Pltfrm Windows - Multiple Windows Platform All Languages ESD Software Contract number: DIR-SDD-2503 Enrollment No.: 4739132 Agreement No.: 01E73535 Country of Usage: USA Maintenance From date: 8/1/2016 Maintenance To date: 7/31/2017	243	243	38.70	9,404.10
18344354 269-12442 ESD MICROSOFT CORPORATION	OfficeProPlus ALNG SA MVL Pltfrm Windows - Multiple Windows Platform English ESD Software Contract number: DIR-SDD-2503 Enrollment No.: 4739132 Agreement No.: 01E73535 Country of Usage: USA Maintenance From date: 8/1/2016 Maintenance To date: 7/31/2017	243	243	86.40	20,995.20
27775581 FUD-00936 ESD MICROSOFT SELECT	CISDataCtr ALNG LicSAPk MVL 2Proc Windows - Multiple Windows Platform All Languages ESD Software Contract number: DIR-SDD-2503 Enrollment No.: 4739132 Agreement No.: 01E73535 Country of Usage: USA Maintenance From date: 8/1/2016 Maintenance To date: 7/31/2017	1	1	3,063.00	3,063.00



Government Solutions
Federal tax ID: 22-3695478
1301 South Mopac Expressway
Suite 375
Austin, TX 78746
Phone: 800-845-6801
Fax: 512-732-0232

Please remit payment to:
SHI Government Solutions Inc.
P O. Box 847434
Dallas, TX 75284-7434
Wire information:
Bank of America
a/c# 004795846371
ABA# 111000025

Invoice No. GB00202853

Invoice date 7/29/2016
Customer number 3002215
Sales order GS00203193

Finance charge of 1.5% per month will be charged on past due accounts-18% per year. All returns require an RMA number supplied by your SHI GS sales team.

Bill To
TOWN OF LITTLE ELM
100 W. ELDORADO PKWY
ATTN: SCOTT WESTENHOEFER
LITTLE ELM, TX 75068
USA

Ship To
TOWN OF LITTLE ELM
100 West Eldorado Pkwy
Little Elm, TX 75068
USA
80364/Scott Westenhoefer

27775584 FUD-01148 ESD MICROSOFT SELECT	CISDataCtr ALNG LicSAPk MVL woWinSvrLic 2Proc Windows - Multiple Windows Platform All Languages ESD Software Contract number: DIR-SDD-2503 Enrollment No.: 4739132 Agreement No.: 01E73535 Country of Usage: USA Maintenance From date: 8/1/2016 Maintenance To date: 7/31/2017	1	1	1,804.60	1,804.60
27775907 YJD-01206 ESD MICROSOFT CORPORATION	CISStd ALNG LicSAPk MVL woWinSvrLic 2Proc Windows - Multiple Windows Platform All Languages ESD Software Contract number: DIR-SDD-2503 Enrollment No.: 4739132 Agreement No.: 01E73535 Country of Usage: USA Maintenance From date: 8/1/2016 Maintenance To date: 7/31/2017	5	5	451.60	2,258.00
25384224 7NQ-00292 ESD MICROSOFT SELECT	SQLSvrStdCore ALNG SA MVL 2Lic CoreLic Windows - Multiple Windows Platform All Languages ESD Software Contract number: DIR-SDD-2503 Enrollment No.: 4739132 Agreement No.: 01E73535 Country of Usage: USA Maintenance From date: 8/1/2016 Maintenance To date: 7/31/2017	2	2	579.10	1,158.20
20977237 076-01912 ESD MICROSOFT SELECT	Microsoft Project - SA GSA Select Windows - Multiple Windows Platform All Languages ESD Software Contract number: DIR-SDD-2503 Enrollment No.: 4739132 Agreement No.: 01E73535 Country of Usage: USA Maintenance From date: 8/1/2016 Maintenance To date: 7/31/2017	5	5	106.20	531.00

shi
Government Solutions
 Federal tax ID: 22-3695478
 1301 South Mopac Expressway
 Suite 375
 Austin, TX 78746
 Phone: 800-845-6801
 Fax: 512-732-0232

Please remit payment to:
 SHI Government Solutions Inc.
 P.O. Box 847434
 Dallas, TX 75284-7434
 Wire information:
 Bank of America
 a/c# 004795846371
 ABA# 111000025

Invoice No. GB00202853

Invoice date 7/29/2016
 Customer number 3002215
 Sales order GS00203193

Finance charge of 1.5% per month will be charged on past due accounts-18% per year. All returns require an RMA number supplied by your SHI GS sales team.

Bill To
 TOWN OF LITTLE ELM
 100 W. ELDORADO PKWY
 ATTN: SCOTT WESTENHOEFER
 LITTLE ELM, TX 75068
 USA

Ship To
 TOWN OF LITTLE ELM
 100 West Eldorado Pkwy
 Little Elm, TX 75068
 USA
 80364/Scott Westenhoefer

20988125 D86-01253 No Media MICROSOFT SELECT	VisioStd ALNG SA MVL Windows - Multiple Windows Platform All Languages No Media Software Contract number: DIR-SDD-2503 Enrollment No.: 4739132 Agreement No.: 01E73535 Country of Usage: USA Maintenance From date: 8/1/2016 Maintenance To date: 7/31/2017	5	5	46.90	234.50
20977689 395-02504 ESD MICROSOFT SELECT	ExchgSvrEnt ALNG SA MVL Windows - Multiple Windows Platform All Languages ESD Service Contract number: DIR-SDD-2503 Enrollment No.: 4739132 Agreement No.: 01E73535 Country of Usage: USA Maintenance From date: 8/1/2016 Maintenance To date: 7/31/2017	1	1	653.90	653.90
21021466 H04-00268 ESD MICROSOFT SELECT	OfficeSharePointSvr ALNG SA MVL Windows - Multiple Windows Platform All Languages ESD Software Contract number: DIR-SDD-2503 Enrollment No.: 4739132 Agreement No.: 01E73535 Country of Usage: USA Maintenance From date: 8/1/2016 Maintenance To date: 7/31/2017	1	1	1,097.30	1,097.30

Quote: 9789421

Sales Balance	50,409.50
Freight	0.00
Recycling Fee	0.00
Sales Tax	0.00
Total	50,409.50
Currency	USD



SHI Government Solutions
Federal tax ID: 22-3695478
1301 South Mopac Expressway
Suite 375
Austin, TX 78746
Phone: 800-845-6801
Fax: 512-732-0232

Please remit payment to:
SHI Government Solutions Inc.
P.O. Box 847434
Dallas, TX 75284-7434
Wire information:
Bank of America
a/c# 004795846371
ABA# 111000025

Invoice No. GB00202845

Invoice date 7/29/2016
Customer number 3002215
Sales order GS00237348

Finance charge of 1.5% per month will be charged on past due accounts-18% per year. All returns require an RMA number supplied by your SHI GS sales team.

Bill To
TOWN OF LITTLE ELM
100 W. ELDORADO PKWY
ATTN: SCOTT WESTENHOEFER
LITTLE ELM, TX 75068
USA

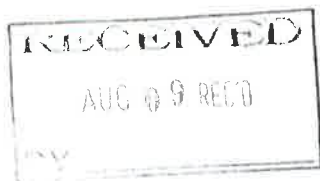
Ship To
TOWN OF LITTLE ELM
100 West Eldorado Pkwy
Little Elm, TX 75068
USA
160243/SCOTT WESTENHOEFER

Ship Date	Salesperson	Purchase Order	Ship Via	FOB	Terms
7/29/2016	Craig Bailey	160243	FEDEX GROUND	FOB DEST	NET 30

Item No. Mfg Part No.	Description	Qty Ordered	Qty Shipped	Unit Price	Extended Price
29241395 6V2-00002 No Media MICROSOFT SELECT	Office365PlanG1 ShrdSvr ALNG SubsVL MVL AddOn touserCoreCAL Windows - Multiple Windows Platform All Languages No Media Software Contract number: DIR-SDD-2503 Enrollment No.: 4739132 Agreement No.: 01E73535 Country of Usage: USA Maintenance From date: 8/1/2016 Maintenance To date: 7/31/2017	243	243	46.80	11,372.40

Quote: 10753988

1574



Sales Balance	11,372.40
Freight	0.00
Recycling Fee	0.00
Sales Tax	0.00
Total	11,372.40
Currency	USD



Little Elm Human Resources
Deidre Hale, Human Resources Director
Phone: 214-975-0410
dhale@littleelm.org

TOWN COUNCIL REGULAR AGENDA

Date: September 6, 2016

AGENDA ITEM:

Authorizing the Town Manager to execute any and all contract documents associated with the renewal of employee benefits Blue Cross Blue Shield of Texas, Humana, Superior Vision and Mutual of Omaha.

BACKGROUND:

The Town is requesting to keep the same medical insurance provider Blue Cross Blue Shield. Blue Cross Blue Shield has been our provider since 2014 and after negotiations by the town managers office and the broker for fiscal year 2017 we were able to keep our insurance rates flat with no increase.

In fiscal year 2016 8% was projected for our increase but was very pleased that we had a zero increase. We fill due to our successful wellness program and strong partnership with Blue Cross/Blue Shield the town managers office was able to negotiate a no increase.

In order to maintain the same rate for fiscal year 2016 employees' plans will stay the same.

BACKGROUND:

The town is requesting to keep the same provider for dental insurance. Human has been our provider since 2012 and they have provided no rate increase to the town.

BACKGROUND:

The town is requesting to keep the same provider for vision insurance. Superior has been our provider since 2012. This year Superior offered a 4% increase after a two year freeze on our rates. In comparing to the rest of the market Superior was very competitive.

BACKGROUND:

The town is requesting to change their Life, AD&D, LTD and STD provider. We rebid competitively in order to provide the best value. The town has received a bid of a 17%

decrease from Mutual of Omaha with the plan renaming the same. The town and the employees will receive a decrease in premiums.

Town of Little Elm Summary of Proposed Medical Marketing Results

Benefits	CURRENT				NEGOTIATED RENEWAL			
	BCBS PPO	BCBS HSA	Out-of-Network	In-Network	BCBS PPO	BCBS HSA	Out-of-Network	In-Network
Conformance								
Deductible								
Out-of-Pocket Maximum								
Deductible Included in OOP								
Lifetime Maximum								
Physician Office Copay								
Specialist Office Copay								
Urgent Care Copay								
Emergency Room Copay								
Hospital								
Inpatient								
Outpatient								
Skilled Nursing Facility								
Home Health Care								
Mental Illness								
Inpatient								
Outpatient Office								
Substance Abuse								
Inpatient								
Outpatient Office								
Prescription Drugs								
Retail - (30 day supply)								
Generic								
Brand Name								
Non-Formulary								
Mail Order - (90 day supply)								
Generic								
Brand Name								
Non-Formulary								
Rates								
Employee Only								
Employee + Child								
Employee + Family								
Monthly Total								
Annual Total								
Combined Total								
Percent(%) Increase								

Town of Little Elm

Summary of Proposed Dental Renewal

Benefits	CURRENT		Negotiated Renewal	
	Humana PPO		Humana PPO	
Deductible		\$50 Single \$150 Family		\$50 Single \$150 Family
Waived for Preventive		Yes		Yes
Preventive		100%		100%
Basic*		80%		80%
Major*		50%		50%
Calendar Year Maximum		\$1,000		\$1,000
Endodontics and Periodontics		Major		Major
R&C Percentile		90%		90%
Orthodontia		50%		50%
Orthodontia Maximum		\$1,000		\$1,000
Rate Guarantee		-		1 year
Dental Rates				
Employee Only	92	\$28.02		\$28.02
Employee + Spouse	20	\$58.59		\$58.59
Employee + Child(ren)	35	\$68.97		\$68.97
Employee + Family	55	\$103.58		\$103.58
Monthly Total	202	\$11,860.49		\$11,860.49
Annual Total		\$142,325.88		\$142,325.88
Percent Diff Over Current		--		0.00%

* Deductible applies



Town of Little Elm Summary of Vision Renewal

		CURRENT	RENEWAL
		Superior Vision	Superior Vision
Providers		Ind. Providers, Little Elm Eye Care, WalMart, EyeMasters, JC Penny, LensCrafters, Pearle Vision, Sears, Target	Ind. Providers, Little Elm Eye Care, WalMart, EyeMasters, JC Penny, LensCrafters, Pearle Vision, Sears, Target
Services			
Examination		Once every 12 months	Once every 12 months
Lenses		Once every 12 months	Once every 12 months
Frames		Once every 24 months	Once every 24 months
Copayments		\$10 copay - exams \$25 copay - materials	\$10 copay - exams \$25 copay - materials
Materials		Discounts given for non-covered materials	Discounts given for non-covered materials
Standard Lenses			
Single Vision		100% after copay	100% after copay
Bifocal		100% after copay	100% after copay
Trifocal		100% after copay	100% after copay
Lenticular		100% after copay	100% after copay
Progressive		Up to Trifocal amount	Up to Trifocal amount
Frames		Up to \$125 retail allowance	Up to \$125 retail allowance
Contact Lenses		Nec.-100% after copay Elective - up to \$120 allowance	Nec.-100% after copay Elective - up to \$120 allowance
Non-Participating Provider		Up to set allowance	Up to set allowance
Laser Vision Correction		20% discount	20% discount
Rate Guarantee		2 years eff 11/1/14	4 years eff 11/1/16
Vision Rates			
Employee Only	99	\$5.57	\$5.79
Employee + Spouse	21	\$11.01	\$11.45
Employee + Child(ren)	29	\$10.81	\$11.24
Employee + Family	56	\$16.42	\$17.08
Monthly Total	205	\$2,015.65	\$2,096.10
Annual Total		\$24,187.80	\$25,153.20
Percent Diff Over Current		--	3.99%



Town of Little Elm
Ancillary Summary
November 1, 2016

Carriers	Current		Renewal		Recommended	
		Standard		Standard		Mutual of Omaha
Basic Life		\$16,151		\$16,151		\$14,805
LTD		\$43,805		\$58,404		\$34,818
Total		\$59,955		\$74,555		\$49,623
\$ Difference vs Current		-		\$14,600		-\$10,333
% Difference vs Current		-		24%		-17%

**Town of Little Elm
Long Term Disability Marketing
24 Month Own Occ ALL**

	Current		RENEWAL		RECOMMENDED	
	Standard	60% of monthly earnings	Standard	60% of monthly earnings	Mutual of Omaha	60% of monthly earnings
Basic Benefit Class 1						
Maximum Mo. Benefit	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Elimination Period	90 days	90 days	90 days	90 days	90 days	90 days
Definition of Disability	12 months - Safety Ees 24 months - All Others	12 months - Safety Ees 24 months - All Others	12 months - Safety Ees 24 months - All Others	12 months - Safety Ees 24 months - All Others	24 months Own Occupation	24 months Own Occupation
Survivor Benefit	3 months	3 months	3 months	3 months	3 months	3 months
Mental Illness	12 months	12 months	12 months	12 months	12 months	12 months
Pre-existing Conditions	3/12	3/12	3/12	3/12	3/12	3/12
Waiver of Premium	Included	Included	Included	Included	Included	Included
Rate Guarantee	-	2 Years eff 11/1/16	2 Years eff 11/1/16	2 Years eff 11/1/16	2 Years eff 11/1/16	2 Years eff 11/1/16
Covered Volume	\$935,996	\$935,996	\$935,966	\$935,966	\$935,966	\$935,966
LTD Rates (per \$100)	\$0.390	\$0.390	\$0.520	\$0.520	\$0.310	\$0.310
Monthly Total	\$3,650.38	\$3,650.38	\$4,867.02	\$4,867.02	\$2,901.49	\$2,901.49
Annual	\$43,804.61	\$43,804.61	\$58,404.28	\$58,404.28	\$34,817.94	\$34,817.94



Town of Little Elm Voluntary Short-Term Disability Marketing

	Current		RENEWAL		RECOMMENDED	
	Standard		Standard		Mutual of Omaha	
Basic Benefit	60% of weekly earnings		60% of weekly earnings		60% of weekly earnings	
Maximum Weekly Benefit	\$1,000		\$1,000		\$1,000	
Benefit Waiting Period	14 days for Accident, and 14 days for illness		14 days for Accident, and 14 days for illness		14 days for Accident, and 14 days for illness	
Maximum Benefit Period	11 weeks		11 weeks		11 weeks	
Employee Contribution	Contributory		Contributory		Contributory	
Participation	-		-		28%	
Pre-Existing Conditions					3/6	
Rate Guarantee	-		2 Years eff 11/1/16		2 Years eff 11/1/16	
STD Rates (per \$10)						
0-24	\$0.497		\$0.497		\$0.497	
25-29	\$0.497		\$0.497		\$0.497	
30-34	\$0.540		\$0.540		\$0.540	
35-39	\$0.397		\$0.397		\$0.397	
40-44	\$0.351		\$0.351		\$0.351	
45-49	\$0.417		\$0.417		\$0.417	
50-54	\$0.485		\$0.485		\$0.485	
55-59	\$0.668		\$0.668		\$0.668	
60-64	\$0.817		\$0.817		\$0.817	
65-69	\$0.817		\$0.817		\$0.817	
70+	\$0.817		\$0.817		\$0.817	



**Town of Little Elm
Basic Life/AD&D
Marketing**

Benefits	CURRENT		RENEWAL		RECOMMENDED
	Standard	1 x BAE	Standard	1 x BAE	Mutual of Omaha
Life/AD&D Amount		1 x BAE		1 x BAE	1 x BAE
Guarantee Issue Amount		\$100,000		\$100,000	\$100,000
Maximum Amount		\$100,000		\$100,000	\$100,000
Conversion		Included		Included	Included
Portability		Included		Included	Not Included
Accelerated Benefit		75%		75%	80%
Age Reduction Formula		33% at age 65 55% at age 70 70% at age 75		33% at age 65 55% at age 70 70% at age 75	33% at age 65 60% at age 70 70% at age 75
Rate Guarantee		-		2 Years eff. 11/1/16	2 Years eff. 11/1/16
Covered Volume		\$11,215,800		\$11,215,800	\$11,215,800
Life/AD&D Rates (/\$1,000)		\$0.120		\$0.120	\$0.110
Monthly Total		\$1,345.90		\$1,345.90	\$1,233.74
Annual Total		\$16,150.75		\$16,150.75	\$14,804.86
Percent Diff Over Current		--		0.00%	-8.33%



**Town of Little Elm
Voluntary Life/AD&D
Marketing**

Benefits	CURRENT		RENEWAL		RECOMMENDED
	Standard		Standard		
Employee Benefit	\$10,000 increments		\$10,000 increments		\$10,000 increments
Guarantee Issue	\$50,000		\$50,000		5x BAE or \$50,000
Maximum Amount	\$500,000		\$500,000		5x BAE of \$500,000
Conversion	Included		Included		Included
Accelerated Death Benefit	Included		Included		Included
Waiver of Premium	Included		Included		Included
Participation Requirement	25% or 25 employees		25% or 25 employees		25%
Age Reduction Formula	33% at age 65 55% at age 70 70% at age 75		33% at age 65 55% at age 70 70% at age 75		33% at age 65 55% at age 70 70% at age 75
Rate Guarantee	-		2 Years eff. 11/1/16		2 Years eff. 11/1/16
Voluntary AD&D Rate	\$0.04		\$0.04		\$0.04
Voluntary Life Rates (Per \$1,000)					
<19	\$0.047		\$0.047		\$0.047
20-24	\$0.085		\$0.085		\$0.085
25-29	\$0.108		\$0.108		\$0.108
30-34	\$0.131		\$0.131		\$0.131
35-39	\$0.155		\$0.155		\$0.155
40-44	\$0.248		\$0.248		\$0.248
45-49	\$0.374		\$0.374		\$0.374
50-54	\$0.688		\$0.688		\$0.688
55-59	\$1.268		\$1.268		\$1.268
60-64	\$1.904		\$1.904		\$1.904
65-69	\$3.131		\$3.131		\$3.131
70-74	\$5.789		\$5.789		\$5.789
75+	\$19.586		\$19.586		\$19.586



**Town of Little Elm
Dependent Voluntary Life/AD&D
Marketing**

CURRENT		RENEWAL		RECOMMENDED
Benefits	Standard	Standard		Mutual of Omaha
Spouse Benefit	\$5,000 increments	\$5,000 increments		\$5,000 increments
Spouse Guarantee Issue	\$10,000	\$10,000		\$10,000
Spouse Maximum Amount	\$250,000	\$250,000		Lesser of 100% EE or \$250,000
Child Benefit	Flat \$10,000	Flat \$10,000		Flat \$10,000
Age Reduction Formula	33% at age 65 55% at age 70 70% at age 75	33% at age 65 55% at age 70 70% at age 75		Terminates at 70
Rate Guarantee	-	2 Years eff. 11/1/16		2 Years eff. 11/1/16
Child Rate (Per \$1,000)	\$0.18	\$0.18		\$0.18
Voluntary Life Rates (Per \$1,000)				
<19	\$0.047	\$0.047		\$0.047
20-24	\$0.085	\$0.085		\$0.085
25-29	\$0.108	\$0.108		\$0.108
30-34	\$0.131	\$0.131		\$0.131
35-39	\$0.155	\$0.155		\$0.155
40-44	\$0.248	\$0.248		\$0.248
45-49	\$0.374	\$0.374		\$0.374
50-54	\$0.688	\$0.688		\$0.688
55-59	\$1.268	\$1.268		\$1.268
60-64	\$1.904	\$1.904		\$1.904
65-69	\$3.131	\$3.131		\$3.131
70-74	\$5.789	\$5.789		\$5.789
75-79	\$19.586	\$19.586		\$19.586
Spouse AD&D				\$0.040



TOWN OF LITTLE ELM

Town Council

STAFF REPORT



PROJECT:	Annexation of Lincoln Park North		
MEETING DATES:	Town Council:	6-7-16	
		8-2-16	
		8-16-16	
		9-6-16	
	Planning & Zoning Commission:	8-18-16	
REQUEST:	Approve the proposed annexation of Lincoln Park North and assign it to Council district 5.		
LOCATION:	Generally located on the northeast corner of Oak Grove Parkway and University Drive, outside Little Elm's town limits		
PLANNING ANALYSIS:	<p>On June 7th, 2016, Council adopted Resolution 06071601 that directed staff to prepare a service plan and schedule public hearings for the annexation. On August 2nd, 2016 and August 16th, 2016, the first and second public hearings were held, respectively, for discussion only. The final meeting, for discussion and action, is scheduled for September 6th, 2016.</p> <p>Council district 5 is directly adjacent to the subject properties and is the appropriate district assignment.</p>		
RECOMMENDED ACTION:	<p>Staff recommends approval of the proposed annexation.</p> <p><i>On August 18th, 2016, the Planning & Zoning Commission unanimously recommended approval of the proposed annexation.</i></p>		
TOWN CONTACT:	Lisa Reich – Town Planner Jason W. Laumer, P.E. – Director of Development Services		
ATTACHMENTS:	Ordinance 1346 Legal Description Location Map Service Plan		

TOWN OF LITTLE ELM, TEXAS

ORDINANCE NO. 1346

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, ANNEXING ADJACENT AND CONTIGUOUS TERRITORY, AS DESCRIBED IN THE ATTACHED LEGAL DESCRIPTION AND AS DEPICTED IN THE ATTACHED LOCATION MAP, TO THE TOWN OF LITTLE ELM, TEXAS; FINDING THAT ALL NECESSARY AND REQUIRED LEGAL CONDITIONS HAVE BEEN SATISFIED; PROVIDING THAT SUCH AREA SHALL BECOME A PART OF THE TOWN AND THAT THE OWNERS AND INHABITANTS THEREOF SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS AND BE BOUND BY THE ACTS, ORDINANCES, RESOLUTIONS AND REGULATIONS OF THE TOWN OF LITTLE ELM NOW IN EFFECT AND TO BE HEREAFTER ADOPTED; APPROVING AND ADOPTING A SERVICE PLAN FOR THE ANNEXED AREA; FURTHER PROVIDING FOR AMENDING AND CORRECTING THE OFFICIAL BOUNDARIES OF THE TOWN AS HERETOFORE ADOPTED; PROVIDING A SAVINGS CLAUSE; CORRECTING THE OFFICIAL TOWN MAPS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Little Elm ("Town") is a home rule municipal corporation organized and existing by virtue of the Constitution and laws of the State of Texas and by its Charter adopted on May 1, 2001; and

WHEREAS, the Town of Little Elm, Texas (the "Town"), pursuant to Chapter 43 of the Texas Local Government Code and Section 1.03 of the Home Rule Charter of the Town of Little Elm, Texas, has instituted annexation proceedings to annex certain territory which is adjacent and contiguous to the Town, which territory is described in the attached Legal Description and the attached Location Map, both of which are attached hereto and incorporated herein for all purposes; and

WHEREAS, the last remainder of the Town of Lincoln Park, being the subject property, dissolved on March 30, 2016; and

WHEREAS, on June 7, 2016, Town Council adopted Resolution 06071601, which scheduled public hearings and directed staff to prepare a service plan for the subject property; and

WHEREAS, on August 2, 2016 and August 16, 2016, two public hearings were conducted, respectively, in accordance with Chapter 43 of the Texas Local Government Code; and

WHEREAS, the public hearings were conducted and held not more than forty (40) days nor less than twenty-one (21) days prior to the institution of annexation proceedings; and

WHEREAS, all required written notices were timely sent to all property owners and others entitled to written notice at least thirty-one (31) days before the first public hearing; and

WHEREAS, notice of the public hearings was published in a newspaper of general circulation in the Town and in the territory proposed to be annexed by publication at least once in said newspaper not more than twenty (20) days nor less than eleven (11) days prior to each public hearing; and

WHEREAS, notice of the public hearings was posted on the Town's Internet website on or after the twentieth (20th) day but before the tenth (10th) day before the date of each public hearing and remained posted until the date of the hearings; and

WHEREAS, all required statutory notices pursuant to Chapter 43 of the Texas Local Government Code and Section 1.03 of the Home Rule Charter of the Town of Little Elm, Texas, have been accomplished; and

WHEREAS, in accordance with Chapter 43 of the Texas Local Government Code, a service plan, attached hereto and incorporated herein for all purposes, was prepared by the Town Manager, or his designee, before the date that notice of the first public hearing was published and posted, which plan was made available for inspection and explained at the public hearings conducted as herein described; and

WHEREAS, the Planning & Zoning Commission unanimously recommended approval of the proposed annexation at its August 18, 2016 regular meeting; and

WHEREAS, annexation proceedings were instituted and completed relative to the territory to be annexed on September 6, 2016, by the introduction of this annexation ordinance during a Regular Meeting of the Town Council of the Town of Little Elm on said date; and

WHEREAS, the territory to be annexed is contiguous and adjacent to the corporate limits of the Town of Little Elm and meets all applicable size and shape requirements of state law governing eligibility for annexation; and

WHEREAS, the subject property is located adjacent to and between portions of Council district #5 of the Town of Little Elm and most logically fits into that Council district; and

WHEREAS, the Town Council of the Town of Little Elm, in compliance with the laws of the State of Texas and the ordinances of the Town of Little Elm, have given the required notices and held the required public hearings and afforded a full and fair hearing to all property owners generally and to all persons interested in and situated in the affected area and in the vicinity thereof regarding the proposed annexation described herein; and

WHEREAS, after due deliberations and consideration of all information and materials received at the public hearings and other meetings, the Town Council of the Town of Little Elm, Texas, has determined that the proposed annexation would be in the interest of public health, safety and welfare of the citizens of the Town of Little Elm.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS, THAT:

SECTION 1. INCORPORATION OF PREMISES. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. ANNEXATION. The property described in the Legal Description and

depicted in the Location Map, both of which are attached hereto and incorporated herein for all purposes, shall be and is hereby annexed and brought within the corporate limits of the Town of Little Elm, Denton County, Texas, and same is hereby made a part of the Town.

