



**LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION
BOARD OF DIRECTORS**

Monday, August 9, 2021 - 6:00 p.m.

**REGULAR MEETING
100 WEST ELDORADO PARKWAY
TOWN OF LITTLE ELM TOWN HALL**

AGENDA

1. Notice Regarding Public Participation Little Elm EDC Board of Directors and EDC Staff Attendance.
2. Roll Call and Call to Order of Regular Meeting.
Identification of Quorum and call to order.
3. **Discussion and Action to Approve Minutes from the June 14th, 2021 Regular Meeting.** (Jennette Espinosa, Executive Director)
4. **Discussion and Action to Approve the Economic Development Corporation's Budget for FY 2021-2022.** (Jennette Espinosa, Executive Director and Jason Barth, EDC Accountant)
5. **Discussion and Action to Approve the Extension of the Professional Services Agreement** between Little Elm Economic Development Corporation and the Town of Little Elm. (Jennette Espinosa, Executive Director)
6. **Discussion and Action to Approve a Resolution for an Incentive Agreement for the American Rescue Plan Act of 2021, COVID-19 Voucher program.** (Jennette Espinosa, Executive Director)
7. **Discussion and Action to Approve the Seventh Amendment to the Ground Lease Purchase Agreement** between Hula Hut and Little Elm EDC. (Jennette Espinosa, Executive Director)
8. **Discussion and Action to Approve the Performance Agreement** between Hurtado Barbecue LLC, Little Elm and the EDC (Jennette Espinosa, Executive Director)
9. **Director's Report:** Discuss, update, and action regarding projects, policies, events, activities and calendar pertaining to EDC. (Jennette Espinosa, Executive Director)
 - Food Truck Discussion

10. **Executive Closed Session of the Board of Directors.**

The Little Elm EDC will now hold a Closed Session meeting pursuant to the provisions of Chapter 551 of the Texas Government Code in accordance with the authority contained in:

(A) Section 551.087 of the Texas Government Code to discuss or deliberate regarding commercial or financial information that the LE EDC has received from a business prospect, and or to deliberate the offer of a financial or other incentive with a business re: a project in the vicinity of Eldorado Parkway in Lakefront.

11. **Reconvene into Open Session** The Little Elm EDC will now reconvene into Regular Session meeting pursuant to the provisions of Chapter 551 of the Texas Government Code in accordance with the authority contained in:

(A) Section 551.087 of the Texas Government Code to discuss or deliberate regarding commercial or financial information that the LE EDC has received from a business prospect, and or to deliberate the offer of a financial or other incentive with a business re: a project in the vicinity of Eldorado Parkway in Lakefront.

12. **Adjournment.**

Respectfully,

Jennette Espinosa

Executive Director

This is to certify that the above notice was posted on www.littleelm.org, Town of Little Elm website, under Agendas and Minutes prior to 5:00 p.m. this **5th day of August, 2021.**



Date: 08/09/2021
Agenda Item #: 3.
Department: Economic Development Corporation
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to Approve Minutes from the June 14th, 2021 Regular Meeting. (Jennette Espinosa, Executive Director)

DESCRIPTION:

Record of Minutes from the July 14, 2021 EDC Board of Directors Meeting

BUDGET IMPACT:

N/A

RECOMMENDED ACTION:

Staff recommends approval of the Minutes as presented

Attachments

June 14 Minutes

DRAFT



MINUTES
LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION
100 W. Eldorado Parkway

REGULAR MEETING
Monday, JUNE 14, 2021
6:00 PM

Present: Ken Eaken, President; Casey Russell, Vice President; Taylor Girardi, Treasurer; Michel Hambrick, Secretary; Michael McClellan, Council Liaison; Jack Gregg, Board Member; Marce E. Ward, Board Member

Staff Present: Jason Barth, EDC Accountant
Jeff Moore, EDC Attorney
Jennette Espinosa, EDC Executive Director
Natasha Roach, EDC Coordinator

Attendees: Kevin Lerner, Government Capital

1. Roll Call and Call to Order of Regular Meeting at **6:00 pm** by President, Ken Eaken.
Identification of Quorum and call to order.