SECTION 3. SERVICE PLAN. The attached Service Plan, incorporated herein for all purposes, was submitted in accordance with Chapter 43 of the Texas Local Government Code and is hereby approved and adopted as part of this Ordinance, and is made a part hereof.

SECTION 4. CITIZENSHIP. The property described in the Legal Description and depicted in the Location Map shall bear its pro rata share of the taxes levied by the Town, and the inhabitants of the areas herein annexed shall be entitled to all of the rights, privileges, and responsibilities of other citizens of the Town and are hereby bound by all acts, ordinances, resolutions, regulations and other legal action now in full force and effect and all those which may be hereafter adopted.

SECTION 5. ZONING MAP. Official maps of the Town shall be amended to reflect the annexation changes made by this ordinance.

SECTION 6. COUNCIL DISTRICT ASSIGNMENT. The subject property annexed into the Town of Little Elm is hereby assigned to Council district #5 until further redistricted by the Town Council of Little Elm in accordance with all applicable local, state, and federal law.

SECTION 7. FILING & NOTIFICATION. The Town Manager is hereby directed and authorized to file a certified copy of this Ordinance with the necessary governmental agencies.

SECTION 8. SAVINGS. This Ordinance shall be cumulative of all other ordinances of the Town, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that any complaint, notice, action, cause of action, or claim which prior to the effective date of this Ordinance has been initiated or has arisen under or pursuant to such other ordinance(s) shall continue to be governed by the provisions of that ordinance or those ordinances, and for that purpose that ordinance or those ordinances shall be deemed to remain and shall continue in full force and effect.

SECTION 9. SEVERABILITY. The sections, paragraphs, sentences, phrases, and words of this Ordinance are severable, and If any section or provision of this ordinance or the application of that section or provision to any person, firm, corporation, situation or circumstance is for any reason judged invalid or unconstitutional, the adjudication shall not affect any other section or provision of this ordinance or the application of any other section or provision to any person, firm, corporation, situation or circumstance, nor shall adjudication affect any other section or provision of the Comprehensive Zoning Ordinance of the Town of Little Elm, Texas, and the Town Council hereby declares that it would have adopted the valid portions and applications of the ordinance without the valid parts and to this end the provisions of this ordinance shall remain in full force and effect.

SECTION 10. REPEALER. That all ordinances of the Town of Little Elm in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of that

conflict.

SECTION 11. EFFECTIVE DATE. That this Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED this the 6th day of September, 2016.

The Town of Little Elm, Texas

David Hillock, Mayor

ATTEST:

Kathy Phillips, Town Secretary

APPROVED AS TO FORM:

Robert Brown, Town Attorney

47.4 ACRE TRACT

BEING that certain tract of land located in the Marsella Jones Survey, Abstract No. 662, in Denton County, Texas, and being part of that certain tract of land described in deed to Trail Dust Steak Houses, Inc., recorded in Volume 1075, Page 843, of the Real Property Records of Denton County, Texas (RPRDCT), and part of those certain tracts of land described as Tract 2, Tract 3, and Tract 4 in deed to Trail Dust Steak Houses, Inc., recorded in Volume 972, Page 884, RPRDCT, and part of that certain tract of land described in deed to Lincoln Park NW Corner, Inc., recorded in Instrument Number 2007-25118, RPRDCT, and being all of that certain tract of land described in Agreed Judgment of Condemnation Proceeding to the State of Texas, recorded in Volume 5391, Page 3974, RPRDCT and being more particularly described as follows;

BEGINNING at a point for corner located at the north end of a corner clip of the north right-of-way line of U.S. Highway No. 380 (variable width right-of-way) and the east right-of-way line of Oak Grove Road (variable width right-of-way);

THENCE North $02^{\circ}05'10''$ East, with the east right-of-way line of said Oak Grove Road, a distance of 203.34 feet to a point for corner located at the northwest corner of said Lincoln Park NW Corner, Inc. tract, same also being the westernmost southwest corner of said Trail Dust Steak Houses tract recorded in Volume 1075, Page 843;

THENCE North $02^{\circ}01'07''$ East, continuing with said east right-of-way line, a distance of 412.86 feet to a point for corner;

THENCE over and across said Trail Dust Steak Houses tract recorded in Volume 1075, Page 843, RPRDCT, the following courses to points for corners;

South $88^{\circ}29'07''$ East, a distance of 924.12 feet;

North $01^{\circ}32'04''$ East, a distance of 112.81 feet;

South $88^{\circ}29'07''$ East, a distance of 11.69 feet;

North $01^{\circ}30'23''$ East, a distance of 285.98 feet;

South $88^{\circ}29'07''$ East, a distance of 882.24 feet;

North $01^{\circ}30'23''$ East, a distance of 17.90 feet;

And South $88^{\circ}29'07''$ East, a distance of 122.68 feet, said point being located on the common east line of said Trail Dust Steak Houses tract recorded in Volume 1075, Page 843, RPRDCT, and the west line of that certain tract of land described in deed to 2931 Commercial, L.P., recorded in Instrument Number 2008-132752, RPRDCT;

THENCE South $01^{\circ}57'24''$ West, with said common line, a distance of 1429.74 feet to a point for corner located at the southeast corner of said State of Texas tract;

THENCE North $79^{\circ}33'49''$ West, with a southerly line of said State of Texas tract, a distance of 1548.56 feet to a point for corner;

THENCE North $69^{\circ}20'15''$ West, with a southerly line of said State of Texas tract, a distance of 100.54 feet to a point for corner located on the north right-of-way line of said U.S. Highway 380;

THENCE North $79^{\circ}42'00''$ West, with said north right-of-way line, a distance of 240.22 feet to a point for corner located at the south end of said corner clip of the north right-of-way line of said U.S. Highway No. 380 and the east right-of-way line of said Oak Grove Road;

THENCE North $38^{\circ}39'28''$ West, with said corner clip, a distance of 113.55 feet to the POINT OF BEGINNING and containing a calculated area of 47.4 acres of land, more or less.

Note:

The bearings shown and recited hereon are referenced to the north line of that certain tract of land described in deed to 2931 Commercial, L.P., recorded in Document No. 2008-132752, of the Real Property Records of Denton County, Texas ($N88^{\circ}30'00''W$).

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

OAK GROVE ROAD

MARSELLA JONES SURVEY ~
ABSTRACT NO. 662

2931 LAND, LP
INST. NO. 2007-17506
RPRDCT

YOUNGBLOOD, LTD.
TRACT 7
VOL. 4257, PG. 1101
RPRDCT

TRAIL DUST STEAK
HOUSES, INC.
VOL. 1075, PG. 843
RPRDCT

S88°29'37"E 924.12'

N01°30'23"E
285.98'

S88°29'37"E
11.69'

N01°32'34"E
112.81'

LINCOLN PARK NW CORNER, INC.
INST. NO. 2007-25118 RPRDCT

TRAIL DUST STEAK
HOUSES, INC.
VOL. 1075, PG. 843
RPRDCT

TRAIL DUST STEAK HOUSES, INC.
TRACT 3
VOL. 972, PG. 884 RPRDCT

TRAIL DUST STEAK HOUSES, INC.
TRACT 4
VOL. 972, PG. 884 RPRDCT

TRAIL DUST STEAK
HOUSES, INC.
TRACT 2
VOL. 972, PG. 884
RPRDCT

P.O.B.

N69°20'15"W
100.54'

N79°42'30"W
240.22'

N79°55'28"W
113.55'

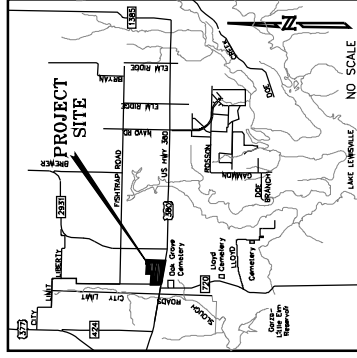
N79°33'49"W 1548.56'

U.S. HIGHWAY NO. 380
(VARIABLE WIDTH R.O.W.)



2931 COMMERCIAL, L.P.
INST. NO. 2008-132752 RPRDCT

S01°57'24"W 1429.74'



VICINITY MAP

300 150 0 300

1-inch = 300-feet

- LEGEND:
- P.O.B.
 - INST.
 - VOL.
 - PG.
 - R.O.W.
 - RPRDCT
- POINT OF BEGINNING
- INSTRUMENT
- VOLUME
- PAGE
- RIGHT-OF-WAY
- REAL PROPERTY RECORDS OF
DENTON COUNTY, TEXAS

NOTES:

1. NO IMPROVEMENTS OR EASEMENTS ARE SHOWN.
2. THE BEARINGS SHOWN AND RECITED HEREON ARE REFERENCED TO THE NORTH LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO 2931 COMMERCIAL, L.P., RECORDED IN DOCUMENT NO. 2008-132752, OF THE REAL PROPERTY RECORDS OF DENTON COUNTY, TEXAS (N88°30'00"W).
3. THIS DOCUMENT WAS PREPARED UNDER 22 TAC §663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.

EXHIBIT "A"

47.4 ACRE TRACT

SITUATED IN THE
MARSELLA JONES SURVEY, ABSTRACT NO. 662
DENTON COUNTY, TEXAS



PETTITT BARRAZA
ENGINEERING PLANNING SURVEYING
TYPE FIRM REGISTRATION NO. 1488
TBP'S FIRM REGISTRATION NO. 101088
1651 Glenville Drive, Suite 208
Richardson, Texas 75081
Tel. No. (214) 221-9955
Fax No. (214) 340-3550
DATE: MAY 2016
JOB NO. 14011-00
SCALE: 1"=500'

0.16 ACRE TRACT

BEING that certain tract of land located in the Marsella Jones Survey, Abstract No. 662, in Denton County, Texas and being part of that certain tract of land described in deed to Myrtle Meador recorded in Volume 471, Pages 208 and 209, RPRDCT, and being more particularly described as follows;

COMMENCING at an iron rod found, said iron rod being located on the east right-of-way line of FM 720 (Variable width R.O.W.), and also being the most northerly southwest corner of said Myrtle Meador tract;

THENCE South 87 degrees 42 minutes 06 seconds East, with a south line of the Myrtle Meador tract, a distance of 580.66 feet to a point for corner;

THENCE South 01 degrees 58 minutes 04 seconds West, with a west line of the Myrtle Meador tract, a distance of 408.57 feet to the POINT OF BEGINNING of herein described tract;

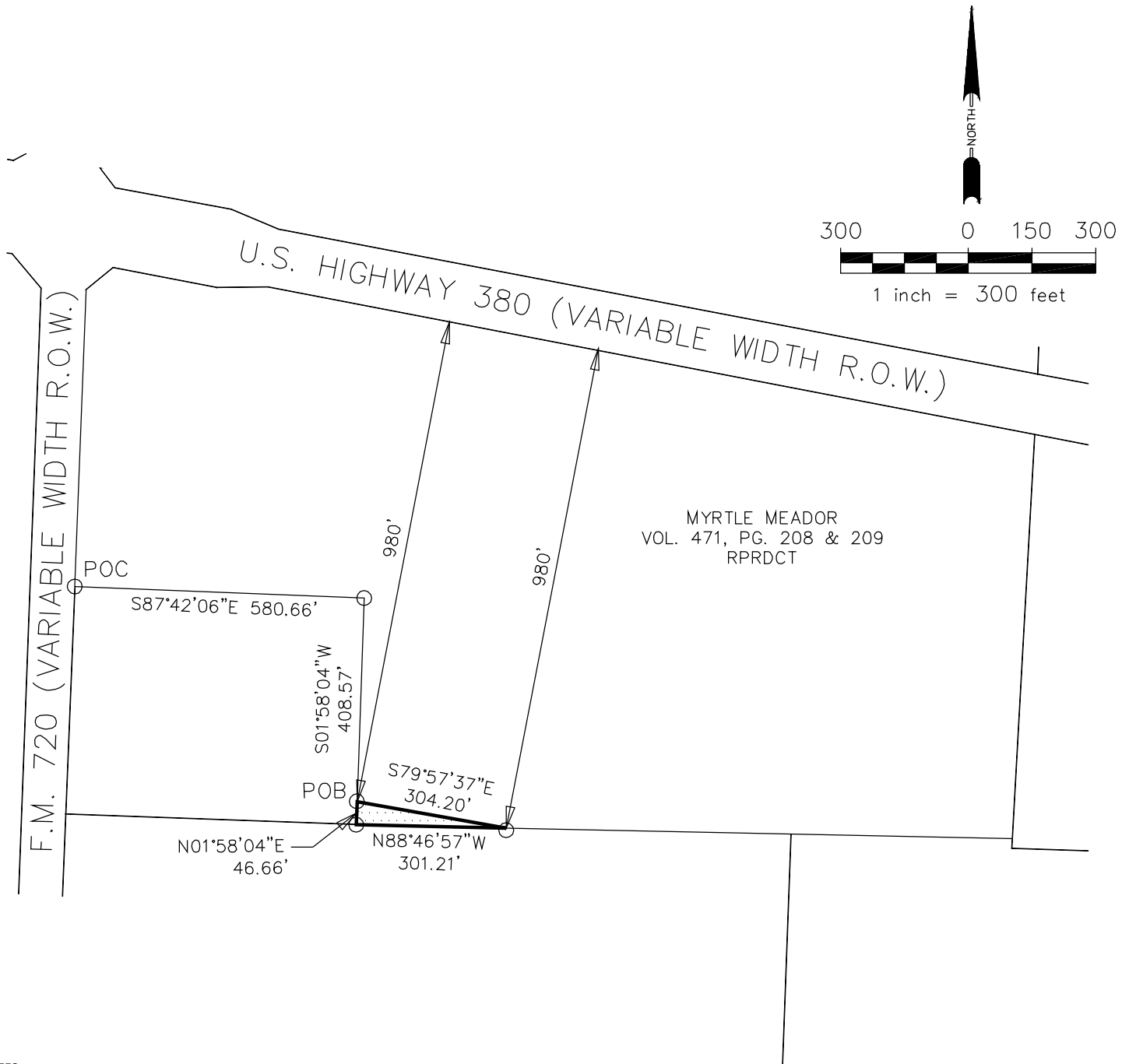
THENCE South 79 degrees 57 minutes 37 seconds East, leaving said west line of the Myrtle Meador tract, a distance of 304.20 feet to a point for corner, said point being located on the south line of the Myrtle Meador tract;

THENCE North 88 degrees 46 minutes 57 seconds West, with the most southerly south line of the Myrtle Meador tract, a distance of 301.21 feet to a point for corner;

THENCE North 01 degrees 58 minutes 04 seconds East, with said west line of the Myrtle Meador tract, a distance of 46.66 feet to the POINT OF BEGINNING of herein described tract, containing a calculated area of 0.16 acres of land, more or less.

Note: The bearings shown and recited hereon are referenced to the north line of that certain tract of land described in deed to 2931 Commercial, L.P., recorded in Document No. 2008-132752, of the Real Property Records of Denton County, Texas (N88°30'00"W).

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



NOTES:

1. NO IMPROVEMENTS OR EASEMENTS ARE SHOWN.
2. The bearings shown and recited hereon are referenced to the north line of that certain tract of land described in deed to 2931 Commercial, L.P., recorded in Document No. 2008-132752, of the Real Property Records of Denton County, Texas (N88°30'00"W).
3. THIS DOCUMENT WAS PREPARED UNDER 22 TAC §663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.

LEGEND

RPRDCT	REAL PROPERTY RECORDS DENTON COUNTY, TEXAS
VOL.	VOLUME
PG.	PAGE



1651 N. Glenville Drive, Suite 208 Tel. No. (214) 221-9955
Richardson, Texas 75081 Fax No. (214) 340-3550

141

0.16 ACRE TRACT
SITUATED IN THE
MARSELLA JONES SURVEY ~ ABSTRACT NO. 662
DENTON COUNTY, TEXAS

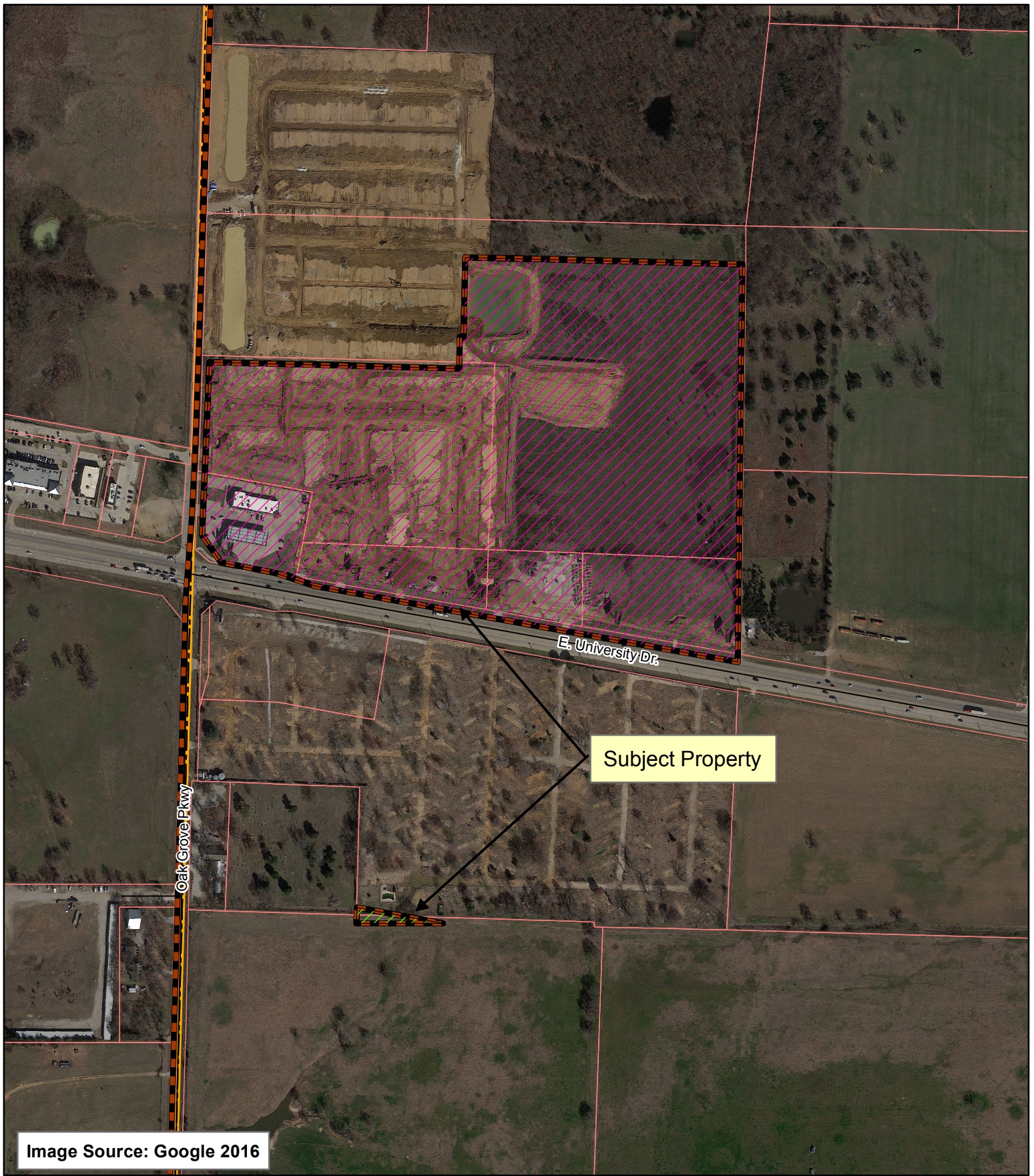


Image Source: Google 2016



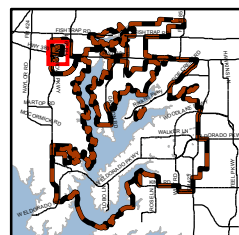
Location Map

Lincoln Park
Town of Little Elm
Denton County, TX
Date: 6/28/2016

0 225 450
Feet

Legend

- Roads
- Lincoln Park Sliver
- Lincoln Park North
- Town Limit
- ETJ



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This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

ANNEXATION SERVICE PLAN

DATE OF ANNEXATION ORDINANCE: 9-6-16

ACREAGE ANNEXED: 47.56

PROPERTY DESCRIPTION: See Legal Descriptions attached to the annexation ordinance.

Municipal Services to the acreage described above shall be furnished by or on behalf of the Town of Little Elm, Texas ("Town") at the following levels in accordance with the following schedule:

LITTLE ELM MUNICIPAL SERVICE PLAN FOR THE PROPERTY

This Service Plan sets forth: (1) obligations that will be assumed by Little Elm upon annexation of the Property; and (2) municipal services that will be provided to the Property upon annexation. This Service Plan benefits current and future owners and developers of the Property and the Lincoln Park Property (defined below), and Little Elm acknowledges such owners and developers are third-party beneficiaries of this Service Plan.

1. UTILITY ACQUISITION AND FUNDING AGREEMENT. The UAF Agreement establishes rights and obligations of Lincoln Park with respect to the property located within the corporate limits of Lincoln Park (the "Lincoln Park Property"). Upon annexation of all or any portion of the Property, Little Elm will succeed to and assume all rights and obligations of Lincoln Park under the UAF Agreement, subject to the following:

1.1 The obligation of Little Elm to provide adequate, continuous, and uninterrupted retail water service to the Lincoln Park Property will not begin unless and until: (1) the Lincoln Park Water System has been conveyed to Little Elm or to the Little Elm EDC in accordance with the UAF Agreement; (2) the rights of Lincoln Park under the Regional Water Contract have been assigned to Little Elm or the Little Elm EDC in accordance with the UAF Agreement; and (3) the rights of Lincoln Park under TCEQ Public Water System No. TX0610055 and Central Registry Nos. RN101455251 and CN600755169, have been assigned to Little Elm or the Little Elm EDC in accordance with the UAF Agreement.

1.2 The obligation of Little Elm to provide adequate, continuous, and uninterrupted retail wastewater treatment service to the Lincoln Park Property will not begin unless and until: (1) the Lincoln Park Wastewater System has been conveyed to Little Elm or to the Little Elm EDC in accordance with the UAF Agreement; (2) the rights of Lincoln Park under the Regional Wastewater Contract have been assigned to Little Elm or the Little Elm EDC in accordance with the UAF Agreement; and (3) the rights of Lincoln Park under TCEQ wastewater permit No. 11613-001 have been assigned to Little Elm or the Little Elm EDC in accordance with the UAF Agreement.

1.3 Little Elm shall pay the Consideration (as defined in the UAF Agreement) from any funds legally available for such purpose including \$2,500,000.00 from funds deposited by the Little Elm EDC into a segregated account within three days after the Effective Date. Such segregated funds shall be paid as follows: \$1,300,000.00 when Little Elm adopts one or more ordinances annexing all or any portion of the Property into the corporate limits of Little Elm and four payments of \$400,000.00 on each of October 1, 2015, October 1, 2016, October 1, 2017, and October 1, 2018. If the first three \$400,000.00 payments are timely made on or before the dates specified the fourth payment of \$400,000.00 is forgiven. The fourth payment is an inducement to Little Elm to timely make the first three required payments. Such funds when paid will be wire transferred from Little Elm to Lincoln Park [insert wire transfer instructions]. The obligations to pay the Consideration survive the termination of the Allocation Agreement if Little Elm annexes all or any portion of the Property.

2. FIRE and EMERGENCY MEDICAL SERVICES

Existing services provided by Little Elm: None

Services to be provided by Little Elm: Fire and emergency medical services will be provided to the Property upon annexation at a level of such services that is comparable or equal to the level of such services now being provided to other parts of the Town of Little Elm with topography, land use, and population density similar to the Property.

3. POLICE

Existing services provided by Little Elm: None

Services to be provided by Little Elm: Upon annexation, the Town of Little Elm will provide police protection to the Property at a level of such services that is comparable or equal to the level of such services now being provided to other parts of the Town of Little Elm with topography, land use, and population density similar to the Property, including the extension of regular and routine patrols to the area.

4. BUILDING INSPECTION

Existing services provided by Little Elm: None

Services to be provided by Little Elm: The Town of Little Elm will provide building inspection and enforcement services to the Property upon annexation at a level of such services that is comparable or equal to the level of such services now being provided to other parts of the Town of Little Elm with topography, land use, and population density similar to the Property. This includes issuing building, electrical and plumbing permits for any new construction and remodeling, and enforcing all other applicable codes which regulate building construction within the Town of Little Elm.

PLANNING AND ZONING

Existing services provided by Little Elm: None

Services to be provided by Little Elm: The Planning and Development Department is responsible for regulating development and land use within the Property on the effective date of the annexation by administering the Code of Ordinances.

5. CODE ENFORCEMENT

Existing services provided by Little Elm: None

Services to be provided by Little Elm: Upon annexation the Code Enforcement Department will provide Code Enforcement Services at a level of such services that is comparable or equal to the level of such services now being provided to other parts of the Town of Little Elm with topography, land use, and population density similar to the Property.

6. PARKS & LIBRARY

Existing services provided by Little Elm: None

Services to be provided by Little Elm: Upon the effective date of annexation, Town of Little Elm public parks and Library use privileges will be provided to anyone residing in the annexed area.

7. HEALTH DEPARTMENT – HEALTH CODE ENFORCEMENT SERVICE

Existing services provided by Little Elm: None

Services to be provided by Little Elm: Upon annexation, the Town of Little Elm's health ordinances and regulations will be administered and applicable to the Property, including animal control services, at a level of such services that is comparable or equal to the level of such services now being provided to other parts of the Town of Little Elm with topography, land use, and population density similar to the Property.

8. STREETS (INCLUDING STREET LIGHTING)

Existing services provided by Little Elm: None

Services to be provided by Little Elm: Operation and maintenance of roads and streets, if any, dedicated to (and accepted by) the public or the Town of Little Elm or owned by the Town of Little Elm will be provided to the Property by the Town of Little Elm at a level of such services that is comparable or

equal to the level of such services now being provided to other parts of the Town of Little Elm with topography, land use, and population density similar to the Property. Road and street lighting will be provided by the applicable utility company providing lighting or electric services in the annexed area pursuant to laws, rules, regulations, and standards of such utility.

9. STORM WATER FACILITIES

Existing services provided by Little Elm: None

Services to be provided by Little Elm: Storm water drainage services, to the extent located within property or facilities owned by or dedicated to (and accepted by) the Town of Little Elm, will be provided to the Property at a level of such services that is comparable or equal to the level of such services now being provided to other parts of the Town of Little Elm with topography, land use, and population density similar to the Property.

10. WATER SERVICE

Existing services provided by Little Elm: None

Services to be provided by Little Elm: Operation and maintenance of water facilities in the annexed area that are not within the service area of another water utility shall be provided in accordance with applicable Town codes, ordinances, and departmental policy. Operation and maintenance of water facilities that are within the service area of another utility shall be the responsibility of that utility.

11. WASTEWATER SERVICE

Existing services provided by Little Elm: None

Services to be provided by Little Elm: Operation and maintenance of wastewater facilities in the annexed area that are not within the service area of another wastewater utility shall be provided in accordance with applicable Town codes, ordinances, and departmental policy. Operation and maintenance of wastewater facilities in the annexed area that are within the service area of another utility will be the responsibility of that utility.

12. SOLID WASTE SERVICES

Existing services provided by Little Elm: None

Services to be provided by Little Elm: Solid waste collection will be provided to the Property on the effective date of the annexation. The collection of refuse shall be made in accordance with the usual Utility Department scheduling and shall be conducted at a level consistent with current methods and procedures provided to similar areas.

13. MISCELLANEOUS

All other applicable municipal services will be provided to the area in accordance with the Town of Little Elm's established policies governing extension of municipal services to newly annexed areas.

TOWN OF LITTLE ELM

Town Council

Staff Report



PROJECT:	16-Z-001	Lincoln Park North MF & LC
PUBLIC HEARING DATES:	Planning & Zoning Commission:	8-18-16
	Town Council:	9-6-16
REQUEST:	A Town-initiated request to zone approximately 2.9 acres of land to Light Commercial district (LC) and designate a Retail/Office FLUP land use category, and zone approximately 17.35 acres of land to Multi-family district (MF) and designate a High Density Residential FLUP land use category	
PROPOSED USE:	Retail and multi-family	
LOCATION:	Generally located on the northeast corner of Oak Grove Parkway and University Drive, and a sliver located south of the old Lincoln Park trailer park and east of Oak Grove United Methodist Church, outside of Little Elm's town limits	
PROPOSED ZONING	Light Commercial district (LC) and Multi-family district (MF)	
CURRENT/PROPOSED FLUP DESIGNATION:	The proposed Future Land Use Plan designations are Retail/Office and High Density Residential.	
EXISTING USE / SITE ATTRIBUTES:	Convenience stores, vacant land, and currently, multi-family construction	
APPLICANT:	Town of Little Elm	
OWNER:	Multiple	
ZONING ANALYSIS:	On September 6 th , 2016, the Town Council will consider annexing the subject properties into the town limits of Little Elm. The proposed Light Commercial district (LC) and Multi-family district (MF) zoning is proposed to match the current uses of the properties, and the proposed FLUP designations of Retail/Office and High Density Residential, respectively, are complimentary to the proposed zoning.	
RECOMMENDED ACTION:	Staff recommends approval of the proposed zonings and FLUP designations. <i>On August 18th, 2016, the Planning & Zoning Commission unanimously recommended approval of the proposed zonings and FLUP designations.</i>	

TOWN CONTACT:

Lisa Reich – Town Planner

ATTACHMENTS:

Ordinance 1347
Location Map

TOWN OF LITTLE ELM

ORDINANCE NO. 1347

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, BY ZONING APPROXIMATELY 2.9 ACRES OF LAND TO LIGHT COMMERCIAL DISTRICT (LC) AND DESIGNATING A RETAIL/OFFICE FUTURE LAND USE PLAN CATEGORY, AND ZONING APPROXIMATELY 17.35 ACRES OF LAND TO MULTI-FAMILY DISTRICT (MF) AND DESIGNATING A HIGH DENSITY RESIDENTIAL FUTURE LAND USE PLAN CATEGORY, GENERALLY LOCATED ON THE NORTHEAST CORNER OF OAK GROVE PARKWAY AND UNIVERSITY DRIVE, AND A SLIVER LOCATED SOUTH OF UNIVERSITY DRIVE AND EAST OF OAK GROVE PARKWAY, OUTSIDE OF LITTLE ELM'S TOWN LIMITS; PROVIDING A SAVINGS CLAUSE; CORRECTING THE OFFICIAL ZONING MAP; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Little Elm ("Town") is a home rule municipal corporation organized and existing by virtue of the Constitution and laws of the State of Texas and by its Charter adopted on May 1, 2001; and

WHEREAS, the Town possesses all the rights, powers, and authorities possessed by all home rule municipalities, including the authority to regulate land uses under Chapter 211 of the Texas Local Government Code; and

WHEREAS, the Town Council, on September 6, 2016, adopted Ordinance #1346, annexing the subject properties into the Little Elm town limits; and

WHEREAS, the Town has initiated a request to zone the subject properties, more specifically described on the Location Map, attached hereto, as Light Commercial district (LC) and Multi-family district (MF); and

WHEREAS, the Town has initiated a request to assign Retail/Office and High Density Residential as the Future Land Use Plan (FLUP) designations for the subject properties, which are land use categories that compliment Light Commercial (LC) and Multi-family (MF) zoning, respectively; and

WHEREAS, the Town Council and the Planning & Zoning Commission of the Town of Little Elm, in compliance with the laws of the State of Texas and the ordinances of the Town of Little Elm, have given the required notices and held the required public hearings and afforded a full and fair hearing to all property owners generally and to all persons interested in and situated in the affected area and in the vicinity thereof regarding the requested rezoning described herein; and

WHEREAS, after due deliberations and consideration of the recommendation of the Planning & Zoning Commission and any other information and materials received at the public hearing, the Town Council of the Town of Little Elm, Texas, has determined that the

rezoning request would be in the interest of public health, safety and welfare of the citizens of the Town of Little Elm.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS:

SECTION 1. INCORPORATION OF PREMISES. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. FLUP AMENDMENT. The Future Land Use Plan (FLUP) of the 2008 Comprehensive Plan is hereby amended to categorize approximately 2.9 acres of land as **Retail/Office**, and approximately 17.35 acres of land as **High Density Residential**, generally located on the northeast corner of Oak Grove Parkway and University Drive, and a sliver located south of University Drive and east of Oak Grove Parkway, tracts of land more particularly described on the Location Map, attached hereto, subject to all other applicable ordinances, laws, rules, regulations, and standards.

SECTION 3. ZONING AMENDMENT. The Comprehensive Zoning Ordinance of the Town, is hereby amended, by providing for a **Light Commercial (LC)** district on approximately 2.9 acres of land, and for a **Multi-family (MF)** district on approximately 17.35 acres of land, generally located on the northeast corner of Oak Grove Parkway and University Drive, and a sliver located south of University Drive and east of Oak Grove Parkway, tracts of land more particularly described on Location Map, attached hereto, subject to all of the terms and conditions set forth herein, the terms and conditions of the Comprehensive Zoning Ordinance, and all other applicable ordinances, laws, rules, regulations, and standards.

SECTION 4. SAVINGS. This Ordinance shall be cumulative of all other ordinances of the Town, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that any complaint, notice, action, cause of action, or claim which prior to the effective date of this Ordinance has been initiated or has arisen under or pursuant to such other ordinance(s) shall continue to be governed by the provisions of that ordinance or those ordinances, and for that purpose that ordinance or those ordinances shall be deemed to remain and shall continue in full force and effect.

SECTION 5. MAP. The official zoning map of the Town shall be amended to reflect the change in zoning made by this ordinance.

SECTION 6. PENALTY. Any person, firm, or corporation violating any of the provision of this ordinance shall be punished by a penalty of a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense and each and every day such offense shall continue shall be deemed to constitute a separate offense.

SECTION 7. SEVERABILITY. The sections, paragraphs, sentences, phrases, and words of this Ordinance are severable, and If any section or provision of this ordinance or the application of that section or provision to any person, firm, corporation, situation or circumstance is for any reason judged invalid or unconstitutional, the adjudication shall not affect any other section or provision of this ordinance or the application of any other section or provision to any person, firm, corporation, situation or circumstance, nor shall adjudication affect any other section or provision of the Comprehensive Zoning Ordinance

of the Town of Little Elm, Texas, and the Town Council hereby declares that it would have adopted the valid portions and applications of the ordinance without the valid parts and to this end the provisions of this ordinance shall remain in full force and effect.

SECTION 8. REPEALER. That all ordinances of the Town of Little Elm in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of that conflict.

SECTION 9. EFFECTIVE DATE. Upon adoption, this Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, Texas on the 6th day of September, 2016.

ATTEST:

The Town of Little Elm, Texas

Kathy Phillips, Town Secretary

David Hillock, Mayor



Image Source: Google 2016



Location Map

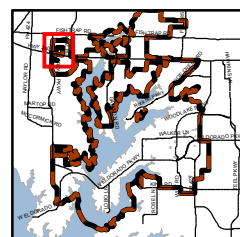
Zoning Change
Town of Little Elm
Denton County, TX

Date: 8/4/2016

0 330 660
Feet

Legend

- Roads
- Light Commercial
- Multi-Family
- Town Limit
- ETJ



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TOWN OF LITTLE ELM

Town Council

Staff Report



PROJECT:	16-PD-008	Backwards Oklahoma & LP SF
MEETING DATES:	Planning & Zoning Commission:	8-18-16
	Town Council:	9-6-16
REQUEST:	A request to zone approximately 28.3 acres of land to Planned Development-Single Family (PD-SF) and rezone approximately 13.765 acres of land from Agriculture (AG) to Planned Development-Single Family (PD-SF) to allow for the expansion of Hillstone Pointe subdivision, and designate the total area as the FLUP land use category Low Density Residential	
PROPOSED USE:	Single Family Residential	
LOCATION:	Generally located on the northeast corner of University Drive and Oak Grove Lane	
PROPOSED ZONING	Planned Development with Single Family 4 base zoning (PD-SF4) to match the existing PD #1261	
CURRENT/PROPOSED FLUP DESIGNATION:	The proposed Future Land Use Plan designation is Low Density Residential.	
EXISTING USE / SITE ATTRIBUTES:	Vacant land, and currently, construction of infrastructure for the Hillstone Pointe subdivision	
APPLICANT:	Town of Little Elm	
OWNER:	CADG Lincoln Park, LLC	
ZONING ANALYSIS:	<p>On September 6th, 2016, the Town Council will consider annexing the 28.3 acre property into the town limits of Little Elm.</p> <p>The 13.765 acre property was annexed by a boundary adjustment agreement between the Town of Lincoln Park and the Town of Little Elm effective May 4th, 2015. A public hearing was never held for the zoning of this property, so the Agriculture (AG) zoning that is automatically assigned as a place-holder to newly annexed property remains.</p> <p>Staff proposes to amend PD #1261 to include the subject properties in the Hillstone Pointe single family subdivision, and hold them to the existing Planned Development regulations, which are attached. In</p>	

addition, staff proposes to assign the Low Density Residential Future Land Use Plan category to both properties.

**RECOMMENDED
ACTION:**

Staff recommends approval of the proposed zonings and FLUP designations.

On August 18th, 2016, the Planning & Zoning Commission unanimously recommended approval of the proposed zonings and FLUP designations.

TOWN CONTACT:

Lisa Reich – Town Planner

ATTACHMENTS:

Ordinance 1348
Location Map
Existing PD Regulations
Existing Concept Plan

TOWN OF LITTLE ELM

ORDINANCE NO. 1348

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE, HEREOF AMENDED, BY ZONING APPROXIMATELY 28.3 ACRES OF LAND TO PLANNED DEVELOPMENT-SINGLE FAMILY DISTRICT (PD-SF4) AND REZONING APPROXIMATELY 13.765 ACRES OF LAND FROM AGRICULTURE DISTRICT (AG) TO PLANNED DEVELOPMENT-SINGLE FAMILY DISTRICT (PD-SF4) TO ALLOW FOR THE EXPANSION OF HILLSTONE POINTE SUBDIVISION (ORDINANCE #1261), AND ASSIGNING THE FUTURE LAND USE PLAN CATEGORY LOW DENSITY RESIDENTIAL TO THE TOTAL AREA OF APPROXIMATELY 42.065 ACRES, GENERALLY LOCATED ON THE NORTHEAST CORNER OF UNIVERSITY DRIVE AND OAK GROVE LANE; PROVIDING A SAVINGS CLAUSE; CORRECTING THE OFFICIAL ZONING MAP; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Little Elm ("Town") is a home rule municipal corporation organized and existing by virtue of the Constitution and laws of the State of Texas and by its Charter adopted on May 1, 2001; and

WHEREAS, the Town possesses all the rights, powers, and authorities possessed by all home rule municipalities, including the authority to regulate land uses under Chapter 211 of the Texas Local Government Code; and

WHEREAS, the Town Council, on September 6, 2016, adopted Ordinance #1346, annexing the 28.3 acre property into the Little Elm town limits; and

WHEREAS, the 13.765 acre property was annexed into Little Elm town limits by a boundary adjustment agreement between the Town of Lincoln Park and the Town of Little Elm effective May 4th, 2015; and

WHEREAS, the Town has initiated a request to zone the subject properties, more specifically described on the Location Map, attached hereto, as Planned Development-Single Family district (PD-SF4) to allow for the expansion of Hillstone Pointe subdivision; and

WHEREAS, the Town has initiated a request to assign Low Density Residential as the Future Land Use Plan (FLUP) designation for the subject properties, which is a land use category that compliments Planned Development-Single Family (PD-SF4) zoning; and

WHEREAS, on January 20th, 2015, the Town Council rezoned 66.795 acres of adjacent property for a residential subdivision, via PD Ordinance #1261, which contained provisions to acknowledge and encourage the expansion of the subdivision if desired; and

WHEREAS, the Town Council and the Planning & Zoning Commission of the Town of Little Elm, in compliance with the laws of the State of Texas and the ordinances of the Town of Little Elm, have given the required notices and held the required public hearings and afforded a full and fair hearing to all property owners generally and to all persons interested in and situated in the affected area and in the vicinity thereof regarding the requested rezoning described herein; and

WHEREAS, after due deliberations and consideration of the recommendation of the Planning & Zoning Commission and any other information and materials received at the public hearing, the Town Council of the Town of Little Elm, Texas, has determined that the rezoning request would be in the interest of public health, safety and welfare of the citizens of the Town of Little Elm.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS:

SECTION 1. INCORPORATION OF PREMISES. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. FLUP AMENDMENT. The Future Land Use Plan (FLUP) of the 2008 Comprehensive Plan is hereby amended to categorize approximately 42.065 acres of land as **Low Density Residential**, generally located on the northeast corner of University Drive and Oak Grove Lane, tracts of land more particularly described on the Location Map, attached hereto, subject to all other applicable ordinances, laws, rules, regulations, and standards.

SECTION 3. ZONING AMENDMENT. That Ordinance No. 226 of the Town of Little Elm, Texas, the same being the Comprehensive Zoning Ordinance of the Town, is hereby amended by providing for a **Planned Development-Single Family (PD-SF4)** district to allow for the **expansion of Hillstone Pointe subdivision** on approximately 42.065 acres of land, generally located on the northeast corner of University Drive and Oak Grove Lane, Little Elm, Denton County, Texas, tracts of land more particularly described on the Location Map, attached hereto, subject to all of the terms and conditions set forth herein, the terms and conditions of the Comprehensive Zoning Ordinance, and all other applicable ordinances, laws, rules, regulations, and standards.

SECTION 4. CONDITIONS. The subject property shall develop per the attached Concept Plan, and the special ordinance provisions of PD Ordinance #1261 shall apply to the subject property.

SECTION 5. SAVINGS. This Ordinance shall be cumulative of all other ordinances of the Town, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that any complaint, notice, action, cause of action, or claim which prior to the effective date of this Ordinance has been initiated or has arisen under or pursuant to such other ordinance(s) shall continue to be governed by the provisions of that ordinance or those ordinances, and for that purpose that ordinance or those ordinances shall be deemed to remain and shall continue in full force and effect.

SECTION 6. MAP. The official zoning map of the Town shall be amended to reflect the changes in zoning performed by this ordinance.

SECTION 7. PENALTY. Any person, firm, or corporation violating any of the provision of this ordinance shall be punished by a penalty of a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense and each and every day such offense shall continue shall be deemed to constitute a separate offense.

SECTION 8. SEVERABILITY. The sections, paragraphs, sentences, phrases, and words of this Ordinance are severable, and If any section or provision of this ordinance or the application of that section or provision to any person, firm, corporation, situation or circumstance is for any reason judged invalid or unconstitutional, the adjudication shall not affect any other section or provision of this ordinance or the application of any other section or provision to any person, firm, corporation, situation or circumstance, nor shall adjudication affect any other section or provision of the Comprehensive Zoning Ordinance of the Town of Little Elm, Texas, and the Town Council hereby declares that it would have adopted the valid portions and applications of the ordinance without the valid parts and to this end the provisions of this ordinance shall remain in full force and effect.

SECTION 9. REPEALER. That all ordinances of the Town of Little Elm in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of that conflict.

SECTION 10. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED the 6th day of September, 2016.

The Town of Little Elm, Texas

David Hillock, Mayor

ATTEST:

Kathy Phillips, Town Secretary



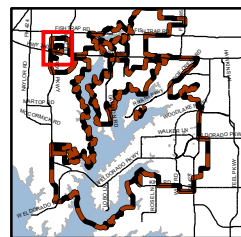
Location Map

Zoning Change
Town of Little Elm
Denton County, TX
Date: 8/4/2016

0 17,500 35,000
Feet

Legend

- Roads
- Single Family
- Town Limit
- ETJ



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This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Special Ordinance Provisions of PD #1261

General

1. Allowed uses on the subject property (approximately 66 acres to the east of Oak Grove Road and north of Lincoln Park city limits) are single family residential.
2. Parkland dedication, permit fees, impact fees, tree preservation, architectural masonry percentages, and other development related items are covered in an associated development agreement.
3. All not defined by these revisions shall default to the Little Elm Code of Ordinances, and as amended.

Single Family Tract

4. The Single Family development shall be developed per the attached concept plan(s) in terms of street layout, lot patterns, setbacks, density, height, lot coverage, lot size, and other site development related items.
5. The HOA established shall be responsible for maintenance of common areas.
6. The maximum number of dwelling units is 368.
7. The minimum lot width is 40'.
8. The maximum lot coverage is 60%.
9. The maximum height is 2 stories.
10. The development shall provide at least one HOA lot that includes pool, playground, and restroom facilities to be constructed during the second phase of development.



Landplan 10

data summary

GROSS SITE ACRES:	107.6	
RESIDENTIAL PRODUCT TYPE:	UNITS	DENSITY
40'x 110' Single Family Lots	388	
50'x 110' Single Family Lots	202	
Total Single Family	590	5.5:1

LOT STANDARDS:

	40'x110' 30'x75'	50'x110' 40'x75'
PAD SIZE:		
FRONT YARD:	15'	20'
REAR YARD:	20'	15'
SIDE YARD:	5'	5'
CORNER LOTS SIDE YARD:	10'	10'

Note: Landplan based on securing detention offsite on adjacent property

TOWN OF LITTLE ELM

Town Council

Staff Report



PROJECT: 16-SUP-002 Witt Public Storage

PUBLIC HEARING DATES: Planning & Zoning Commission: 8-18-16
Town Council: **9-6-16**

REQUEST: A request for a Specific Use Permit for self-storage on approximately 1.99 acres of land currently zoned Light Industrial district (LI)

PROPOSED USE: Self-storage

LOCATION: Generally located north of Old Witt Road and approximately 300 feet west of FM 423, within the town limits of Little Elm

SIZE: Approximately 1.99 acres of land

CURRENT ZONING: Light Industrial district (LI)

FUTURE LAND USE PLAN DESIGNATION: Business Commercial

EXISTING USE / SITE ATTRIBUTES: Communication tower

APPLICANT: Stantec

OWNER: BLS Witt Properties, LLC

PLANNING ANALYSIS: Chapter 106 of the Little Elm Code of Ordinances requires self-storage uses to obtain a Specific Use Permit (SUP) to legally operate in Light Industrial (LI) zoning districts.