***Note:** Casey joined the meeting via zoom at 6:04 pm

2. **Discussion and Action to approve Minutes** from April 19, 2021, Special Meeting.

Motion by Board Member Marce E. Ward, seconded by Secretary Michel Hambrick

AYE: President Ken Eaken, Treasurer Taylor Girardi, Secretary Michel Hambrick, Council Liaison Michael McClellan, Board Member Jack Gregg, Board Member Marce E. Ward

6 - 0 Passed - Unanimously

3. **Discussion and Action to approve Resolution No. 0614202101ED Authorizing the First Amendment to Promissory Note and Loan Agreement No. 7833** and resolving other matters incident and related thereto. (Guest: Stewart Shirey and Kevin Lerner of Government Capital)

Motion by Board Member Jack Gregg, seconded by Board Member Marce E. Ward

AYE: President Ken Eaken, Vice President Casey Russell, Treasurer Taylor Girardi, Secretary Michel Hambrick, Council Liaison Michael McClellan, Board Member Jack Gregg, Board Member Marce E. Ward

7 - 0 Passed - Unanimously

4. **Consider Action to Award a Professional Services Contract for Planning Services** related to the West Side Study and Development Ordinances Diagnostics.

Motion by Vice President Casey Russell, seconded by Board Member Jack Gregg

AYE: President Ken Eaken, Vice President Casey Russell, Treasurer Taylor Girardi, Secretary Michel Hambrick, Council Liaison Michael McClellan, Board Member Jack Gregg, Board Member Marce E. Ward

7 - 0 Passed - Unanimously

5. **Discussion and Action to proceed with West Side Parcel Clean Up with McCathern, PLLC.**

Motion by Board Member Jack Gregg, seconded by Board Member Marce E. Ward

AYE: President Ken Eaken, Vice President Casey Russell, Treasurer Taylor Girardi, Secretary Michel Hambrick, Council Liaison Michael McClellan, Board Member Jack Gregg, Board Member Marce E. Ward

7 - 0 Passed - Unanimously

6. **Discussion and Action to Approve an Amendment for Contract Services Budget Year 2020-2021.** (Jason Barth, Integrity Books and Payroll)

Motion by Secretary Michel Hambrick, seconded by Vice President Casey Russell

AYE: President Ken Eaken, Vice President Casey Russell, Treasurer Taylor Girardi, Secretary Michel Hambrick, Council Liaison Michael McClellan, Board Member Jack Gregg, Board Member Marce E. Ward

7 - 0 Passed - Unanimously

7. **Discussion and Action to Approve 2nd Quarter Financials** for Budget Year 2020-2021.

Motion by Vice President Casey Russell, seconded by Treasurer Taylor Girardi

AYE: President Ken Eaken, Vice President Casey Russell, Treasurer Taylor Girardi, Secretary Michel Hambrick, Council Liaison Michael McClellan, Board Member Jack Gregg, Board Member Marce E. Ward

7 - 0 Passed - Unanimously

8. **Executive Closed Session of the Board of Directors: At 6:51 pm** The Little Elm EDC will now hold a Closed Session meeting pursuant to the provisions of Chapter 551 of the Texas Government Code in accordance with the authority contained in:

(A) Section 551.087 of the Texas Government Code to discuss or deliberate regarding commercial or financial information that the LE EDC has received from a business prospect, and or to deliberate the offer of a financial or other incentive with a business re: a project in the vicinity of Main Street and Eldorado Parkway

No Action Taken

9. **Reconvene into Open Session: At 7:09 pm** The Little Elm EDC will now reconvene into Regular Session meeting pursuant to the provisions of Chapter 551 of the Texas Government Code in accordance with the authority contained in:

(A) Section 551.087 of the Texas Government Code to discuss or deliberate regarding commercial or financial information that the LE EDC has received from a business prospect, and or to deliberate the offer of a financial or other incentive with a business re: a project in the vicinity of Main Street and Eldorado Parkway.