An SUP is required of uses that the zoning ordinance may allow, but uses that should also be specially approved for situational suitability. The purpose of the SUP requirement is to allow the Town to determine the appropriateness of a proposal. Thus, Council has broad discretionary approval of the requested SUP.

The Future Land Use Plan (FLUP) designates the subject property with a Business Commercial land use category, which is appropriate for the use of self-storage. The requested SUP, if approved, would not be in conflict with the FLUP.

The subject property is located on approximately 1.99 acres on Old Witt Road, flanked by auto repair and outdoor auto storage to the west and a soon-to-be opening retail strip to the east. A manufacturing

company operates to the north and the property to the south is in the City of Frisco.

This property will have direct access from Old Witt Road and a new fire lane will be split between the subject property and the auto repair to the west. An easement for cross access to The Crossing Church to the northeast will be included on the plat, although it will not be constructed at this time. This easement will be directly south of the communication tower that is screened by a masonry wall and is to remain.

The architectural elevations exceed the requirement for Industrial zoning districts, and meet the 80% brick/stone requirement for primary facades, as shown in the attached conceptual renderings. In the attached Regulations, the applicant proposes a reduction of required building articulation and auxiliary design standards due to the proportions that would be required on the extra-large structure. The building is proposed to be 4 stories and have a height of approximately 53 feet, which is less than the 60 foot maximum height restriction.

Most of the landscaping requirements meet compliance, aside from the small amount of interior canopy trees due to the large building footprint, and the canopy tree requirement along the eastern property line, which is proposed, instead, to have groups of slender evergreen shrubs that are 3 feet tall at the time of planting to create screening. Both of these items are listed in the Regulations.

Other items in the Regulations include burying the overhead power lines that are not along Old Witt Road, removing wooden fencing and only replacing with fencing that complies with the Code of Ordinances, a reduction in parking, and allowing for an apartment for the property manager, if necessary.

Please note that a protest form was submitted by an adjacent property owner that owns more than 20% of the land within the 200-ft buffer. This triggers the requirement that this zoning request shall not be approved unless three-fourths of the present Council members vote in support of the application.

RECOMMENDATION:

Staff does not offer a recommendation.

On August 18, 2016, the Planning & Zoning Commission made a recommendation to approve the proposed zoning with a vote of 3-2.

TOWN CONTACT:

Lisa Reich – Town Planner

ATTACHMENTS:

Ordinance 1349
Location Map
Conceptual Site Plan
Conceptual Landscaping Plan
Conceptual Elevations
Regulations

TOWN OF LITTLE ELM

ORDINANCE NO. 1349

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, HEREOFRE AMENDED, BY ISSUING A SPECIFIC USE PERMIT FOR SELF-STORAGE USE ON APPROXIMATELY 1.99 ACRES OF LAND CURRENTLY ZONED LIGHT INDUSTRIAL DISTRICT (LI), GENERALLY LOCATED NORTH OF OLD WITT ROAD AND APPROXIMATELY 300 FEET WEST OF FM 423, PROVIDING THAT THIS SPECIFIC USE PERMIT IS ESTABLISHED SUBJECT TO CERTAIN CONDITIONS AS SET FORTH HEREIN; PROVIDING A SAVINGS CLAUSE; CORRECTING THE OFFICIAL ZONING MAP; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Little Elm ("Town") is a home rule municipal corporation organized and existing by virtue of the Constitution and laws of the State of Texas and by its Charter adopted on May 1, 2001; and

WHEREAS, the Town possesses all the rights, powers, and authorities possessed by all home rule municipalities, including the authority to regulate land uses under Chapter 211 of the Texas Local Government Code; and

WHEREAS, Chapter 106 (Zoning) of the Little Elm Code of Ordinances requires a Specific Use Permit be granted by Town Council in order to legally operate and occupy the subject property with Self-storage use while it is zoned Light Industrial district (LI); and

WHEREAS, a request for a Specific Use Permit for Self-storage use has been submitted by Stantec on approximately 1.99 acres of land currently zoned Light Industrial district (LI), more specifically described on the Location Map, attached hereto; and

WHEREAS, Section 106-36 of the Little Elm Code of Ordinances, and as amended, provides that in considering and determining the issuance of a specific use permit, the Town may require from an applicant plans, information, operating data, and expert evaluation concerning the location and function and characteristics of any building or use proposed; and may, in the interest of the public welfare and to assure compliance therewith, establish conditions of operation, location, arrangement, and construction of any use for which a permit is authorized; and further, that in authorizing the location of any of the uses listed as specific use permits, the Town Council may impose such development standards and safeguards as the conditions and locations indicate important to the welfare and protection of adjacent property from noise, vibration, dust, dirt, smoke, fumes, odor, gas, explosion, glare, offensive view, or other undesirable or hazardous conditions; and

WHEREAS, the Town Council and the Planning & Zoning Commission of the Town of Little Elm, in compliance with the laws of the State of Texas and the ordinances of the Town of Little Elm, have given the required notices and held the required public hearings and afforded a full and fair hearing to all property owners generally and to all persons

interested in and situated in the affected area and in the vicinity thereof regarding the requested specific use permit described herein; and

WHEREAS, after due deliberations and consideration of the recommendation of the Planning & Zoning Commission and any other information and materials received at the public hearing, the Town Council of the Town of Little Elm, Texas, has determined that the requested specific use permit for Self-storage use would be in the interest of public health, safety and welfare of the citizens of the Town of Little Elm.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS:

SECTION 1. INCORPORATION OF PREMISES. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. AMENDMENT. That Ordinance No. 226 of the Town of Little Elm, Texas, the same being the Comprehensive Zoning Ordinance of the Town, is hereby amended by issuing a **Specific Use Permit for Self-storage** use to the property generally located north of Old Witt Road and approximately 300 feet west of FM 423, Little Elm, Denton County, Texas, an approximately 1.99 acre tract of land more particularly described on the Location Map, attached hereto, subject to all of the terms and conditions set forth herein, the terms and conditions of the Comprehensive Zoning Ordinance, and all other applicable ordinances, laws, rules, regulations, and standards.

SECTION 3. CONDITIONS. The following special ordinance provisions shall apply to the subject property:

1. The subject property shall develop in full compliance with the Little Elm Code of Ordinances, unless otherwise specified within the attached Regulations, and shall conceptually develop per the attached concept plans.

SECTION 4. SAVINGS. This Ordinance shall be cumulative of all other ordinances of the Town, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that any complaint, notice, action, cause of action, or claim which prior to the effective date of this Ordinance has been initiated or has arisen under or pursuant to such other ordinance(s) shall continue to be governed by the provisions of that ordinance or those ordinances, and for that purpose that ordinance or those ordinances shall be deemed to remain and shall continue in full force and effect.

SECTION 5. ZONING MAP. The official zoning map of the Town shall be amended to reflect the changes in zoning made by this ordinance.

SECTION 6. PENALTY. Any person, firm, or corporation violating any of the provision of this ordinance shall be punished by a penalty of a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense and each and every day such offense shall continue shall be deemed to constitute a separate offense.

SECTION 7. SEVERABILITY. The sections, paragraphs, sentences, phrases, and words of this Ordinance are severable, and If any section or provision of this ordinance or the application of that section or provision to any person, firm, corporation, situation or

circumstance is for any reason judged invalid or unconstitutional, the adjudication shall not affect any other section or provision of this ordinance or the application of any other section or provision to any person, firm, corporation, situation or circumstance, nor shall adjudication affect any other section or provision of the Comprehensive Zoning Ordinance of the Town of Little Elm, Texas, and the Town Council hereby declares that it would have adopted the valid portions and applications of the ordinance without the valid parts and to this end the provisions of this ordinance shall remain in full force and effect.

SECTION 8. REPEALER. That all ordinances of the Town of Little Elm in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of that conflict.

SECTION 9. EFFECTIVE DATE. That this Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, Texas on the 6th day of September, 2016.

The Town of Little Elm, Texas

David Hillock, Mayor

ATTEST:

Kathy Phillips, Town Secretary



Image Source: Google 2016



Location Map

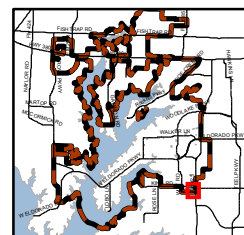
Public Storage - Witt
Town of Little Elm
Denton County, TX

Date: 7/25/2016

0 135 270
Feet

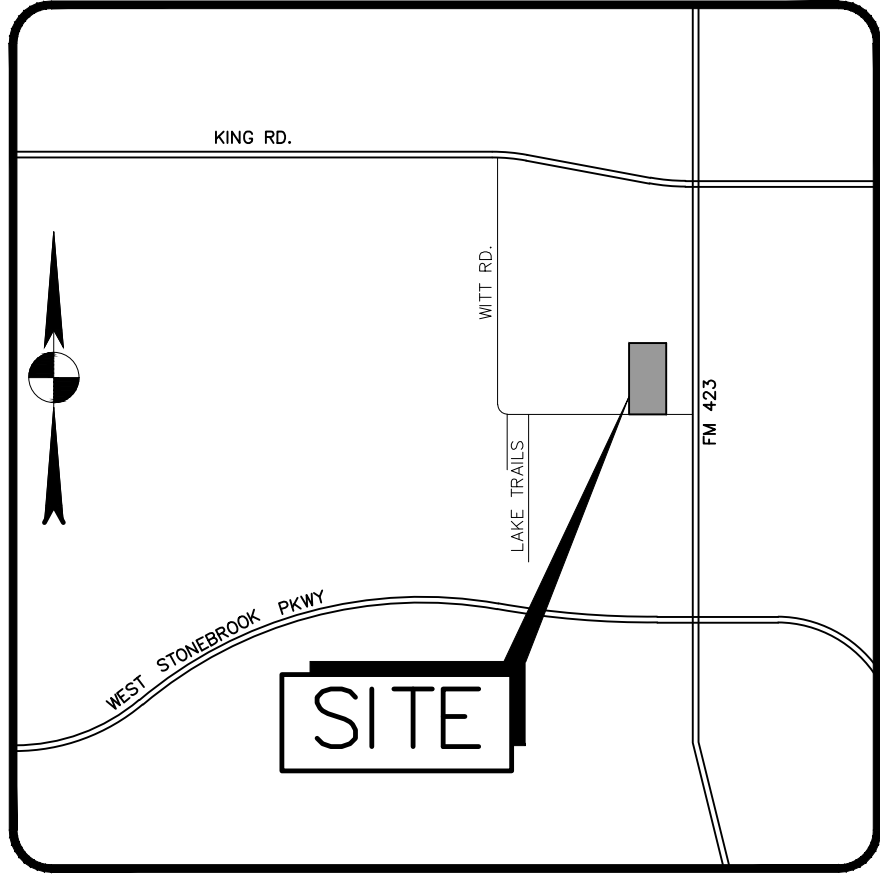
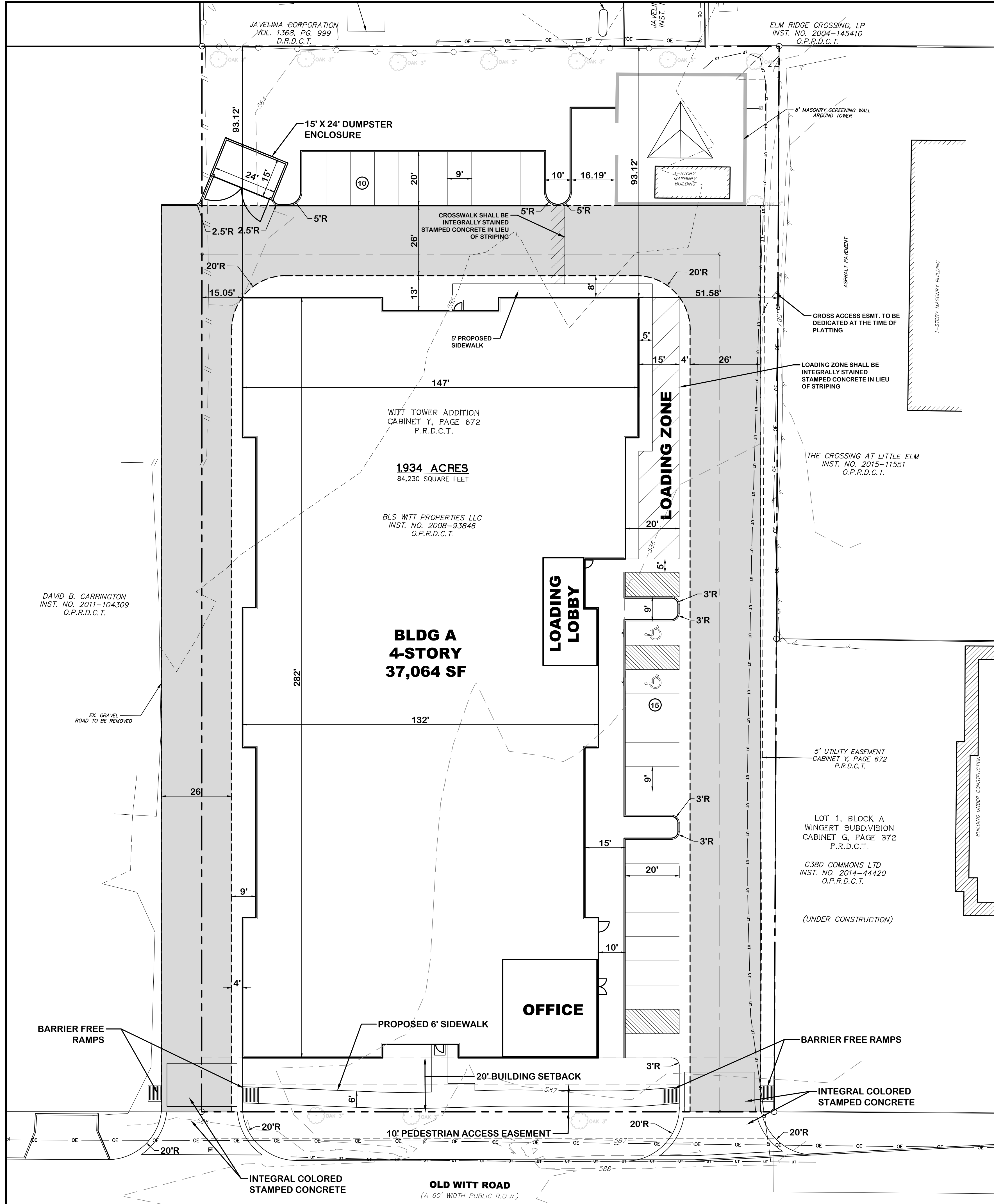
Legend

- Roads
- Public Storage Witt
- Town Limit
- ETJ

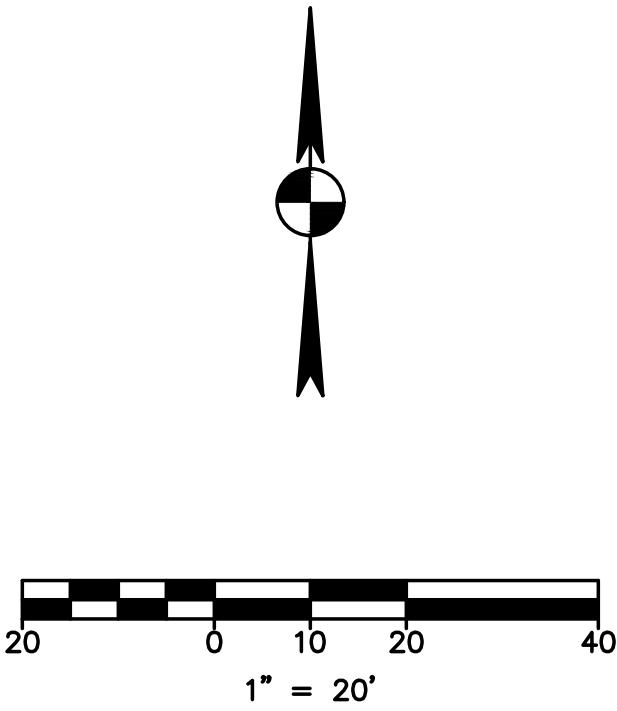


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LOCATION MAP
N.T.S.



LEGEND

FIRELANE

SITE DATA SUMMARY TABLE

CURRENT ZONING	LIGHT INDUSTRIAL
PROPOSED ZONING	LIGHT INDUSTRIAL
LAND USE	MINI-WAREHOUSE
LOT AREA	1.93 A (84,230 SF)
BUILDING FOOTPRINT AREA	37,064 SF
TOTAL BUILDING AREA	148,256 SF
MAX. BUILDING HEIGHT (# OF STORIES)	4
MAX. BUILDING HEIGHT (FEET)	60'
LOT COVERAGE	0.44%
FLOOR AREA RATIO	1.76:1
PARKING RATIO	1 PER 6,000 SF (REFER TO LOI)
REQUIRED PARKING	25
PROVIDED PARKING	25
ACCESSIBLE PARKING REQUIRED	2
ACCESSIBLE PARKING PROVIDED	2

NOTES:

- ALL SIGNAGE IS APPROVED VIA A SEPARATE PERMIT THROUGH THE BUILDING SAFETY DIVISION
- ALL MECHANICAL EQUIPMENT, DUMPSTERS, ROOFTOP UNITS, ETC SHALL BE SCREENED IN COMPLIANCE WITH THE ZONING ORDINANCE.
- ALL LIGHTING SHALL COMPLY WITH THE ZONING ORDINANCE
- ANY ALTERATION TO THE SITE PLAN, INCLUDING BUILDING ELEVATION AND LANDSCAPE SUBSTITUTIONS, REQUIRE TOWN APPROVAL THROUGH A REVISED PLAN, STAMPED BY STAFF.
- REFER TO ARCHITECTURAL PLANS FOR EXACT BUILDING DIMENSIONS.
- ALL OVERHEAD POWER LINES (NOT ALONG WITT ROAD) TO BE BURIED AS A CONDITION OF THE SUP UPON DEVELOPMENT OF THIS SITE.
- ANY WOODEN FENCING TO BE RELOCATED MUST BE REPLACED WITH FENCING PER TOWN OF LITTLE ELM ORDINANCE.

OWNER
BLS WITT PROPERTIES LLC
1446 OVERLOOK DR
FRISCO, TEXAS 75033
PH: (972) 668-6100

DEVELOPER:
PUBLIC STORAGE
2200 K AVE.
SUITE 200
PLANO, TEXAS 75074
PH: 888-612-9889
CONTACT: JARROD YATES

CIVIL ENGINEER:
STANTEC CONSULTING SERVICES, INC.
5310 HARVEST HILL ROAD
SUITE 100
DALLAS, TEXAS 75230
PH: (972) 991-0011
FAX: (972) 991-0278
CONTACT: GRAYSON K. HUGHES, P.E.

PUBLIC STORAGE - WITT
CITY OF LITTLE ELM, TEXAS

P.O. BOX 25050
GLENDALE, CA 91221

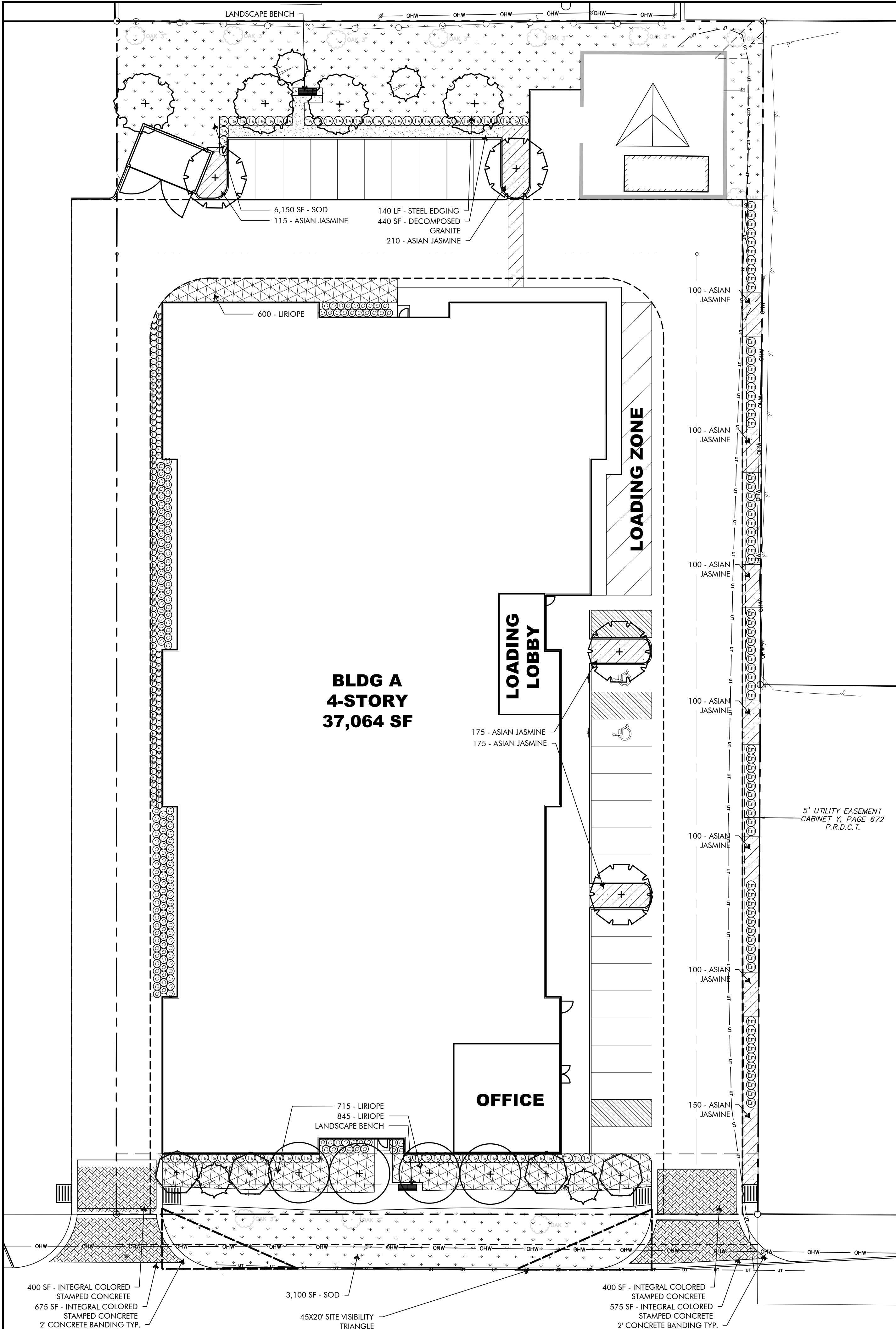
DRAWN BY: WCJ
DESIGNED BY: GKH
QA / QC: GKH
PROJECT NO.: 222210356

SHEET
SP.1

Stantec
5310 Harvest Hill Road, Suite 100
Dallas, Texas 75230
Tel. (972) 991-0011 Fax (972) 991-0278
TBPE # F-6324 TBPLS # F-10194229
Copyright © 2016

PRELIMINARY
FOR REVIEW ONLY
Stantec
CONSULTING SERVICES, INC.
5310 HARVEST HILL ROAD
SUITE 100
DALLAS, TEXAS 75230
PH: (972) 991-0011
FAX: (972) 991-0278
CONTACT: GRAYSON K. HUGHES, P.E.

SUP SITE PLAN



Little Elm, TX Code of Ordinances
Chapter 106 - Article II. Landscaping Regulations

Non-Residential Requirements

Landscape Requirements

A minimum of 10% of the gross vehicular use area shall be devoted to living landscape which includes grass, groundcover, plants, shrubs and trees. Gross Vehicular Area: 25,039 s.f.

REQUIRED	PROVIDED
2,504 s.f.	2,877 s.f.
REQUIRED	PROVIDED
7 Lg. canopy trees	4 Lg. canopy trees

There shall be a minimum of one large tree planted for each 400 s.f. or fraction thereof of required interior landscape.

All vehicular use areas shall be screened from all abutting properties and the public right-of-way with a wall, fence, evergreen hedge, berm or other durable landscape barrier. Plants and shrubs used in living barriers shall be at least 2'4" at time of planting, and will attain a minimum height of 3' within 18 months and form a continuous hedge.

REQUIRED	PROVIDED
yes	yes
REQUIRED	PROVIDED
yes	yes

A minimum 20' landscape buffer adjacent to the right-of-way is required.

Landscape buffers adjacent to the public right-of-way shall contain at least one large canopy tree each thirty (30) linear feet of street frontage, inclusive of driveways. Trees may be grouped or clustered to facilitate site design.

REQUIRED	PROVIDED
yes	yes

A perimeter landscape buffer of at least 10' in width shall be maintained between adjacent properties. This landscaping can be reduced to 5' when abutting property of the same zoning.

REQUIRED	PROVIDED
yes	yes

Perimeter landscape buffers not adjacent to the public right-of-way shall contain at least one large canopy tree for each fifty (50) linear feet when adjacent to another commercial use, and at least one large canopy tree each thirty (30) linear feet when adjacent to residential use or zoning.

REQUIRED	PROVIDED
yes	no

For every five (5) large canopy trees required along the street frontage or perimeter, one ornamental tree shall be provided.

REQUIRED	PROVIDED
yes	yes

Landscape Points

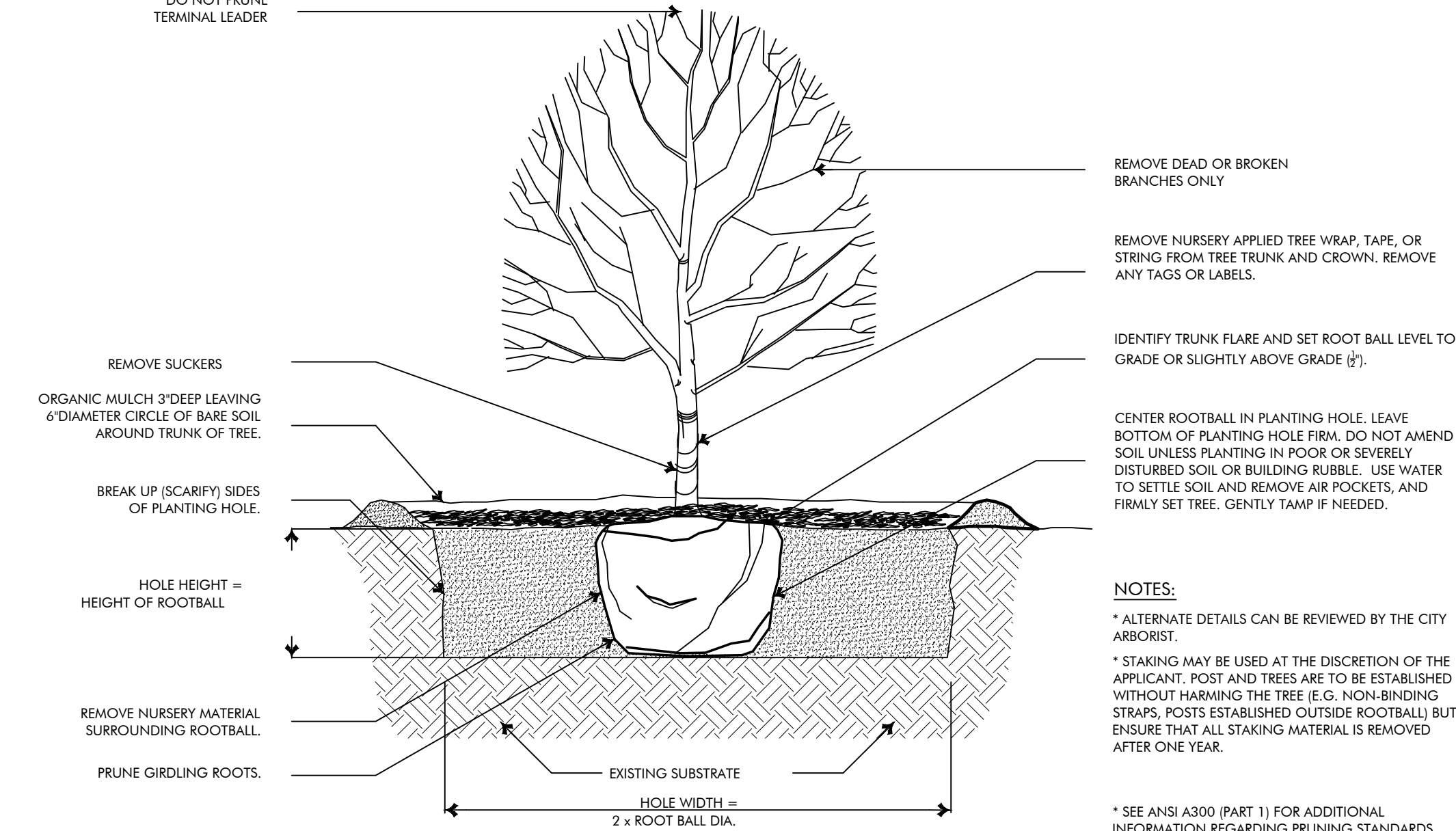
Site size : 1.93 acres
4.3 acres = 20 points

REQUIRED	PROVIDED
20	20

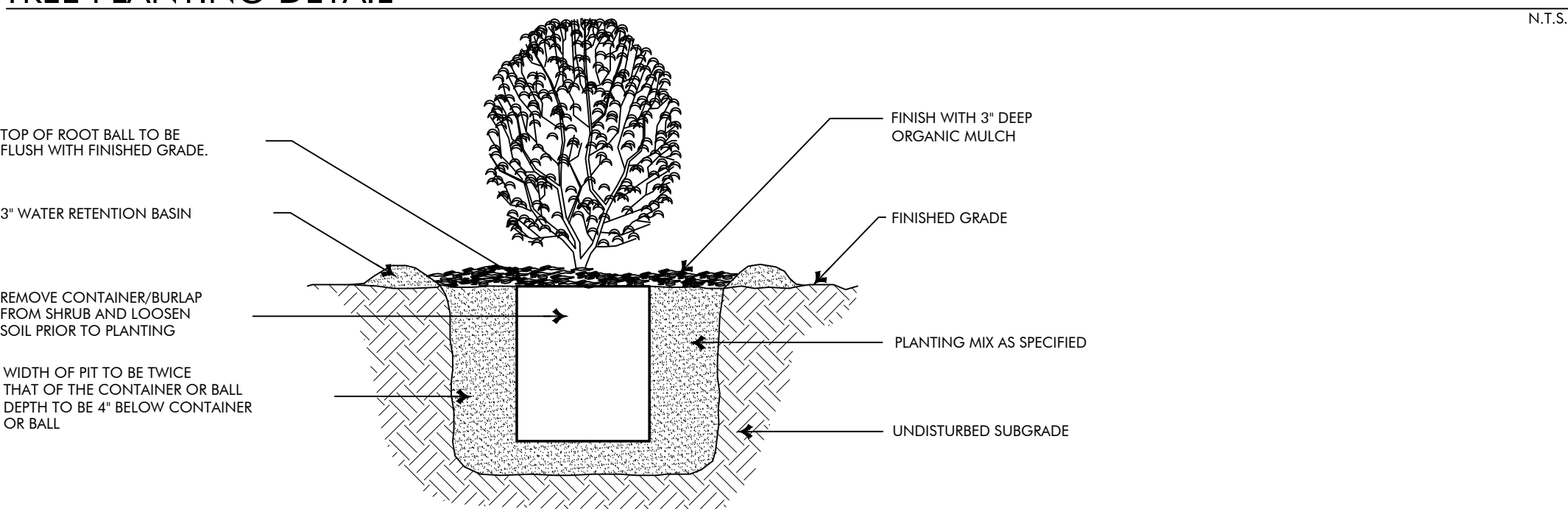
Landscape Elements Provided:

Use of shaded and decorative outdoor seating areas (benches, outdoor dining, etc.); 5 points
Enhanced Site Canopy (Planting perimeter trees one per 30 feet and locating a parking island very 10 spaces); 5 points
Enhanced evergreen screen added in lieu of trees on east perimeter due to utility easement.
Foundation plantings along 75% of the building's primary facade; 5 points
Enhanced streetscape elements (i.e. decorative lampposts, benches, receptacles, decorative bollards, etc.); 5 points

DO NOT PRUNE
TERMINAL LEADER

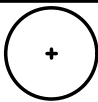
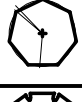
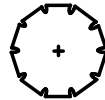
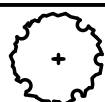




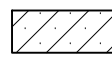
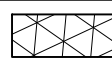


TREE PLANTING DETAIL



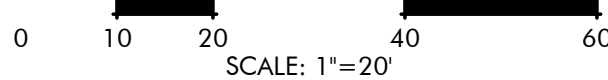
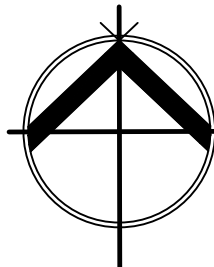
SHRUB PIT PLANTING DETAIL

N.T.S.

TREES				
QUANTITY	SYMBOL	SCIENTIFIC NAME	COMMON NAME	SIZE AND CONDITION
4		Quercus virginiana	Live Oak	3" caliper, 8' Ht./ 8' spread
4		Magnolia grandiflora "D.D. Blanchard"	D.D. Blanchard Magnolia	45 gal., 8' Ht./ 3' spread, container grown straight trunk
4		Ulmus crassifolia	Cedar Elm	3" caliper, 8' Ht./ 5' spread, straight trunk
4		Quercus shumardii	Shumard Red Oak	4" caliper, 14' Ht./ 5' spread
ORNAMENTAL TREES				
4		Vitex agnus-castus	Chaste Tree	1 1/2" Cal. min. 8' Ht./5' spread, multi-trunk, 5 trunk min.
SHRUBS				
QUANTITY	SYMBOL	SCIENTIFIC NAME	COMMON NAME	SIZE AND CONDITION
71		Leucophyllum frutescens 'Compacta'	Sage, Texas	5 gallon, 24" Ht./20" spread
70		Chamaecyparis lawsoniana 'Blue Surprise'	Blue Surprise Port Orford Cedar	5 gallon, 36" Ht./20" spread
160		Rhaphiolepis indica 'Clara'	Indian Hawthorn, White	3 gallon, 20" Ht./20" spread
GROUNDCOVER				
1,425		Trachelospermum asiaticum	Asian Jasmine	4" pots at 12" o.c.
2,160		Liriope muscari 'Aztec'	Aztec grass	4" pots at 12" o.c.
TURF GRASS				
QUANTITY	CALLOUT	SCIENTIFIC NAME	COMMON NAME	SIZE AND CONDITION
9,250	S.F. SOD	Cynodon dactylon	Common Bermuda	SOD - refer to specifications
MISCELLANEOUS				
QUANTITY	CALLOUT	DESCRIPTION		
20,000		SF 2" bed preparation as per specifications		
10,000		SF 2"-3" hardwood mulch as per specifications		
NOTES				
1. Quantities shown are for contractor's convenience only. Contractor is responsible for verification of all quantities.				
2. Contractor to provide separate line item for a one[1] year maintenance package.				
3. All shrub beds shall be mulched and edged.				
4. Integral color of concrete to be Davis Colors 'Adobe', and stamped pattern to be an Octagon & Tile interlocking pattern				

Standard Notations Regarding Maintenance and Irrigation

The owner, tenant, and their agent, if any, shall be jointly and severally responsible for the maintenance of all landscaping. All required landscaping shall be maintained in a neat and orderly manner at all times. This shall include mowing, edging, pruning, fertilizing, watering, weeding, and such activities common to the maintenance of landscaping. Landscape areas shall be kept free of trash, litter, weeds and other such material or plants not a part of the landscaping. No substitutions for plant materials is allowed, without written and other such material approval by the director on a revised landscape plan. The right-of-way adjacent to required landscape areas shall be maintained by the adjacent property owner in the same manner as the required landscape area. All driveways will maintain visibility as approved by the Director. All plantings intended for erosion control will be maintained. The town may require revegetation to prevent erosion or slippage. All plant material shall be maintained in a healthy and growing condition as is appropriate for the season of the year. Plant materials which die shall be replaced with plant material of similar variety and size, within thirty (30) days or a date approved by the Director, based on current seasons and weather conditions (i.e., drought or freeze). When power lines are present, trees shall not be planted underneath and should be oriented in a manner to avoid conflict. Substitution of plant material is not allowed without prior written authorization from the Director. All required landscape areas shall be provided with an automatic underground irrigation system with rain and freeze sensors and evapotranspiration (ET) weather based controllers and said irrigation system shall be designed by a qualified professional and installed by a licensed irrigator. Required landscaped open areas and disturbed soil areas shall be completely covered with living plant material, per the Landscape Ordinance. All streetscape furniture (benches, bollards, lampposts, trash receptacles, patio furniture, bike racks, etc) shall be a chip and flake resistant material, decorative, and generally black "storm cloud" in color.



This document is released for bid review under the authority of Robert A. Pilgrim, RLA, #2044 on August, 15 2016. It is not to be used for construction purposes.

LANDSCAPE PLAN,
NOTES AND LEGEND

PUBLIC STORAGE - WITT
CITY OF LITTLE ELM, TEXAS

P.O. BOX 25050
GLENDALE, CA 91221

Public Storage

DRAWN BY: WCJ
DESIGNED BY: GKH
QA / QC: GKH
PROJECT NO.: 2222 0356

SHEET

L1



NORTH ELEVATION



SOUTH ELEVATION



EAST ELEVATION



WEST ELEVATION

MATERIALS LEGEND

1. BURNT PUMPKIN BRICK (PER PREVIOUS PS LITTLE ELM MATERIAL SELECTION)
2. GLACIER WHITE BRICK
3. DRIFTWOOD BRICK
4. "CASA BLANCA" STUCCO
5. "SAND" STUCCO
6. DARK BRONZE METAL CAP
7. DARK BRONZE STOREFRONT
8. SPANDREL GLAZING
9. "CASA BLANCA" STUCCO WITH HORIZONTAL REVEALS

PUBLIC STORAGE - LITTLE ELM

little elm, texas
maa.2016047

08.08.2016



PUBLIC STORAGE - LITTLE ELM

little elm, texas
maa.2016047

08.15.2016

Request for Regulations

Here are several requirements in the current SUP zoning on which we would like to ask for variances.

- Parking – Requesting to reduce parking requirement to 1 space per 6,000 square feet of total floor area as shown on plans.
- Building articulation design standards – Minimize required vertical and horizontal articulation since we are a 4 story structure.
- Auxiliary design standards – Request to comply with 3 out of 5 required auxiliary design standards.
- Canopy Trees – Requesting to allow evergreen shrubs (3" at planting) in place of 1 canopy tree per 30 feet along the eastern property line.
- Overhead power lines – Requesting to allowing that all overhead power lines be buried except along Old Witt Road.
- Fencing – Any existing wooden fences which are removed by this development must be replaced with a material that complies with the Town Ordinance.
- Landscaping – Requesting to allow less interior landscaping as provided on the concept landscape plan submitted with this SUP.

**Finance Department**

Karla Stovall, Chief Financial Officer

Phone: 214-975-0415

kstovall@littleelm.org

TOWN COUNCIL REGULAR AGENDA

Date September 6, 2016

PROJECT

Conduct Public Hearing to receive public comments and take necessary action on the Proposed Budget for the Town of Little Elm for Fiscal Year 2017. All interested citizens are welcome to attend the hearing and participate in same.

BACKGROUND

The purpose of this agenda item is to comply with Local Government Code and the Town Charter requirements for budget adoption. The Proposed Budget has been placed on file with the Town Secretary in addition to being placed on the Town's website for public inspection.

The proposed budget was discussed at Council Workshop dated August 9th and filed with the Town Secretary 30 days before adoption dated scheduled for September 13, 2016. A Notice of Budget Hearing was published in the Denton Record Chronicle.

The Town Council cannot take any action regarding the budget at this public hearing. The sole purpose of the public hearing is to provide the public an opportunity to address council regarding the proposed budget for Fiscal Year 2017.

RECOMMENDED ACTION

"Vote to postpone the final budget vote until the September 13, 2016 Council Meeting at 6:00 pm at Town Hall at 100 W. Eldorado Parkway, Little Elm, Texas 75068"

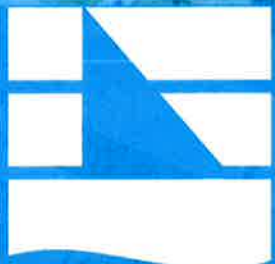
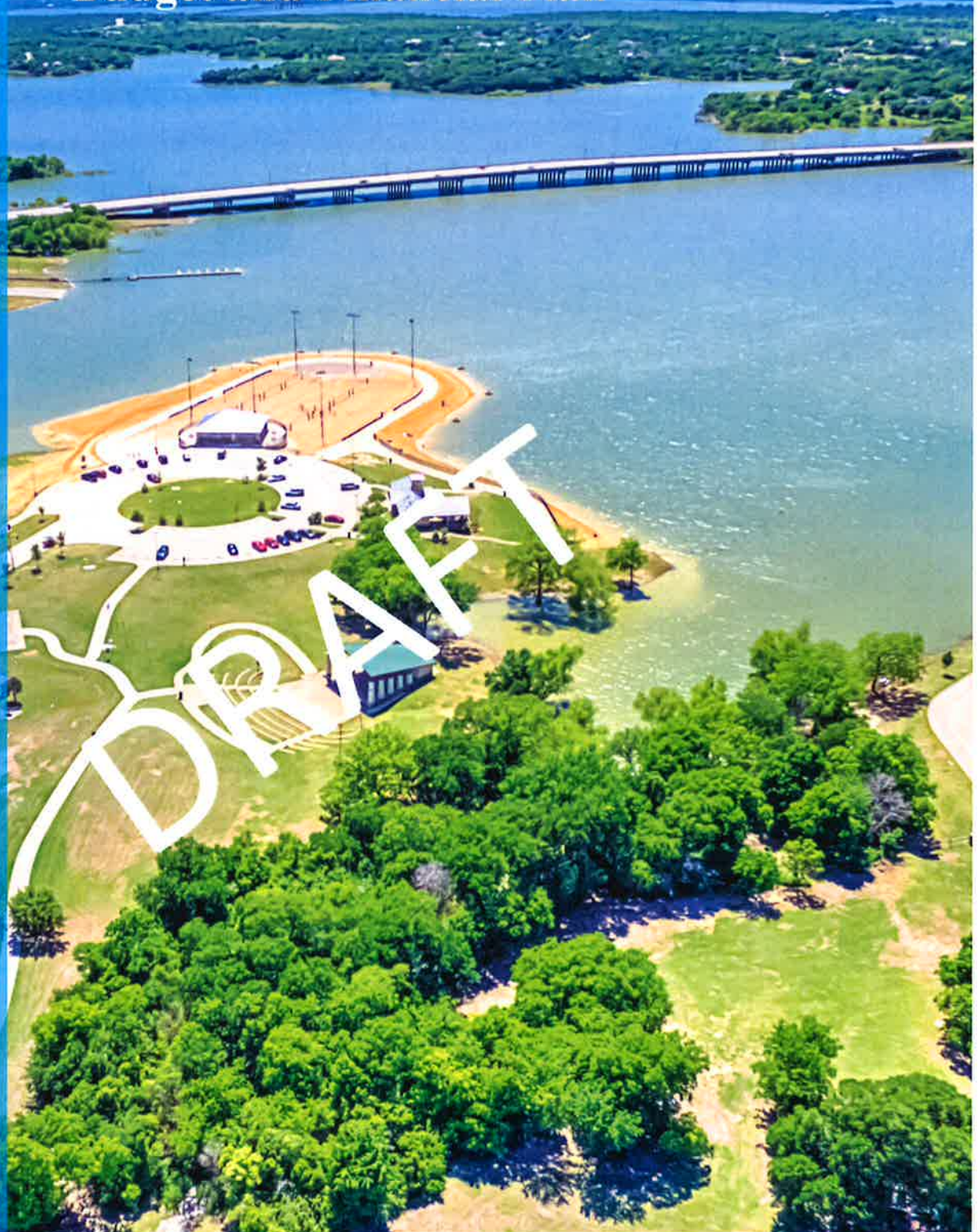
ATTACHMENTS

- Budget Executive Summary
- Town - Wide Fund Summary
- Notice of Budget Hearing

Town of Little Elm, TX

2017-2021

Budget and Financial Plan



LITTLE ELM

“The Town with a Lake Attitude”



TOWN OF LITTLE ELM
TOWN WIDE FUND SUMMARY
FY2016-2017

This budget will raise more revenue from property taxes than last year's budget by an amount of \$2,496,260, which is a 16 percent increase from last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is \$743,587.

TOWN COUNCIL RECORD VOTE

The members of the governing body voted on the adoption of the budget as follows:

FOR:

AGAINST:

PRESENT AND NOT VOTING:

NOT PRESENT DURING VOTING:

ABSENT:

TAX RATE	ADOPTED FY2015-2016	PROPOSED FY2016-2017
Property Tax Rate	\$0.661687	\$0.661687
Effective Rate	\$0.604459	\$0.601849
Effective M&O Rate	\$0.433373	\$0.433931
Rollback Tax Rate	\$0.661687	\$0.634601
Debt Rate	\$0.193257	\$0.165956

The total amount of municipal debt obligation secured by property taxes for the Town of Little Elm is \$82,760,000

Introduction

A municipal budget is more than a book of numbers. The budget is also a tool for prioritization, communication, and allocation of resources that go toward the implementation of programs, projects and services that fit the needs of a community's residents and businesses. It is the duty of those who are fortunate enough to serve the citizens of Little Elm to operate in a transparent, efficient, and ethical manner and the budget is also a tool that allows us to do just that.

Budget Philosophy

Little Elm is one of the fastest growing areas in the nation and with that comes a tremendous number of challenges, but also outstanding opportunity. With this growth, there are new sources and higher amounts of revenue to be allocated in the budget, but there is also a mounting list of needs for programs and services to accommodate the growth and meet the expectations of the community.

Town staff develops the operating and capital budgets so that strategic goals and long-term objectives defined in the Town Council adopted Strategic Plan are achieved. This strategic plan, which was approved in 2013 and updated in 2015, sets the vision and charts the course for the community and it is staff's job to move in that direction through budgeting and project implementation.

The internal value system at the Town of Little Elm stems from the philosophy of Servant Leadership and the belief that as public employees, all actions stem from the obligation to put the needs of the citizen first and dedicate our decision making and actions to the ideal that Town employees exist to serve the public. This is further emphasized in the organizational values of Efficiency, Innovation, Customer Service, and Integrity. These values are the foundation of the organization and are the bedrock on which the departmental budgets are built.

The overall budget philosophy of the Town of Little Elm is to provide the highest level of service at the greatest value. This means that the Town must operate in the most effective and efficient method possible to accomplish this goal. The internal budgeting and review process is very stringent with department heads dissecting each other's budgets in a peer review process that seeks to ensure that every line item is carefully planned and all projects are justified.

As part of the Town's budgeting philosophy and commitment to respect the Taxpayer's money, priorities in the budget process were to keep the property taxes at the same rate, realize the long term impacts of financial decisions, and keep fund balances and reserves at a healthy level.

Multi-Year Approach

For the past few years, Town staff has been working towards a multi-year approach to budgeting. Our goal has been to successfully present a five-year balanced budget (technically a one-year budget and a 4 year financial plan) to the Council for consideration. The purpose of the approach



is to ensure that we are providing sustainable services in Little Elm's high growth environment. This is particularly important as we begin expanding services on highway 380 to account for the new residents moving to the area.

The time has come to begin adding and increasing services in the northern part of the community and the five year budget looks at the cost of those services and the revenues that will be coming due to the growth. A multi-year plan is very helpful since the expenses for these services are in the very near future, yet the revenues will be delayed as the area grows and new taxable values are added to the tax rolls.

Two budget cycles ago, staff implemented the beginnings of a five year budget and last year, basic operational expenses were projected out through a five year period. This "step-by-step-approach" has allowed for significant planning regarding long term growth, revenue and staffing projections, and project planning. This year's budget contains not only a balanced FY 2017, but balanced budgets for fiscal years 2018, 2019, 2020, and 2021 as well.