10. Director's Report. **No Action Taken**

11. Adjournment.
Meeting was adjourned at **7:35 pm**.

Respectfully,

Jennette Espinosa, Executive Director

Passed and approved this _____ day of _____ 2020



Date: 08/09/2021
Agenda Item #: 4.
Department: Economic Development Corporation
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to Approve the Economic Development Corporation's Budget for FY 2021-2022. (Jennette Espinosa, Executive Director and Jason Barth, EDC Accountant)

DESCRIPTION:

Review of the proposed Budget for the EDC for FY 2021-2022.

BUDGET IMPACT:

N/A

RECOMMENDED ACTION:

Staff recommends that the Board approve the proposed budget as presented.

Attachments

Proposed Budget 2021-2022



LITTLE ELM

Economic Development Corporation

4A Sales Tax

Proposed Budget

FY 2021-2022

The Little Elm Economic Development Corporation is tasked with bringing much needed commercial, industrial and tourist opportunities to the Town of Little Elm. The mission of the EDC is to advance the economic development in Little Elm while maintaining traditional values and a sense of community. The Little Elm EDC was founded in 1993 and has served the Town since that time. The EDC is made up of four members from the community and a Town Council Liaison.

LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION

PROPOSED

BUDGET FY 2021-2022

	FY 2020	FY 2021		FY 2022
	ACTUAL	BUDGET	ESTIMATED	PROPOSED
FUND REVENUES				
5132 SALES TAX	\$2,430,202	\$2,335,736	\$2,629,783	\$2,698,734
5611 INTEREST EARNINGS	28,902	15,000	40,000	30,000
5600 OTHER EARNINGS	611,045	427,755	3,407,404	437,756
8900 LOAN PROCEEDS	0	0	7,500,000	0
TOTAL FUND REVENUES	\$3,070,149	\$2,778,491	\$13,577,187	\$3,166,490
FUND EXPENDITURES				
6000 DEBT PAYMENTS	\$1,071,099	\$1,055,994	\$1,129,066	\$1,209,291
6100 PERSONNEL COSTS	341,872	364,530	364,530	435,799
6200 OPERATING EXPENSES	185,380	643,759	719,510	242,511
6343 ADVERTISING	219,044	246,724	101,500	287,173
6729 LAND ACQUISITION	0	400,000	0	0
6730 INCENTIVES	41,901	347,484	61,000	935,426
6740 TIN MAN SHELL BUILDGIN	0	0	1,756,211	5,743,789
6250 TRANSFER TO TOWN	30,000	30,000	30,000	30,000
6252 TRANSFER TO TIRZ #1	94,312	105,000	105,000	105,000
TOTAL FUND EXPENDITURES	\$1,983,608	\$3,193,491	\$4,266,817	\$8,988,989
DIFFERENCE	\$1,086,541	(\$415,000)	\$9,310,370	(\$5,822,499)
BEGINNING FUND BALANCE	\$1,542,474	\$1,408,258	\$2,445,599	\$11,755,969
ENDING FUND BALANCE	\$2,445,599	\$1,408,258	\$11,755,969	\$5,933,470



Date: 08/09/2021
Agenda Item #: 5.
Department: Economic Development Corporation
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to Approve the Extension of the Professional Services Agreement between Little Elm Economic Development Corporation and the Town of Little Elm. (Jennette Espinosa, Executive Director)

DESCRIPTION:

The existing "Administrative Services Agreement" between Little Elm EDC and the Town of Little Elm was \$30,000 in fiscal year 2016-2021 through the budget process. The amount of the contract will remain at \$30,000 for the next term of this contract. The contract amount remains the same, but the scope of the services have been revised. The EDC will be adding an additional support specialist to assist with Chamber Events, Memberships and Engagement, as well as complicated administrative support to the EDC Director and the Director of Development Services.

The Town will be providing the additional office work space for the same contract amount and will extend the terms to 10 years in lieu of an increase in the contract amount. The Chamber of Commerce will be contributing approximately one-fourth of the additional staff person's salary.

The new staff member will be shared between Little Elm EDC, Development Services and the Chamber of Commerce.