This does not mean that we will not need to re-visit the budget each year. All of the growth and constant change in the area conditions can certainly change our assumptions and forecasts therefore the annual budget process will occur every year. However, this multi-year approach lets us see how the spending decisions of today will impact the budget in the future.

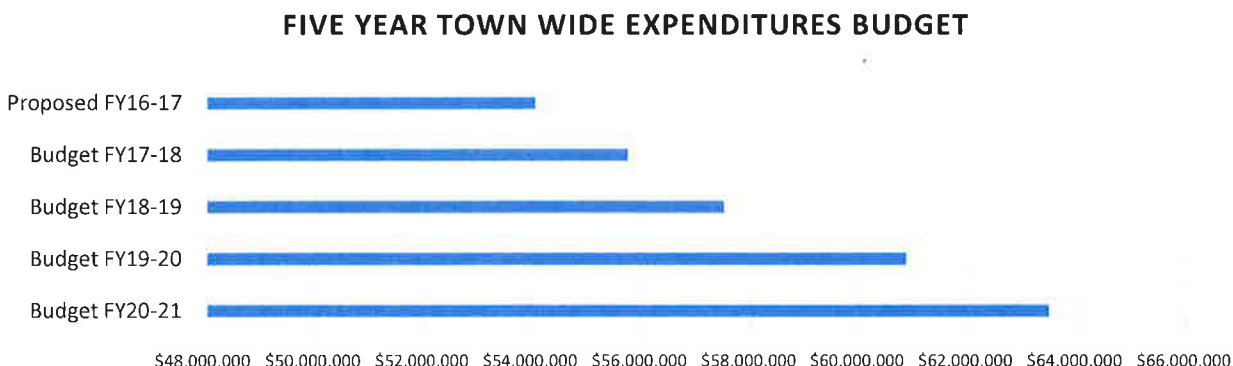
Town Wide Budget Overview

The total Fiscal Year 2017 budget, including all funds and transfers, is \$64,257,748 compared to \$60,119,466 originally budgeted and \$62,767,527 amended in 2016. The budget of all operating funds will increase by \$4,138,282, or 7% over fiscal year 2016. Fiscal Year 2017 total expenditures are greater than the total revenues within the Town Wide budget by \$9,002,063. The Capital Project fund and Street Impact fund have budgeted expenditures of \$10,204,315 of which \$9,458,315 is their available beginning fund balance being spent on projects. The following matrix reflects changes in sources and uses of all funds by category (town wide):

Uses of Funds	2016-2017	Uses of Funds	2015-2016	% of Total	Change Year Over Year	% Change
Operations	\$38,697,705	Operations	\$34,846,592	58.0%	\$3,851,113	11%
Debt	9,007,353	Debt	7,078,339	11.8%	1,929,014	27%
Capital Equipment	2,011,620	Capital Equipment	1,515,006	2.5%	496,614	33%
Capital projects	10,204,315	Capital projects	12,476,233	20.7%	(2,271,918)	-18%
Transfers out	4,336,755	Transfers out	4,203,296	7.0%	133,459	3%
Total Uses	\$64,257,748	Total Uses	\$60,119,466	100.0%	\$4,138,282	7%



During the five year budget period, the town wide budget (excluding CIP and Impact funds) is expected to grow as represented by the chart below.



Revenue

The Town of Little Elm's primary source of revenue for operations is property tax. This year, \$18,047,794 has been budgeted for all property tax collections including delinquents, penalties and for payments to the tax increment financing zones and municipal management district. This year's levy (property tax revenue) at \$.661687 per \$100 of taxable value and is a \$2,152,792 or 14% increase over last year. Sales tax revenue is also expected to grow. The total amount of sales tax (\$.015) budgeted for FY16-17 is \$4,687,650 which is a \$397,650 or 9.3% increase over last year. The sales tax revenue reported includes revenue receipts and contractual payments attributable to 380 economic development and performance agreements where the sales tax has been previously pledged.

Other major sources of revenue come from rates, fees and charges. These sources are for services rendered and user fees charged such as ambulance, alarm monitoring, municipal court, recreational use fees and utility related services. This category is estimated for FY 2017 at \$18,575,284 and represents about 34% of the Town's funding of operations. The increase in rates, fees and charges over 2016 is \$563,374 or about 4%. The increase is attributable to growth and adopted increase in the Town's utility rates in addition to new revenue from the Parks and Recreations operations and growth in the Solid Waste services. For the fiscal year 2017, a total of \$13,617,010 has been budgeted for utility sales and other charges for services. Of this amount, \$7,280,000 comes from water sales, \$5,330,000 comes from sewer, and \$1,007,010 comes from other charges, fees, wholesale contracts and interest earnings.

Transfers between operating and capital funds are part of the total sources of funds and are \$4.3 million. This number reflects one time transfers for infrastructure improvements and reimbursement of in-kind services across funds. The licenses and permits revenue of \$3,073,290 includes projected revenues of \$2,600,000 in building permits. The remaining revenue is attributable other types of permitting and registrations required by development services. The

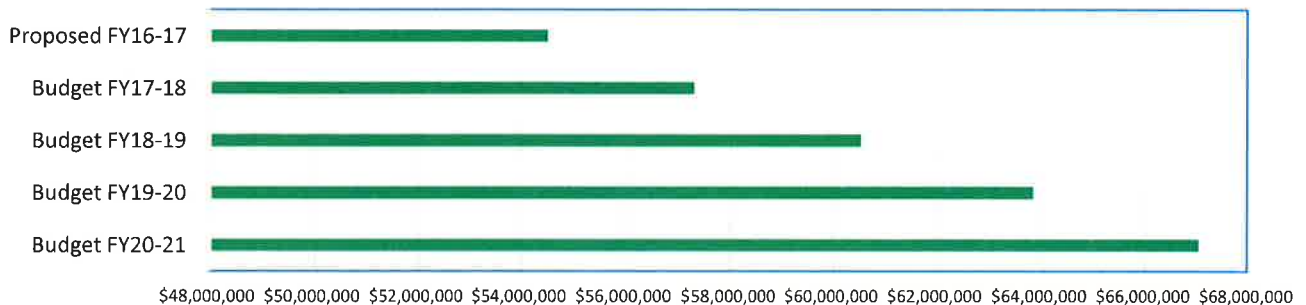


License and Permit revenue will increase about 6% or \$166,120 in FY17. Total Revenue from all sources is broken down in the following chart:

Sources of Funds	2016-2017	Sources of Funds	2015-2016	% of Total	Change Year Over Year	% Change
Property taxes	\$18,047,794	Property taxes	\$15,895,002	29.7%	\$2,152,792	14%
Other taxes	6,988,613	Other taxes	6,643,645	12.41%	344,968	5%
Permits and license	3,073,290	Permits and license	2,907,170	5.43%	166,120	6%
Rates, Fees and charges	18,575,284	Rates, Fees and Charges	18,011,910	33.65%	563,374	3%
Other governments	2,369,357	Intergovernmental	4,444,201	8.30%	(2,074,844)	-47%
Miscellaneous	1,864,592	Miscellaneous	1,422,160	2.66%	442,432	31%
Transfers in	4,336,755	Transfers in	4,203,296	7.85%	133,459	3%
Total Sources	\$55,255,685	Total Sources	\$53,527,384	100.00%	\$1,728,301	3%

The five year revenue total revenue projections (less the CIP transfers and Impact Funds) for the Town of Little Elm are as follows:

FIVE YEAR TOWN WIDE REVENUE BUDGET

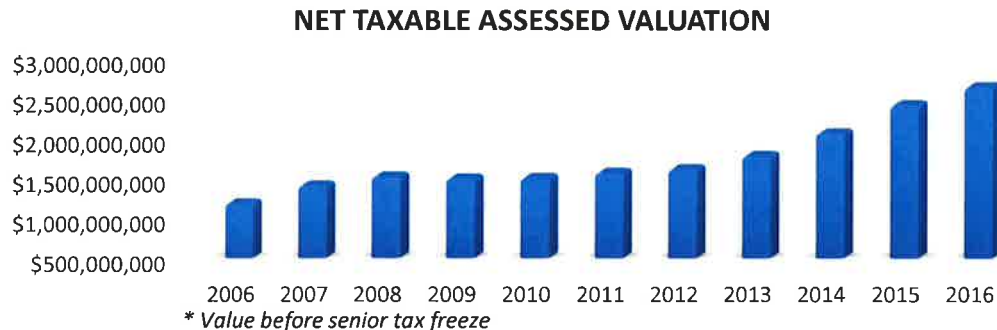


Property Values and Tax

According to the Denton County Central Appraisal District (DCAD), the preliminary taxable value (as of 07/24/2016) before the senior tax ceiling is estimated with appraisal review board under review totals included is \$2.6 billion. This value is 9% or \$226 million more than the 2015 certified taxable value. Of this increase, \$112 million is attributable to new taxable values added to the tax roll which includes improvements and personal property. The increase is also attributable to areas to the north that were previously classified by the appraisal district as exempt agriculture land. The exempt status was changed and the properties were placed on the tax roll. This becomes very important because when calculating the rollback rate and the effective tax rate, new taxable

values are deducted from the calculation. Properties that change their exempt status are not considered new taxable value and in essence lower the effective and rollback tax rates.

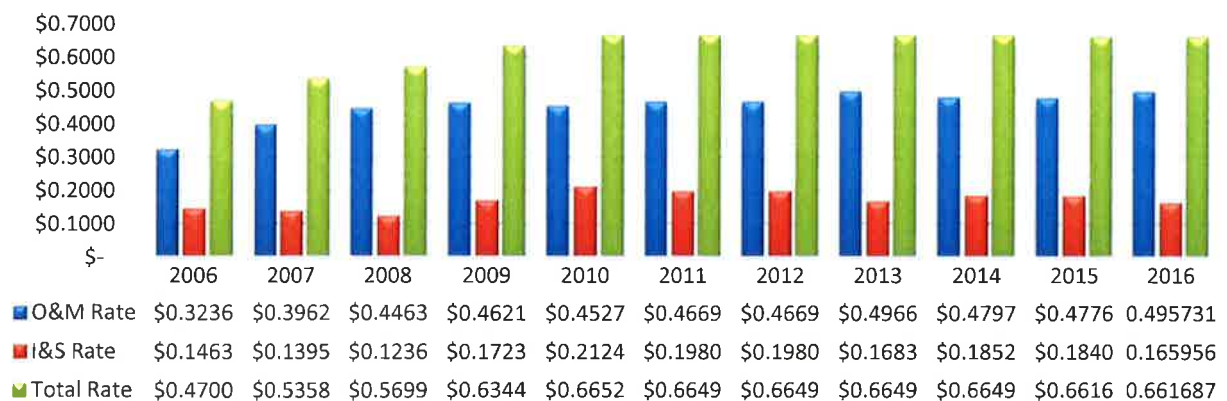
The following graph reflects historical growth in taxable property values including the current year (2016) certified value:



Proposed Tax Rate

During the early planning stages of the budget, it has been the goal to keep the tax rate the same in order to adequately fund the needs of a rapidly growing community and build capacity to implement future capital improvement needs. Last year, in FY16 the Town reduced its tax rate to \$.661687.

Maintaining the current tax rate prepares the Town for its future obligations and adheres to the Town's long and short term operational plan. The anticipated increase in the tax levy for both operations and debt service commitments is expected to be about \$2,593,081, an increase of about 16% in tax revenue over last year's amended levy. Of the total tax rate, \$0.495731 is dedicated to general operations and maintenance (O&M) in the General Fund, and \$0.165956 is dedicated to general obligation debt service. The following graph is a historical picture of the Town's tax rate history for operations and debt service:

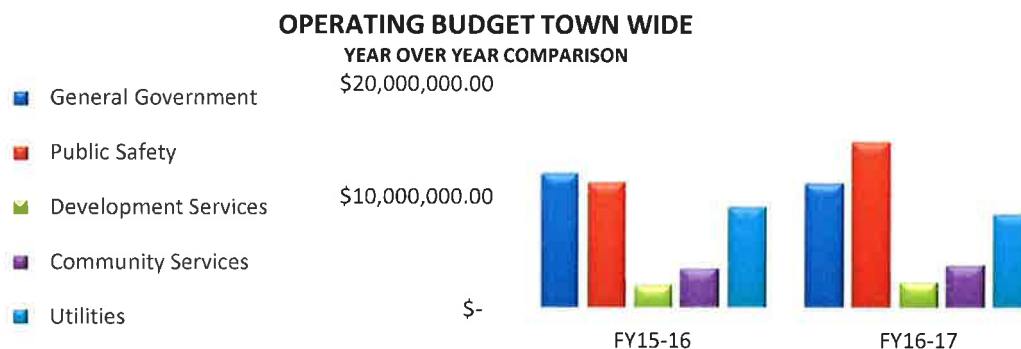


The average single family home value is currently \$229,614 compared to \$205,132 last year. At the proposed property tax rate of \$.661687, the Town tax paid on the average single family home will be \$1,519. For comparison purposes, a single family home valued at \$100,000 will pay \$661.69. The tax bill for senior citizens 65 years of age and older are frozen in the year that they are eligible for the senior citizen tax bill freeze. The following table is a history of the Town's Property tax levy and collections:

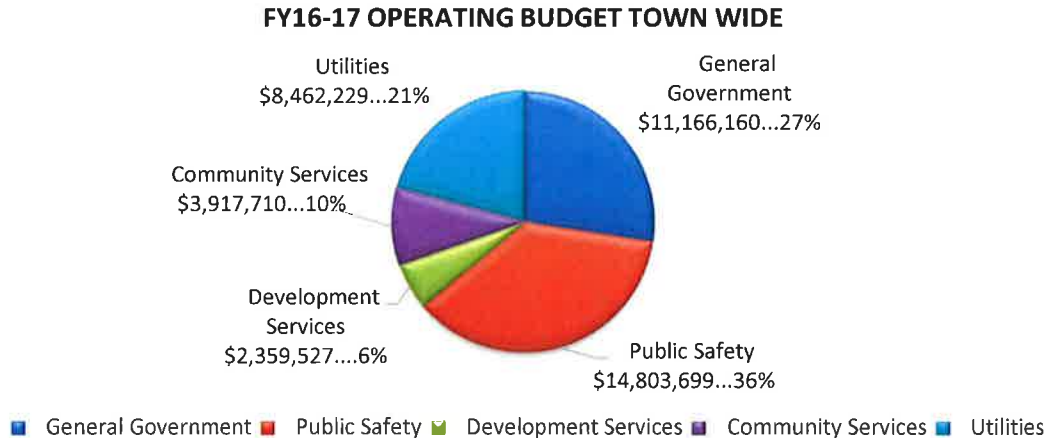
TAX LEVY AND COLLECTION HISTORY:						
Tax Year	For Fiscal Year	Net Taxable Assessed Valuation	Tax Rate	Adjusted Tax Levy	Collected	% Collected
2010	10-11	1,504,837,667	0.66523	9,913,611	10,246,572	99.45%
2011	11-12	1,571,713,483	0.66496	10,358,921	10,279,526	99.23%
2012	12-13	1,615,536,605	0.66497	10,742,850	10,666,899	99.29%
2013	13-14	1,782,118,392	0.66497	11,743,646	11,697,892	99.61%
2014	14-15	2,067,257,335	0.66497	13,640,759	13,563,240	99.43%
2015	15-16	2,421,160,195	0.661687	15,849,294	15,763,815	99.46%
2016	16-17	2,647,651,724	.661687	18,328,083	n/a	n/a

Operating Expenditures

The operating budget is a combination of all costs to do business except for capital improvement projects (CIP), impact funds, transfers and debt service payments. The total of the combined operating budgets for the 2017 budget is \$40,709,325 compared with \$38,094,096 originally budgeted in FY 2016. This is an increase of \$2,615,229, or 7%. Operating costs are broken down in the following chart for the Town's core operating funds comparing this year to last year:



The following charts reflect the percentage cost of operations by operational function of the Town:



The major increase in operational costs over last year's adopted budget are as follows:

- Compensation and Benefits Increase \$528,800
- Additional Personnel (Includes positions added mid FY16) \$1,586,457
- Cost of Water from North Texas \$243,765
- TMRS Increase (Includes new positions) \$349,760

One Time Expenses

The significant one-time expenses that have been placed in the budget for the proposed and future years are as follows:

Parks and Recreation

- Tiller Attachment, FY17 \$6,000
- Pronovost Tiller, FY19 \$13,000
- Toro Workman, FY17 \$22,000
- Beach Tech Sweep (CDC), FY17 \$22,000
- Softball Nets (CDC), FY17 \$20,000
- Rec Center Table and Chairs, FY17 \$4,000

Public Safety

- ASP Batons, FY17 \$6,863
- Body Camera Grant Match, FY17 \$7,943
- CID Body Cameras, FY17 \$3,580
- Citizens on Patrol Vehicle, FY17 \$30,000



• Detective Narcotic Vehicle, FY17	\$26,000
• SWAT Body Armor Update, FY18	\$23,500
• Taser Program, FY17	\$13,680
• Communication Equipment for Safety Boat, FY17	\$5,000
• Vehicles for New Officers (3), FY17	\$165,591
• Motorcycle for New Traffic Officer, FY18	\$41,000
• Vehicle for New Detective, FY19	\$47,980
• Vehicles for New Officers (2), FY19	\$116,000
• Vehicles for New Officers (2), FY21	\$120,000

Information Technology

• Library Virtual Desktop System, FY17	\$57,985
• Network Tester, FY17	\$10,195
• Toughbook Replacements, FY17	\$43,100

Financial Services

• Annexation Analysis, FY17	\$25,000
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Significant Capital Improvements – General Purpose

(Many of these projects cover many years, so they may not be limited to one fiscal year's budget)

- Recreation Center Expansion - \$5,800,000
- Fire Station 3 - \$5,700,000
- Lakefront Trail Project \$3,200,000
- FM 423 East Trail Project - \$425,000
- Hart's Branch Trail - \$2,500,000
- Brent Trail - \$441,000
- Dickson Road and Hill Lane - \$ 809,000 plus Utility \$934,000
- McCord Park Phase 1 - \$3,200,000
- McCord Park Phase 2 - undetermined

Fund Balance and Reserve

There are multiple areas of reserves built into the budget. By ordinance, the Town is required to maintain a 25% General Fund Balance. For FY17, this amount is approximately \$7.3 million. The total amount of reserve that exists in the FY17 is actually closer to 28.4%, but there is a planned draw down of fund balance over the five year budget in order to meet growing service demands as



well as maintain the 25% required reserve. Revenues to pay for services are typically delayed due to the timing of growth and the new growth showing up on the tax rolls. This means that while the expenses for new growth are immediate, the revenues follow a few years later. The need for the planned use of fund balance minimizes in future years when the revenue from growth in the northern part of the community begins to be realized.

The utility fund predicts a working capital reserve of \$4.8 million which is approximately 30% of the revenue received or 109 days of working capital. Over the next couple years of the five year plan the excess working capital fund balance has been allocated for the payment of capital outlay and one-time maintenance infrastructure costs. The Utility Fund has a single revenue source, therefore it is rate sensitive. Every effort is made to keep rate increases at a minimum and evenly spread throughout the five year planning horizon.

There is also a Council contingency amount of \$400,000 that has been placed in the budget to address projects or priorities if they are needed.

Vehicle Equipment Replacement Fund (VERF)

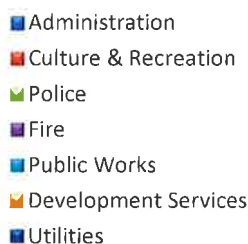
Three years ago, the Vehicle Equipment Replacement Fund (VERF) was established. Annual payments are made by user departments to the fund on all pieces of equipment and vehicles so that when the item reaches the end of its useful life, the money is there ready to purchase its replacement. The total transfer to this fund in the 2017 budget is \$1,051,428.

In order to maximize the life of Police vehicles to save maintenance costs and reduce replacement funding, staff will be working within the VERF to increase the number of Police units in the fleet. The goal will be for each officer to be assigned one vehicle rather than one vehicle assigned to multiple officers. This will require the addition of 12 vehicles and will occur over the next few budget cycles.

Employees

The total number of budgeted employees or FTE's (Full-time equivalents) is 254.7 for a salary cost of \$13 million (includes proposed new positions) in FY17. With benefits the total is approximately \$19.8 million. The following chart is a break-out by service area across the Town:

FY17 FTE's 254.7



We will be experiencing cost increases in personnel due to an increasing cost of insurance premiums, TMRS, new employees, and a one-step pay increase. The new employees include the following:

FY17 Positions

- Accountant, Finance
- Building Inspector, Development Services
- Patrol Officers (3), Police Department
- Community Integrity Specialist, Community Integrity
- Sign Flasher Technician, Street
- PT Fitness Desk Attendant (5), Recreation Center

FY18 Positions

- Human Resource Specialist, Administrative Services
- Traffic Officer, Police Department
- Firefighter Paramedic (9), Fire

FY19 Positions

- Detective, Police Department
- Patrol Officers (2), Police Department
- Small Engine Tech (PT to FT), Fleet
- Craft Technician (PT to FT), Facilities Maintenance
- Operator, Wastewater
- PT Buyer, Finance
- PT Library Assistant, Library

FY20 Positions

- Court Clerk, Municipal Court
- Records Clerk (PT to FT), Fleet
- Crew Leader, Street
- Equipment Operator, Parks
- Maintenance Worker (2), Parks

FY21 Positions

- Patrol Officers (2), Police Department
- Maintenance Worker, Parks



Insurance

Little Elm is facing the issue that many employers are facing which is increasing cost to provide insurance. A 10% increase in premium (\$228,500) has been budgeted, but staff is working to reduce this number before renewal.

TMRS

Texas Municipal Retirement System (“TMRS”), a statewide administered pension plan, is a “cash balance plan” in which members make regular contributions to individual accounts that are matched with employer contributions and supplemented with investment income. TMRS covers 849 cities, and each city can design a benefit plan to meet its needs and cost structure.

The Town provides pension benefits for all of its full-time employees through TMRS. The Town continues to contribute 100% of its annual required contribution (ARC) at an actuarially determined rate and is solid. Both the employees and the Town make contributions monthly. The Town’s TMRS plan is a 2 to 1 matching ratio with a 5 year vesting period. Service eligibility for retirement is age 60 with 5 years of service or any age with 20 years of service.

The Town has updated service credits and COLA all annual repeating. The Town’s 2016 contribution rate is 13.05% with the 2017 rate at 13.61% which is about a 4% increase. The budgetary impact of the TMRS contribution rate and the Town’s estimated wage and compensation budget for 2017 will increase by approximately \$349,760.

The following table reflects the Town’s historical contribution rates:

	2012	2013	2014	2015	2016	2017
Town Contribution Rate	9.90%	10.45%	10.84%	12.95%	13.05%	13.61%
Employee Contribution Rate	7%	7%	7%	7%	7%	7%

General Fund

The General Fund is the fund that houses the basic services of municipal government. These services include Police, Fire, Streets, Development Services, Parks and Recreation, Governmental Administration, and all internal services. The total amount of expenditures in this fund is \$26,144,479. Without transfers to the other funds, the amount is \$25,554,479.

General Fund revenues and budgeted transfers are estimated at \$26,794,198 for FY 2016-2017. This is an increase of 12% or \$2,897,941 over FY 2015-2016. The sales tax maximum rate is 8.25% with 1% contributed to the Town of Little Elm’s General Fund. The sales tax is projected



to generate revenue of approximately \$3 million or 6% more than last year's budget. This growth is a result of continued commercial development and population growth in the area.

Revenue from permitting activity continues to provide sustaining support to general purpose operations. Single Family Residential dwelling permitting activity has been estimated at 1,100 new construction permits in 2016. Building permit revenues annually are estimated at \$2.8 million and includes all permit fees for residential, commercial and multi-family. The Town is forecasting new construction permits for residential at 1,100 units in FY 2017. With residential and commercial permitting the anticipated revenue for building permits will be approximately \$2.6 million. The following chart is representative of the revenues supporting general operations.

FY16-17 GENERAL FUND REVENUE

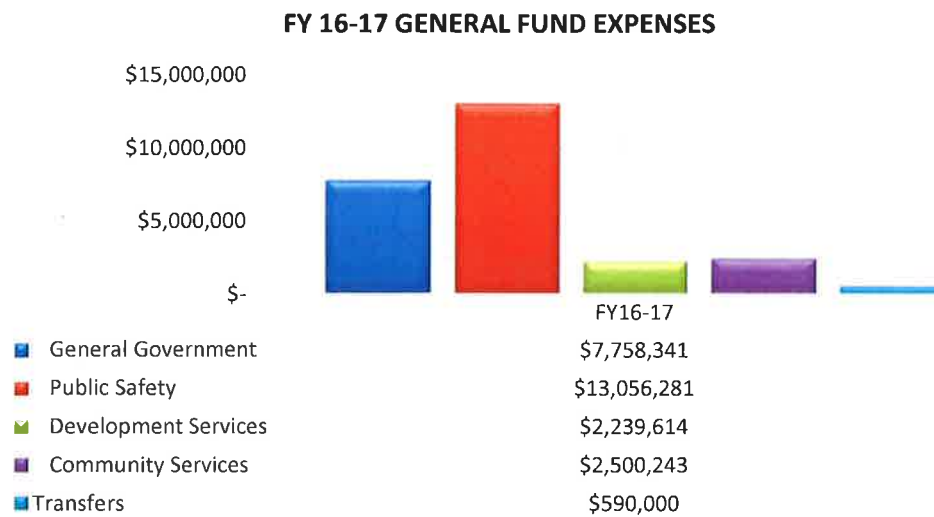


As discussed above, property tax represent about 50% of the total funding sources of the General Fund at \$13.5 million and is approximately \$2 million or 17% more than FY 2015-2016. The growth is from new construction values and appreciation in property values. The transfers into the General Fund represent 7% of total sources of funds and include a payment for General and Administrative services from the Utility Fund.

General Fund operating expenditures total \$25,554,479 before transfers out. With transfers, the total General Fund budget for FY 2016-2017 is \$26,144,479. This budget is a 10% increase or \$2,447,998 more than FY 2015-2016 budget. This budget without transfers is an 11% increase or \$2,619,998 more than FY 2015-2016. A comparison of the General Fund budgeted expenses for FY16-17 and FY15-16 is illustrated in the table below:

General Fund	FY 2015-2016	FY 2016-2017	Difference	Net Effect
Operations	\$22,934,481	\$25,554,479	\$2,619,998	Increase
Transfers	\$762,000	\$590,000	(\$172,000)	Decrease
Total	\$23,696,481	\$26,144,479	\$2,447,998	Increase

The following chart is representative of the expenditures of the General Fund:



Like most municipal organizations, Public Safety makes up the largest cost center of general purpose operations with a combined budget of \$13 million or 50% of the total General Fund Budget. These services include police, fire, and ambulance costs. By category, personnel costs represent about 65% or \$17 million of General Fund operation costs.

The total ending fund balance for the General Fund is projected to be \$7.3 million. This estimated and projected ending fund balance is approximately 28% of operating expenditures (excluding the Recreation Fund transfer which is not applicable in the calculation). The Town's fund balance legal reserve requirement by Town Ordinance is 25% and is equal to approximately \$6.6 million leaving a budgeted amount that will be rolled forward for use in future years while the tax base grows in the northern part of the community.

The Town of Little Elm utilizes a conservative strategy when projecting revenues and expenditures. Revenue and expenditure patterns are closely monitored so that adjustments can be made readily.

Utility Fund

The Water and Sewer Fund ("the utility system") is 100% self-supporting with rates and charges sufficient to cover operating, debt and various scheduled capital outlay purchases and capital infrastructure projects. The Town operates a full service utility with water production and distribution, sewer collection and treatment as well as meter billing and collection. The Water and Sewer Fund operates as a business enterprise and utilizes full accrual accounting. The Water and Sewer Fund segregates and distinguishes water operations and sewer operations and works toward making each operation self-supporting. The FY17 budget for Water and Sewer combined operations includes the 4% increase in water rates and sewer rates approved by Council as part of the four year rate increase adopted last year to support and maintain the system.

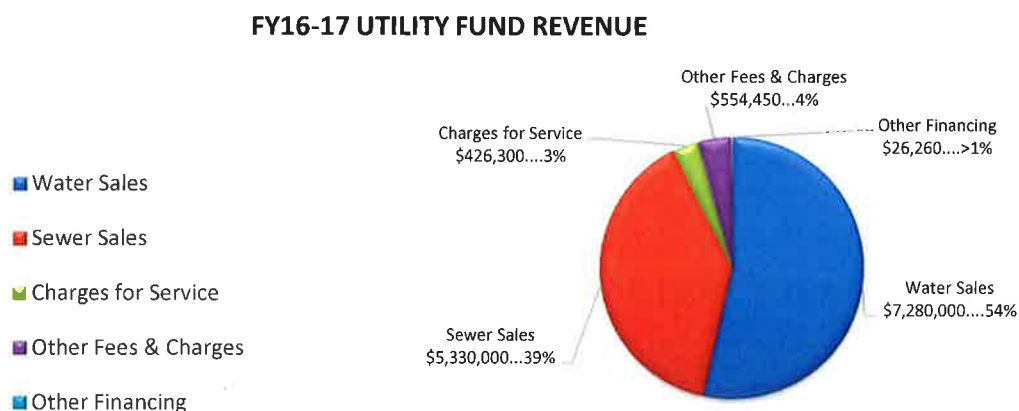


The Water and Sewer Fund is expected to begin fiscal year 17 with a \$4,845,734 million working capital balance. The Town's policy initiative to maintain working capital reserves at a minimum of 60 days calculated from the previous year's earnings. The expected ending working capital balance will be in excess of the required reserve at \$4,373,257. The increased working capital balance is attributable to the most recent Utility Bond sale. Within the sale the Council approved a reimbursement resolution of \$1,146,810.

A healthy fund balance is necessary to help fund the future capital projects and one-time maintenance infrastructure costs planned within the five year balanced budget. Fiscal year 17 expenses are greater than revenues as planned capital outlay is spent using working capital fund balance. By strategically drawing from fund balance this will ensure that the water and sewer infrastructure will meet the needs of the Town over time and keep rates from fluctuating. Rate increases have been kept at a minimum and have also been stretched across the five year plan to minimize impact to the customer.

The total Utility Fund revenues from rates, fees and charges are expected to be \$13,560,750 and with miscellaneous revenue of \$56,260 the total revenues of the system are estimated at \$13,617,010. It is expected that revenues from water and sewer sales will be 4.2 % more than the prior year budget due to growth in residential, multi-family and commercial connections to the Town's utility system as well as the water and sewer combined rate increases. The Town does assess and collect water and sewer developer impact fees to help pay the costs of infrastructure associated with new development for both commercial and residential development.

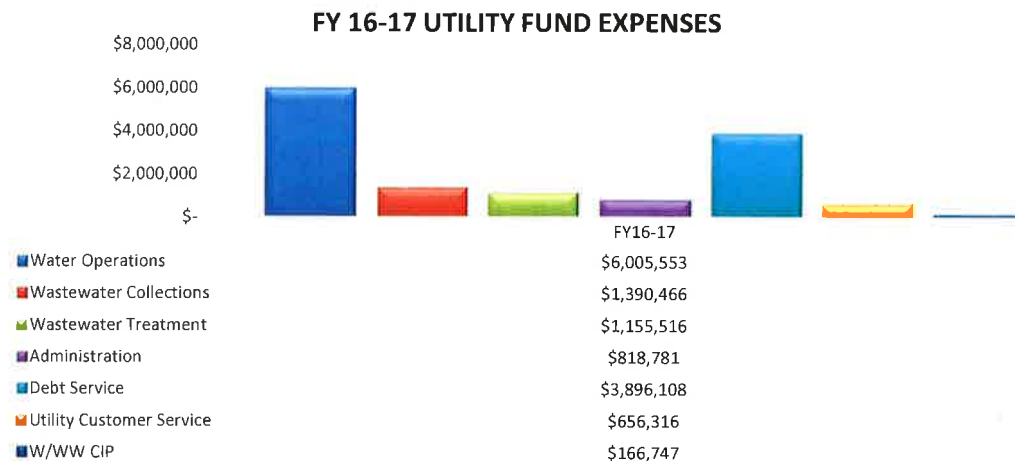
The following chart reflects the sources of revenue supporting the Town's utility system:



Other fees and charges are related to services performed in the field for new connections as well as penalties and interest on late payments and disconnects. Other financing sources include impact

fees and other developer contributions. The Utility System expenses for operations, debt, transfers, infrastructure improvements and capital items total \$14,089,487.

The following graph reflects the uses of funds in the Town's utility system:



The budget includes a pass through increase for water purchased through North Texas Municipal Water District (NTMWD). The rate for purchased water increased from \$2.34 to \$2.58 per 1,000 gallons. Wholesale water costs for 2016 were \$2,752,413 while 2017 is projected to be \$3,034,712 or a 10.3% increase. The Water and Sewer Fund will provide funding from reserves for the cost of \$416,750 for capital outlay and maintenance infrastructure projects needed to maintain the integrity of the system.

On May 1, 2016 the Town issued \$7,640,000 Combination Tax and Limited Pledge Revenue Certificates of Obligation, Series 2016 Bonds. Proceeds from the issuance will be used to pay for improvements and extensions to the Town's waterworks and sewer system, including acquisition of land and right-of-way. The largest of these infrastructure projects will be the expansion of the waste water treatment plant which is currently under design and is scheduled to begin next year.

Solid Waste Fund

This fund is a business-type fund and is utilized to account for the Town's solid waste activities (refuse, hazardous waste and recycle materials). The Town contracts for solid waste collection with Community Waste Disposal, Inc. (CWD). The contract with CWD renewed effective January 01, 2016 for a term of 5 years. The last rate adjustment was in January 2016 and provided a freeze to rates for residential solid waste and recycling for the term of the contract. The contract also included a 23.6% reduction in all rates for commercial solid waste services. The residents currently pay \$16.78 for household refuse collection and disposal. The Town's commercial accounts are billed direct by CWD.

The Town operates its own courtesy disposal site from franchise and user fees generated through this fund. The solid waste fund accounts for the Town's semi-annual clean up events as well as for the cost of disposal of household hazardous waste collection and disposal. The annual contract for waste collection and disposal is estimated at \$1.7 million. With this amount, the FY 2016-2017 budget for the Town's Solid Waste Fund is \$1,820,238 before transfers and is supported with franchise fees, billing and collection fees and sales of service of \$2,389,295.

Street Improvement and Maintenance Fund

The budgeted amount out of the ¼ cent Street Maintenance Fund is \$741,000. The Street Maintenance Fund is budgeted toward neighborhood street repairs and construction annually. The Fund is typically spent down each year with a goal to complete as many street maintenance projects as possible with available resources. In FY17, the \$741,000 is being allocated to the construction of Dickson Lane.

The Town voted a ¼ cent sales tax in May 2013 for the purpose of constructing and maintaining the Town's streets. The Town issues an annual competitive bid for street maintenance and awards the bid for street repairs based on a comprehensive street maintenance inventory grid maintained by the Town's Engineer. The first election was in 2005. Per the state requirements an election will be held in FY17 to continue to fund the ¼ cent sales tax. Street Maintenance Project Inventory is updated annually by Public Works and the Town Engineer; projects are prioritized and placed out to bid and; the bids are value engineered and tailored to the Street Maintenance Sales Tax Budget.

Parks and Recreation Fund

Two years ago, the decision was made to separate the revenue generating functions of the Parks and Recreation Department into a special revenue fund. This allows staff to take more of a business philosophy towards functions such as the Recreation Center, Special Events, and Athletic Programming.

We are continuing to place a great emphasis on Special Events and have planned for growth of Town sponsored events in the FY17 budget. The events that are planned included Autumn Fest, Pumpkin Hollow/Haunted Trail, Christmas, Mardi Gras, Brew & Que, July Jubilee, Lakefront Paddle Fest and a signature beach party (2016's signature event was *Summerbash* which was held in partnership with the Ticket radio station). Currently, the general fund subsidizes the direct cost of special events by approximately \$69,324 per year. This does not include the cost of staff time or overtime from within the fund or from other departments who assist with the events.

We will also be watching this fund and its General Fund subsidy over the next few years. Currently, the fund is subsidized in the amount of \$590,000, a reduction from the transfer in FY16 of \$727,000. However this reduction is a result of utilizing the fund balance. As it is currently



identified, within the five year plan, we anticipate in FY18 for this transfer to increase up to \$775,000 and by 2021 the subsidy will be \$870,000. However, the unknown component of the five year budget is the amount of revenue impact the recreation center expansion. During the next budget planning cycle, staff will have a better idea of what these numbers will be and it will allow staff to rework the long term outlook. The goal is to begin seeing a downward trend in General Fund subsidy transfer to this special revenue fund and maximize cost recovery from revenue generating programs.

Streetscape Fund

The funding for this fund comes from leases the Town has on its tower facilities and funds that are escrowed by developers for landscape and sidewalks. The revenue from the leases total approximately \$121,000 and there is a small amount of \$10,000 for tree mitigation. In addition to tower lease proceeds the fund is supported with a transfer from the Solid Waste Fund for \$391,000 and \$50,000 from CDC. Due to a contractual agreement with the Glen Cove HOA, there will also be revenue of \$25,000 per year for the next six years as they repay their portion of the most recent Neighborhood Integrity Program project which replaced their wall along Eldorado Parkway.

The Streetscape Fund also includes the Town's right-of-way mowing contract with a budgeted allocation of \$300,000. Other budgeted expenses include \$175,000 allocated to Landscape and Signage, and \$130,000 allocated to special projects for Neighborhood Integrity projects and funding to develop a Neighborhood Park Playground Partnership.

The Streetscape Fund will begin the year with a balance of \$49,215 and is proposed to end the fiscal year with a balance of \$40,039.

Drainage Fund

On November 1, 2011, the Town Council adopted Ordinance #1087 implementing the storm water management program. Beginning in January 2012, Little Elm utility customers were assessed a drainage fee as established and determined by Town staff and a consulting team. The purpose of the fee is to provide more effective storm water management throughout Little Elm. It will also help protect Lake Lewisville, the community, private property, and the environment from storm water problems such as pollution, damage to aquatic habitat, creek erosion, and flooding. Storm water system is a network of structures, channels and underground pipes that carry storm water (rain water) to ponds, lakes, streams and rivers. The network consists of both public and private systems. It is an integral part of the storm water management system in the Town that is designed to control the quantity, quality, timing, and distribution of storm runoff. It is not part of the wastewater (sanitary) sewer system, which carries water and waste from drains (sinks, bathtubs, showers, etc.) and toilets to a treatment plant to be treated and filtered. Storm water does not flow to a treatment plant.

The Town's drainage fee is based on a drainage master plan as approved by Town Council and is calculated on impervious service areas. There is a standard square footage assessment for each residential property with commercial based on these areas including concrete parking. Residents pay a base fee of \$3.35 and commercial accounts pay a calculated rate on their impervious area per their equivalent residential units of \$3.35.

The total budget for the Storm Drainage Fund is \$502,751 with the funding of various drainage projects to improve the creeks and channels within the Town.

PEG Fund

This fund was established by Council in FY 2013 to provide funding for the Town's future public access and educational channel. The estimated balance at fiscal year ending September 30, 2016 will be approximately \$125,806. The annual revenue to support the will be approximately \$54,250 for FY2017.

Tirz # 3, Lakefront Tax Increment Reinvestment Zone

The Tirz for the Lakefront District was set up a few years ago to benefit and enhance the development of this unique area in Little Elm. The Town, EDC, CDC, and County all participate in this Tirz with contribution of revenues earmarked for improvements in this area. The funding that is supporting the Tirz is based on the incremental increase of property taxes and sales taxes generated within the boundaries of the Tirz. For the first couple of years, there was very little revenue, but now that many new projects have occurred in the Lakefront District, revenue sufficient enough to begin going towards improvements is beginning to be generated. There have been reoccurring costs for marketing, website administration and transportation budgeted over the five years of the budget, but the money has not completely been allocated so that priority projects can be identified and funded in future years. Partial funding to help build a bathroom/shower facility has been placed in the FY17 in the amount of \$100,000.

Debt

The purpose of this fund is to record property taxes levied and collected for the purpose of paying annual principal and interest payments on debt obligations with a legally binding pledge to repay with a commitment of an annual tax levy against property values certified by the Denton County Appraisal District. There is a proposed property tax rate of \$.661687 cents per \$100 dollars of taxable value levied for FY 2017. The following is a list of all debt obligations:



Bond Series	Obligation	Maturity Date	Callable Date	Principal	Interest	Total Outstanding (09-30-2016)	P&I Due 2016-2017
Primary Government							
2009	General Obligation Bonds	8/1/2029	8/1/2019	7,540,000	2,446,876	9,986,876	750,336
2009A	Combination Tax & Revenue Certificates of Obligation	8/1/2029	8/1/2019	1,885,000	637,715	2,522,715	190,505
2010	General Obligation Refunding and Improvement Bonds	8/1/2030	8/1/2020	7,288,052	2,544,706	9,832,758	734,061
2012	General Obligation Refunding Bonds	8/1/2023	8/1/2021	2,480,000	232,625	2,712,625	438,575
2012A	General Obligation Refunding Bonds	8/1/2027	8/1/2022	2,110,000	273,581	2,383,581	219,099
2013	Certificates of Obligation-CDC	8/1/2033	8/1/2023	5,340,000	1,589,975	6,929,975	406,100
2013A	Certificates of Obligation	8/1/2033	8/1/2023	2,740,000	931,525	3,671,525	215,850
2014	General Obligation Refunding Bonds	8/1/2029	8/1/2024	1,800,000	462,825	2,262,825	176,600
2014	Tax Notes	8/1/2021	8/1/2021	1,550,000	77,084	1,627,084	372,435
2015	Certificates of Obligation	2/1/2036	2/1/2025	9,655,000	3,259,829	12,914,829	762,473
2016	General Obligation Refunding Bonds	8/1/2027	8/1/2027	6,725,000	1,275,799	8,000,799	830,211
Total Debt for Primary Government (Tax Purposes)				\$49,113,052	\$13,732,540	\$ 62,845,592	\$ 5,096,245
Self-Supporting Debt of the Utility							
2008	Combination Tax and Revenue Certificates of Obligation	8/1/2034	8/1/2018	\$ 5,610,000	\$ 2,985,693	\$ 8,595,693	\$ 477,043
2009	Combination Tax and Revenue Certificates of Obligation	8/1/2034	8/1/2018	9,035,000	4,861,425	13,896,425	773,963
2010	General Obligation Refunding and Improvement Bonds	8/1/2030	8/1/2020	981,947	98,094	1,080,041	246,314
2012	Certificates of Obligation	8/1/2027	8/1/2022	4,685,000	637,689	5,322,689	463,376
2012	General Obligation Refunding Bonds	8/1/2024	8/1/2021	2,175,000	275,925	2,450,925	299,950
2013	General Obligation Refunding Bonds	9/1/2025	9/1/2022	2,385,000	294,181	2,679,181	274,206
2014	General Obligation Refunding Bonds	8/1/2029	8/1/2024	2,255,000	573,200	2,828,200	215,825
2016	Certificates of Obligation	8/1/2036	8/1/2026	7,640,000	2,875,199	10,515,199	535,430
Total Self-Supporting Debt (Utility)				\$ 34,766,947	\$ 12,601,406	\$ 47,368,353	\$ 3,286,106
Component Units							
2013	Taxable EDC Refunding Loan	9/15/2031	Variable	6,294,775	1,736,720	8,031,495	535,433
2013	Taxable EDC Loan	9/15/2031	Variable	1,701,520	469,447	2,170,967	144,731
2014	Taxable EDC Loan	9/15/2035	Variable	2,397,176	860,294	3,257,470	176,079
Total Self-Supporting Debt (EDC)				\$ 10,393,471	\$ 3,066,461	\$ 13,459,932	\$ 856,243
Total Debt of all Entities				\$ 94,273,470	\$ 29,400,407	\$ 123,673,877	\$ 9,238,595

Conclusion

This completes the highlights of the 2016-2017 fiscal year budgets as well as a balanced financial plan through fiscal year 2021. We feel that we have done our best to listen to the directives set forth by the Town Council at the beginning of the budgeting process and met all needs communicated. The Town of Little Elm staff and department heads have put a tremendous amount of effort into building a budget that is conservative and respectful of the taxpayers' resources while still addressing the needs and challenges that are presented by the unprecedented growth the community is experiencing. I am proud that this is a document put together by a team who all had the best interests of the community at heart.

Respectfully submitted,



Matt Mueller

Town Manager

**TOWN OF LITTLE ELM
TOWN WIDE FUND SUMMARY
FY2016-2017**



Local Government Code 102.005

This budget will raise more total property taxes than last year's budget by \$2,496,260 or 16%, and of that amount \$ 743,587 is tax revenue to be raised from new property added to the tax roll this year.



COMBINED BUDGET SUMMARY
AND CHANGES IN FUND BALANCE
FY 2016-2017
Proposed Budget

General				Enterprise		Internal Service		Special Revenue Funds							Governmental					CDC Fund (814)	Total Town Wide Budget
General Fund (112)	Debt Service (312)	Recreation (113)	Utility	Solid Waste (712)	Replacement Funds (500 & 501)	Street Maint. (115)	Special Revenue (200)	Street Scaps (202)	PEG (203)	Fees Traffic Safety (205)	Grant Fund (211)	Donation (250)	Foreclosure (412)	Drainage Utility (715)	Street Impact Fund (828)	Capital Projects (871)	Other (810)				
\$ 6,611,280	\$ 447,848	\$ 486,432	\$ 4,845,734	\$ 124,886	\$ 2,071,832	\$ 72,482	\$ 142,915	\$ 49,215	\$ 125,808	\$ 96,268	\$ -	\$ 25,881	\$ 32,720	\$ 16,039	\$ 1,502,867	\$ 7,983,315	\$ 48,314	\$ 35,432	\$ 24,670,254		
13,488,523	4,576,271	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	18,047,784	
3,033,100	-	-	-	-	-	835,275	-	-	-	-	-	-	-	-	-	-	-	819,275	\$ 4,887,850		
2,126,963	-	-	-	120,000	-	-	-	-	54,000	-	-	-	-	-	-	-	-	-	\$ 2,300,963		
3,073,280	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$ 3,073,280		
1,196,370	-	569,420	13,560,750	2,268,555	-	-	48,750	120,824	-	300,000	-	-	8,500	502,115	-	-	-	-	\$ 18,575,284		
191,060	65,000	-	-	-	1,254,132	-	3,650	-	-	-	696,375	-	-	-	-	-	159,140	-	\$ 2,369,357		
1,736,742	15,000	2,500	56,260	740	600	1,500	550	36,000	250	1,000	-	150	5,200	500	5,000	-	-	2,600	\$ 1,864,592		
1,968,150	586,605	590,000	-	-	-	-	-	441,000	-	-	-	-	-	-	-	741,000	-	-	\$ 4,336,755		
26,794,198	5,255,876	1,161,920	13,617,010	2,389,295	1,254,732	836,775	52,950	597,824	54,250	301,000	696,375	150	13,700	502,615	5,000	741,000	159,140	821,875	55,255,685		
\$ 33,405,458	\$ 5,703,724	\$ 1,628,352	\$ 18,462,744	\$ 2,514,181	\$ 3,326,564	\$ 909,267	\$ 195,865	\$ 647,039	\$ 180,056	\$ 387,268	\$ 696,375	\$ 26,031	\$ 46,420	\$ 518,654	\$ 1,507,867	\$ 8,704,315	\$ 207,454	\$ 857,307	\$ 79,934,939		
7,758,341	-	-	-	1,820,238	202,180	-	21,250	607,000	100,000	-	-	-	-	502,751	1,500,000	8,704,315	154,400	-	21,370,475		
13,056,281	-	-	-	-	726,830	-	-	-	-	307,213	696,375	2,000	15,000	-	-	-	-	-	14,803,669		
2,239,614	-	-	-	-	119,913	-	-	-	-	-	-	-	-	-	-	-	-	-	2,359,527		
2,500,243	-	1,302,239	-	-	54,628	-	-	-	-	-	-	8,500	-	-	-	-	-	52,100	3,917,710		
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	8,462,229		
-	5,111,245	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	9,007,353		
590,000	-	-	-	1,731,150	566,000	-	741,000	-	-	-	-	-	-	-	-	-	-	698,605	4,336,755		
\$ 26,144,479	\$ 5,111,245	\$ 1,302,239	\$ 14,069,487	\$ 2,386,238	\$ 1,103,551	\$ 741,000	\$ 31,250	\$ 607,000	\$ 100,000	\$ 307,213	\$ 696,375	\$ 10,500	\$ 15,000	\$ 502,751	\$ 1,500,000	\$ 8,704,315	\$ 154,400	\$ 750,705	\$ 64,257,748		
\$ 7,260,979	\$ 592,479	\$ 326,113	\$ 4,373,257	\$ 127,943	\$ 2,223,013	\$ 168,267	\$ 184,615	\$ 40,039	\$ 80,056	\$ 90,053	\$ -	\$ 15,531	\$ 31,420	\$ 15,903	\$ 7,967	\$ -	\$ 53,054	\$ 106,602	\$ 15,677,191		

Total Appropriable Funds

64,257,748

Notice of Public Hearing on Proposed Budget

The Town of Little Elm has scheduled a public hearing on the Proposed Budget on September 6, 2016. The public hearing will be at 6:00 p.m. at Town Hall at 100 W. Eldorado Parkway, Little Elm, Texas 75068

This budget will raise more total property taxes than last year's budget by \$2,496,260 or 16%, and of that amount \$743,587 is tax revenue to be raised from new property added to the roll this year.

Members of the public are encouraged to attend and express their views.



Finance Department

Karla Stovall, Chief Financial Officer

Phone: 214-975-0415

kstovall@littleelm.org

TOWN COUNCIL REGULAR AGENDA

Date September 6, 2016

PROJECT

2nd Public Hearing on the Town's proposed Property Tax Rate for the Town of Little Elm for Fiscal Year 2017. All interested citizens are welcome to attend hearing and participate the same.

BACKGROUND

In accordance with the "Truth in Taxation" laws of the State of Texas, if an entity's proposed tax rate exceeds the effective rate, the entity is required to vote to place a proposal for adoption of budget and tax rate, publish notices and conduct two public hearings.

The Town Council conducted the first of the two required public hearings on August 16, 2016. The second public hearing is scheduled for September 6, 2016.

The Town Council cannot take any action regarding the tax rate at these public hearings. The sole purpose of the public hearing is to provide the public an opportunity to address council regarding the proposed Tax Rate.

RECOMMENDED ACTION

Please note the following wording in **bold** must be read at the close of the public hearing.

"The Town of Little Elm Council will consider the ordinance to adopt the Tax Rate for the Town of Little Elm Fiscal Year 2017 at the September 13, 2016 Council Meeting at 6:00 pm at the Town Hall at 100 W. Eldorado Parkway, Little Elm, Texas 75068. Members of the public are encouraged to attend the hearings and express their views to the Mayor and Council."

ATTACHMENTS

- Notice of 2016 Tax Year Proposed Property Tax Rate

Initial:

Town Manager ☐ _____ Finance ☐ _____ Library ☐ _____ Public Works ☐ _____ Parks ☐ _____

Town Secretary ☐ _____ Police ☐ _____ Fire ☐ _____ HR ☐ _____ Development Services ☐ _____

APPROVED ☐ DENIED ☐ TABLED ☐ WITHDRAWN ☐

NOTICE OF 2016 TAX YEAR PROPOSED PROPERTY TAX RATE FOR TOWN OF LITTLE ELM

A tax rate of \$0.661687 per \$100 valuation has been proposed by the governing body of TOWN OF LITTLE ELM. This rate exceeds the lower of the effective or rollback tax rate, and state law requires that two public hearings be held by the governing body before adopting the proposed tax rate.

The governing body of TOWN OF LITTLE ELM proposes to use revenue attributable to the tax rate increase for the purpose of providing Police, Fire, Street Maintenance and Parks Maintenance services.

PROPOSED TAX RATE	\$0.661687 per \$100
PRECEDING YEAR'S TAX RATE	\$0.661687 per \$100
EFFECTIVE TAX RATE	\$0.601849 per \$100
ROLLBACK TAX RATE	\$0.634601 per \$100

The effective tax rate is the total tax rate needed to raise the same amount of property tax revenue for TOWN OF LITTLE ELM from the same properties in both the 2015 tax year and the 2016 tax year.

The rollback tax rate is the highest tax rate that TOWN OF LITTLE ELM may adopt before voters are entitled to petition for an election to limit the rate that may be approved to the rollback rate.

YOUR TAXES OWED UNDER ANY OF THE ABOVE RATES CAN BE CALCULATED AS FOLLOWS:

$$\text{property tax amount} = (\text{rate}) \times (\text{taxable value of your property}) / 100$$

For assistance or detailed information about tax calculations, please contact:

Michelle French
Denton County Tax Assessor-Collector
1505 E McKinney Street Denton, TX 76209
940-349-3500
michelle.french@dentoncounty.com
tax.dentoncounty.com

You are urged to attend and express your views at the following public hearings on proposed tax rate:

First Hearing: 08/16/2016 6:00 PM at Little Elm Town Hall Council Chambers 100 W Eldorado Parkway Little Elm, Tx 75068

Second Hearing: 09/06/2016 6:00 PM at Little Elm Town Hall Council Chambers 100 W Eldorado Parkway Little Elm, Tx 75068

TOWN OF LITTLE ELM

AGENDA INFORMATION SHEET:

COUNCIL MEETING

DATE: September 6, 2016

PROJECT: **Texas Parks & Wildlife Department Outdoor Recreation Grant:
Little Elm Park Campsites**

**1. Resolution No. 09061603 Authorizing Application and Naming
Authorized Official to the Texas Park and Wildlife Department**

Summary:

Town Staff are developing an application for the Texas Parks & Wildlife Department's Outdoor Recreation grant to assist in the development of campsites for Little Elm Park. The application is due on October 1, 2016.

The project will include overnight campsites at Little Elm Park, and additional amenities such as restrooms. The campsites will be the first Town-developed campsites in Little Elm, and the location at Little Elm Park will ensure access for campers to the Town's lakefront and trail system.

In the past, the Town of Little Elm has been awarded grant funds from the Texas Parks and Wildlife Department to add additional amenities to McCord Park including picnic areas, pavilions, and a splash pad, further develop McCord Park Trail, and develop the Lake Lewisville Boat Ramp.

Little Elm Park and the project site are located within the 100-year floodplain. The proposed project does not involve any changes to existing drainage patterns; and therefore there is no anticipated impact to hydrology or the floodplain.

The Texas Parks & Wildlife Department requires: 1) a resolution dedicating the land to be developed in Little Elm Park as parkland for recreation purposes in perpetuity; 2) a resolution authorizing support of the project and naming the authorizing official, and 3) public input regarding the project and its location within the 100-year floodplain.

Local funding and support must be provided on a matching basis with the local applicant providing at least 50 percent of the project costs, per grant guidelines. The match must be available at the time of

application. The applicant's matching share may come from a number of sources including, but not limited to the following:

- Voter approved bonds;
- Applicant cash;
- Applicant in house labor, equipment, and materials;
- Applicant publicly-owned non-parkland;
- Fees or cash in-lieu of mandatory dedicated parkland;
- Donated land, cash, labor, equipment, and materials; or
- Other grants awarded.

The grant can be requested for up to \$500,000. Town Staff anticipates providing a substantial amount of local match (\$500,000 or more for extra points) could help the Town be awarded the grant. The exact amount to apply for is still being worked on with consultant and staff on site plan and budget for proposed improvements.

**RECOMMENDED
ACTION:**

Staff recommends Council adopt Resolution No. 09061603 for the Texas Parks & Wildlife Department Outdoor Recreation grant project to develop campsites at Little Elm Park and authorize the Mayor to execute for the same

SCHEDULE:

The application is due October 1, 2016. Project completion would have to be accomplished within three years from the date of selection.

COST:

Approximately \$500,000 (Required match 50%)

TOWN CONTACT:

Jason W. Laumer, P.E.
Director of Development Services
jlaumer@littleelm.org
(214) 975-0473

ATTACHMENTS:

1. Resolution No. 09061603
2. Public Hearing Notice on 100-year floodplain within project site in Little Elm Park

TOWN OF LITTLE ELM, TEXAS

RESOLUTION NO. 09061603

A RESOLUTION BY THE TOWN OF LITTLE ELM DESIGNATING THE TOWN DIRECTOR OF DEVELOPMENT AS RESPONSIBLE FOR, ACTING FOR, AND ON BEHALF OF THE TOWN OF LITTLE ELM IN DEALING WITH THE TEXAS PARKS AND WILDLIFE DEPARTMENT FOR THE PURPOSE OF PARTICIPATING IN THE LOCAL PARK GRANT PROGRAM, HEREIN AFTER REFERERED TO AS THE “PROGRAM”; CERTIFYING THAT THE TOWN OF LITTLE ELM IS ELIGIBLE TO RECEIVE PROGRAM ASSISTANCE; CERTIFYING THAT THE TOWN OF LITTLE ELM MATCHING SHARE IS READILY AVAILABLE; AND DEDICATING THE PROPOSED SITE FOR PERMANENT (OR FOR THE TERM OF THE LEASE OF THE PROPERTY) PUBLIC PARK AND RECREATIONAL USES.

WHEREAS, the Town of Little Elm is fully eligible to receive assistance under the program; and

WHEREAS, the Town of Little Elm is desirous of authorizing the Town Director of Development Services to represent and act for the Town of Little Elm in dealing with the Texas Parks and Wildlife Department concerning the Program;

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS:

SECTION 1

That the Town of Little Elm hereby certifies that they are eligible to receive assistance under the Program, and that the notice of the application has been posted according to local public hearing requirements.

SECTION 2

That the Town of Little Elm hereby certifies that the matching share for this application is readily available at this time.

SECTION 3

That the Town of Little Elm hereby authorizes and directs the Town Director of Development Services to act for the Town of Little Elm in dealing with the Texas Parks and Wildlife Department for the purposes of the Program, and that Jason Laumer is hereby officially designated as the representative in this regard.

SECTION 4

That the Town of Little Elm hereby specifically authorizes the official to make application to the Texas Parks and Wildlife Department concerning the site to be known as Little Elm Park located in the Town of Little Elm or use as a park site and is hereby dedicated (or will be dedicated upon completion of the proposed acquisition) for public park and recreation purposes in perpetuity (or

for the lease term, if legal control is through a lease). Projects with federal monies may have differing requirements.

PASSED AND APPROVED this Tuesday, September 6, 2016.

David Hillock
Mayor

ATTEST:

Kathy Phillips, Town Secretary

**PUBLIC NOTICE
COMMUNITY MEETING
Early Notice and Public Review of Proposed Activity in
100-Year Floodplain
Amenities at Little Elm Park**

**September 6, 2016
Town Hall
100 W. Eldorado Parkway
Little Elm, TX 75068
6:00 P.M.**

The Town of Little Elm invites residents to attend a Town Council meeting on September 6, 2016 to discuss a proposal by the Town to add amenities to Little Elm Park, which will include activities in the 100-year floodplain. The 100-year floodplain is the land that is predicted to flood during a 100-year storm, which has a 1% chance of occurring in any given year. The Town proposes to request grant-funding from the Texas Parks and Wildlife Department to install additional amenities at Little Elm Park, including, but not limited to overnight campsites and restrooms. The minimal anticipated environmental impacts to the 100-year floodplain will be discussed and open for public comment during the Town Council meeting. The Town will take action regarding authorizing by resolution the submittal of the application to the Texas Parks and Wildlife Department at this public meeting.

People who may be affected by activities in the floodplain and those who have an interest in the protection of the natural environment will be given an opportunity to express their concerns and provide information about these areas. Staff will be available at the meeting to provide clarification and address any questions.

**Town of Little Elm
Attention: Jason Laumer, Director of Development Services
100 W. Eldorado Parkway
Little Elm, TX 75068**

For more information, please contact Jason Laumer at 214-975-0473 or by email at JLaumer@littleelm.org.

An agenda will be posted on the Town's website www.littleelm.org 72 hours prior to the meeting.

TOWN OF LITTLE ELM

AGENDA INFORMATION SHEET:

COUNCIL MEETING

DATE: August 16, 2016

PROJECT: Highway 380 Municipal Management District No. 1 – Bond Issuance
Resolution #09061602

DESCRIPTION: Council previously approved a development agreement with Hillwood Communities on the Union Park Development. Those series of agreement consented to the creation and expansion of the Highway 380 Municipal Management District (MMD) No. 1. The agreements also require the Town to dedicate a portion (approximately 46%) of the future property tax revenues to the MMD for public improvements and potential bonds on those improvements.

The attached resolution consents to that bond sale as required under local government code. Proposed bond sale is in the amount of \$6,415,000.

COST: N/A

FUNDING: N/A

SCHEDULE: MMD would sell bond towards the end of the year.

RECOMMENDED ACTION:

Staff recommends Council adopt Resolution #09061602 consenting to the proposed MMD bond sale and authorize the Town Mayor to execute for the same.

TOWN CONTACT: Jason W. Laumer, P.E.
Director of Development Services
JLaumer@littleelm.org
(214) 975-0473

ATTACHMENTS: 1. Resolution

RESOLUTION NO. 09061602

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS GIVING CONSENT TO THE ISSUANCE OF UNLIMITED TAX ROAD BONDS BY HIGHWAY 380 MUNICIPAL MANAGEMENT DISTRICT NO. 1, A CONSERVATION AND RECLAMATION DISTRICT LOCATED WITHIN THE CORPORATE BOUNDARIES OF THE TOWN.

WHEREAS, the Town of Little Elm, Texas (the “Town”) is a Texas municipal corporation as defined by the Texas Local Government Code;

WHEREAS, Highway 380 Municipal Management District No. 1 (the “District”) is a conservation and reclamation district operating pursuant to Chapter 49 of the Texas Water Code and Chapter 375 of the Texas Local Government Code, and is located within the corporate boundaries of the Town;

WHEREAS, the District, to the extent authorized by Section 52, Article III, Texas Constitution, has the power to construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside or outside the District, and to finance the construction, maintenance, or operation of such projects through the issuance of bonds;

WHEREAS, pursuant to Section 375.207 of the Texas Local Government Code, the District is required to obtain the Town’s approval of the issuance of bonds prior to the issuance thereof;

WHEREAS, the District desires to proceed with the issuance of Highway 380 Municipal Management District No. 1, Unlimited Tax Road Bonds, Series 2016 in the amount of \$6,415,000 (the “Bonds”);

WHEREAS, the District desires that the Town consent to the issuance of the Bonds.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF
LITTLE ELM, TEXAS:**

SECTION 1. That the findings contained in the preamble of this Resolution are determined to be true and correct and are hereby adopted as part of this Resolution;

SECTION 2. That the City Council of the Town hereby specifically gives its written consent to the issuance of the Bonds.

PASSED AND APPROVED by the City Council of the Town of Little Elm, Texas on this 6th day of September, 2016.

David Hillock, Mayor
Town of Little Elm, Texas

ATTEST:

Kathy Phillips, City Secretary
Town of Little Elm, Texas

TOWN OF LITTLE ELM

AGENDA INFORMATION SHEET:

COUNCIL MEETING

DATE: September 6, 2016

PROJECT: **Texas Parks & Wildlife Department Outdoor Recreation Grant:
Little Elm Park Campsites**

2. Resolution No. 09061604 Prohibiting Drilling & Mining

Summary:

Town Staff are developing an application for the Texas Parks & Wildlife Department's Outdoor Recreation grant to assist in the development of campsites for Little Elm Park. The application is due on October 1, 2016.

The project will include overnight campsites at Little Elm Park, and additional amenities such as restrooms. The campsites will be the first Town-developed campsites in Little Elm, and the location at Little Elm Park will ensure access for campers to the Town's lakefront and trail system.

In the past, the Town of Little Elm has been awarded grant funds from the Texas Parks and Wildlife Department to add additional amenities to McCord Park including picnic areas, pavilions, and a splash pad, further develop McCord Park Trail, and develop the Lake Lewisville Boat Ramp.

Little Elm Park and the project site are located within the 100-year floodplain. The proposed project does not involve any changes to existing drainage patterns; and therefore there is no anticipated impact to hydrology or the floodplain.

The Texas Parks & Wildlife Department requires: 1) a resolution dedicating the land to be developed in Little Elm Park as parkland for recreation purposes in perpetuity; 2) a resolution authorizing support of the project and naming the authorizing official, and 3) public input regarding the project and its location within the 100-year floodplain.

The Town must also provide evidence that the surface of the project site is protected from any drilling or mining, or can demonstrate

protection through a draft of ordinance, resolution or zoning, and statement that if funded, will authorize the ordinance or resolution.

Town Staff have prepared Resolution No. 09061604 Prohibiting Drilling and Mining.

**RECOMMENDED
ACTION:**

Staff recommends Council adopt Resolution No. 09061604 for the Texas Parks & Wildlife Department Outdoor Recreation grant project to prohibit drilling and mining in the Little Elm Park area and authorize the Town Manager to execute for the same.

TOWN CONTACT:

Jason W. Laumer, P.E.
Director of Development Services
jlaumer@littleelm.org
(214) 975-0473

ATTACHMENTS:

1 Resolution No. 09061604

TOWN OF LITTLE ELM, TEXAS

RESOLUTION NO. 09061604
A RESOLUTION BY THE TOWN OF LITTLE ELM TO PROHIBIT
DRILLING OR MINING OR THE REOPENING OF ANY ABANDONED WELL
OR MINE IN THE PUBLIC PARKLAND LOCATED WITHIN LITTLE ELM PARK

WHEREAS, the Town of Little Elm intends to submit a park expansion and development application for the Little Elm Park Campsites to the Texas Parks & Wildlife Department (TPWD) prior to the October 1, 2016 deadline; and,

WHEREAS, the TPWD requires the submittal of a resolution as part of the 2016 Outdoor Recreation program application submission; and

WHEREAS, there is a need of an order restricting drilling/mining activities within the project site due to grant requirements; and

WHEREAS, there is a need of an order restricting the reopening of previously drilled and abandoned wells or mines located within the project site due to grant requirements.

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

Section 1. The Town Council in meeting this 6th day of September, 2016, supports the Little Elm Park Campsites as applied for in the 2016 Outdoor Recreation program application.

Section 2. The Town Council supports the Little Elm Park Campsites application and requirements to restrict drilling/mining activities in the designated park area of Little Elm Park.

AND BE IT FURTHER RESOLVED: That the Town adopts Resolution 09061604 approving the submission of the project nomination; and finds and declares that the adoption, passage, and implementation of this resolution shall be effective as of first reading.

Signature of Official Authorized in Resolution 09061603

Matt Mueller, Town Manager (214) 975-0405

Typed Name, Title, and Telephone Number

September 6, 2016

Date

TOWN OF LITTLE ELM

AGENDA INFORMATION SHEET:

COUNCIL MEETING

DATE: September 6, 2016

PROJECT: **Town of Little Elm and Palladium USA International, Inc.
380 Economic Development Program and Agreement
Amendment #1**

DESCRIPTION: The Town and the Town's EDC worked with Palladium on a 380 Economic Development Program and Agreement to develop the Lakefront with a phase 1 development of commercial and residential units on approximately 7.14 acres between Clark Street, Main Street, and Eldorado Parkway. The Town's EDC approved a ground lease purchase agreement on Monday, August 12, 2013 that was dependent on the 380 Agreement that was approved by Council on August 20, 2013.

One of the requirements on Palladium was to build Clark Street and in return for construction of Clark Street the Town:

- 100% water, wastewater, and roadway impact fee wavier
- Wavier on all development and permit fees

Due to financing structure of their agreement they would like an amendment where instead of no fees they pay a \$509,183.00 roadway fee to the Town that they will be able to be reimbursed to them in return for building Clark Street once the Town accepts the street. All costs, including any overruns are the developers along with the same requirements to build Clark Street similar to Main Street with parking, sidewalks, lighting, and landscape. Amendment #1 was approved by Council on May 5, 2015.

Palladium is asking for an Amendment #2 that would allow the Town to pay them for work completed and inspected by the Town as their contractor progresses with the work.

COST: N/A

FUNDING:	N/A
SCHEDULE:	Road is expected to be open within a few weeks and completed with lighting, landscape, and irrigation as the entire development finishes during the next six months.
RECOMMENDED ACTION:	Staff recommends Council approve 380 Economic Development Program and Agreement Amendment #2 between the Town of Little Elm and Palladium USA International, Inc. and authorize Town Mayor to execute agreement for the same.
TOWN CONTACT:	Jason W. Laumer, P.E. Director of Development Services JLaumer@littleelm.org (214) 975-0473
ATTACHMENTS:	1. 380 Agreement with Palladium USA International, Inc. Amendment #2

**SECOND AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT BETWEEN THE
TOWN OF LITTLE ELM, TEXAS, AND
PALLADIUM USA INTERNATIONAL, INC.**

This **SECOND AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT BETWEEN THE TOWN OF LITTLE ELM, TEXAS, AND PALLADIUM USA INTERNATIONAL, INC.** ("Second Amendment") is made and entered into by and between the **TOWN OF LITTLE ELM, TEXAS**, a Texas home-rule municipality ("Town"), and **PALLADIUM USA INTERNATIONAL, INC.**, a Delaware corporation, or its permitted assigns ("Palladium") (the Town and Palladium are collectively referred to as the "Parties").

WHEREAS, in 2013, Palladium and the Town entered into an agreement entitled "**TOWN OF LITTLE ELM, TEXAS, AND PALLADIUM USA INTERNATIONAL, INC. CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT**" (hereinafter referred to as the "Agreement") that, among other matter, provided for the construction of an approximate 239 unit, four (4) story multifamily rental development with a free standing approximately 6,000 square foot retail/commercial building, with approximately 411 surface parking spaces for the multifamily residential development, and approximately thirty (30) surface parking spaces for the retail/commercial building, and generally located east of Clark Street, north of Eldorado Parkway, and south of Main Street, Town of Little Elm, Denton County, Texas (also referred to as the "Property"); and

WHEREAS, the Agreement further provides for certain construction obligations regarding Clark Street, which obligations the Parties amended through the **FIRST AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT BETWEEN THE TOWN OF LITTLE ELM, TEXAS, AND PALLADIUM USA INTERNATIONAL, INC.** ("First Amendment"), which provided that Palladium would contribute to the Town a certain sum for the construction of Clark Street and could obtain reimbursement up to the amount of such sum for all verifiable costs incurred by Palladium to construct Clark Street in an amount up to, but not to exceed, the amount of the contributed sum; and

WHEREAS, the Parties desire to amend the Agreement, as amended by the First Amendment, to provide for a manner in which Palladium can request from the Town draws or payments during construction of Clark Street.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 4(e) of the Agreement, "Construction of Clark Street," is hereby amended and shall read as follows (with new matters underlined; matters removed noted with ~~strikeouts~~):

- (e) **Construction of Clark Street.** Palladium covenants and agrees to construct Clark Street from Main Street to the north and Eldorado Parkway to the south according to the Town's development standards, which include a two (2) lane, concrete roadway, with curb and gutter, lighting, parking and landscape requirements, to be reasonably determined. Palladium shall complete construction of said roadway prior to the issuance of the certificate of occupancy for the multifamily residential development. Additionally, Palladium shall pay to the Town as an agreed roadway impact fee the sum of \$509,183.00, as more fully described in the "Clark Street Improvements" listing attached hereto as *Exhibit 1* (hereinafter referred to as the "Clark Street Improvements Fee"). The Clark Street Improvements Fee shall be paid to the Town concurrent with the Town's approval of any permit for development of any portion of the Property. Once segments or portions of Clark Street is are complete and ~~has have~~ been ~~accepted~~ inspected by the Town, the Town agrees that it will reimburse Palladium, through draw or partial payments requests, for all verifiable costs incurred by Palladium to construct the segments or portions of Clark Street in an amount up to, but not to exceed, the total amount of the Clark Street Improvements Fee (*i.e.*, \$509,183.00). Palladium acknowledges and recognizes that the Clark Street Improvements Fee may not be sufficient to cover all of Palladium's costs to construct Clark Street, and Palladium expressly agrees to incur all costs over and above the amount of the Clark Street Improvements Fee and to construct Clark Road as required in the Agreement, the First Amendment and this Second Amendment.
2. Except as modified by this Second Amendment, the terms and conditions of the Agreement, as amended by the First Amendment, shall remain in full force and effect.
3. The Town represents and warrants that this Second Amendment has been duly adopted by official action of the Town Council in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Second Amendment on behalf of the Town has been duly authorized to do so. Palladium represents and warrants that this Second Amendment has been approved by appropriate action of Palladium, that the individual executing this Second Amendment on behalf of Palladium has been duly authorized to do so.
4. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

[The Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

TOWN:
TOWN OF LITTLE ELM, TEXAS,
A Texas Home-Rule Municipality

By: _____
David Hillock
Mayor
Date: _____

ATTEST:

Kathy Phillips, Town Secretary

APPROVED AS TO FORM:

Robert F. Brown, Town Attorney

PALLADIUM:
PALLADIUM USA INTERNATIONAL, INC.
A Delaware Corporation

By: _____
Name: Thomas E. Huth
Title: President and Chief Executive Officer_
Date: 8-29-2016