The term of the new agreement is for a period of ten (10) years commencing on October 1, 2021, and ending on September 30, 2031. The service agreement is for the purpose of compensating the Town for certain essential and necessary services:

- **Legal Services:** with the EDC reserving the right to hire their own attorney.
- **Financial Services:** assistance with budgeting, audit services, financial management services, and TIRZ calculations. The EDC has retained outside accounting and bookkeeping services for the day to day management of the EDC Finances.
- **Administrative Services:** meeting and consultation with the Town Manager or other Town Staff and other liaison services including contract review, assistance with setting and posting agendas, responding to inquiries etc. The EDC has a full time assistant that handles the secretarial and clerical services.
- **Office Space/Services:** The Executive Director and staff of the EDC shall have office space in Town Hall and have complete access to all office equipment, phone and computer systems.

BUDGET IMPACT:

The contract amount for the Professional Services Agreement

- \$30,000 on an annual basis to the Town of Little Elm
- The EDC shall budget Administrative Services Fees in the annual budget

The term of this contract is for 10 year, beginning October 1, 2021.

RECOMMENDED ACTION:

Staff recommends approval of the Professional Services Agreement between the EDC and the Town of Little Elm for a period of ten (10) year for a compensatory amount of \$30,000 annually.

Attachments

Administrative Services Agreement

ADMINISTRATIVE SERVICES AGREEMENT BETWEEN TOWN OF LITTLE ELM, TEXAS AND
LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION

STATE OF TEXAS €
 €
COUNTY OF DENTON €

This Administrative Services Agreement ("Agreement") is entered effective as of the 1st day of October, 2021, by and between the Town of Little Elm, Texas, ("Town") and the Little Elm Economic Development Corporation ("LE EDC"), acting by and through their respective authorized officers and in accordance with the Development Corporation Act of 1979, as amended.

ARTICLE I
SERVICES PROVIDED BY THE TOWN

LE EDC does hereby agree to expend monies identified below for the purpose of paying the Town for the costs incurred by the Town in providing to the LE EDC certain essential and necessary services, Town agrees to provide the following services to the LE EDC subject to the limitations and conditions set forth below:

1. Development, Engineering & Planning Services: Town agrees to provide development services, engineering and planning services, including, but not limited to, design review, bid and construction review, GIS exhibits, and oversight for all LE EDC construction projects; as requested by Little Elm EDC Executive Director.
2. Legal Services: The LE EDC reserves the right to hire an attorney of its own choice and its own expense.
3. Financial Services: The Town agrees to provide through its Financial Department assistance and coordination with the EDC's accounting firm for budgeting purposes or as requested or needed, all audit services, as well as calculations of revenue for each of the designated TIRZ agreements, as needed. The EDC treasurer will have full oversight, control and approval of the EDC revenue and expenditures, as specified within Article III, Section 4, Article IV, Section 3-5 of the Bylaws.
4. Town of Little Elm Management Team: Town agrees to provide the services of the Town Manager, on as an as needed basis for meetings and consultation; as well as, Department Heads, and/or the Town Manager's designee(s) will provide liaison services between the Town staff, the LE EDC staff and its Board of Directors, and potential business prospects. Liaison services include review of all contracts and agreements, administrative oversight of development projects, assistance in setting agenda items, presentations to civic groups, council and business developers, and responding to inquiries of potential business prospects.

In addition, the Town Manager's office shall provide secretarial and other clerical services, including, but not limited to, posting of meeting agendas and reservation of meeting rooms if needed.

ARTICLE II
SERVICES PROVIDED BY THE EDC THROUGH ITS EXECUTIVE DIRECTOR AND STAFF
ON BEHALF OF THE LE EDC BOARD OF DIRECTORS AND OTHER CONDITIONS AND
SERVICES

LE EDC does hereby agree to expend monies identified below for the purpose of performing administrative and executive functions for and on behalf of the LE EDC Board consistent with the Articles of Incorporation and Bylaws of said corporation as follows:

1. EDC Executive Director and EDC Staff: The Executive Director of the EDC and staff will be classified as an employee of the Town and shall receive all benefits available to all full-time employees of the Town. The Executive Director and EDC staff will be subject to the same employee policies as all other employees of the Town, with the exception that the Executive Director will report directly to the EDC Board of Directors; with the understanding that the BOD may institute additional operational policy and procedures if they so choose; and EDC staff will report directly to the EDC Executive Director. The Town will provide the Executive Director with complete access to all office equipment, printers, phone systems, email and computer services that are provided to the Town Manager. The Town will provide EDC staff with complete access to all office equipment, printers, phone systems, email and computer services necessary to conduct business in their work space. The Town will provide an office for the Executive Director and the same access level to all meeting rooms that are provided to the Town Manager, as well as work space for the EDC staff.
2. EDC Executive Director and Staff: The Executive Director and Staff is responsible for compliance with the Open Meetings and Open Records laws of the State of Texas. The Executive Director will make sure that all LE EDC Board meetings will be conducted in compliance with all State laws.
3. Web Site Services: The LE EDC will be provided as much space as required on the Town's web site for placement of economic development information.
4. Town Logo: The LE EDC is authorized to use the Town Logo for its economic development purposes; modified to identify the EDC.
5. Shared Staff: EDC Executive Director will share Support Specialist staff with the Development Services Director on an as needed basis.

ARTICLE III
COMPENSATION

In consideration of the provision by Town to LE EDC of the services described in Articles above, LE EDC agrees to pay to Town the sum of \$30,000. It is agreed by the parties hereto

that the compensation described in this Article III is equal to the reasonable value of the services anticipated to be provided by Town to the LE EDC.

1. Payments: Payments to the Town for the services described herein shall begin October 1, 2021 and shall run with the term of this Agreement. Payments and reimbursements shall be made by the LE EDC to the Town on an annual basis.

2. Use of Funds: It is expressly understood and agreed by LE EDC and the Town that all funds received from the LE EDC by the Town will be used solely for the purposes set out by the LE EDC Board in this agreement, its budget, and as directed by its Board as recorded in its official minutes.

3. Employees: All persons who are to provide services to the LE EDC as described herein are employees of the Town.

ARTICLE IV **TERM**

The term of this Agreement shall be for ten (10) years, beginning October 1, 2021, and unless sooner terminated or extended by agreement of the parties hereto.

ARTICLE V **TERMINATION**

It is understood and agreed that either party may terminate this Agreement at any time and for any reason whatsoever by giving the other party notice in writing of said termination at least ninety (90) days prior to termination. If this Agreement is terminated by either party pursuant to the terms of this provision, LE EDC shall pay the Town for all services rendered up to the date of termination.

ARTICLE V **ASSIGNMENT**

This Agreement may not be assigned or otherwise conveyed by either party without the prior written consent of the other party. The provisions of this Agreement are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

ARTICLE VI **VENUE AND GOVERNING LAW**

In the event of any action under this Agreement, venue for all causes of action shall be instituted and maintained in Denton County, Texas. The parties agree that the laws of the State

of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement, and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in the year 2021 and as of the dated indicated.

TOWN OF LITTLE ELM, TEXAS

LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION

Curtis Cornelious, Mayor

Ken Eaken, EDC President

Date

Date

ATTEST:

ATTEST:

Caitlan Biggs, Town Secretary

Jennette Espinosa, LEEDC Executive Director

Date

Date



Date: 08/09/2021
Agenda Item #: 6.
Department: Economic Development Corporation
Strategic Goal: Promote and expand Little Elm's identity
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to Approve a Resolution for an Incentive Agreement for the American Rescue Plan Act of 2021, COVID-19 Voucher program. (Jennette Espinosa, Executive Director)

DESCRIPTION:

This Resolution is for the Incentive Program and Request for Grant money established by the EDC in an effort to support our local businesses. The program allows vouchers in the amount of \$25 be mailed to residents of Little Elm and surrounding neighboring communities to drive business to our area. The businesses acknowledge participation by signing the Incentive Agreement and Grant Request Application, providing the \$25 discount to the customer and agreeing to submit the required paperwork for reimbursement from the EDC.

BUDGET IMPACT:

The EDC will issue reimbursements to restaurants from the operating budget, but will then be reimbursed by the Town from the funds collected from the American Rescue Plan. The total amount allotted to the EDC for this program is \$100,000 per year for the next 3 years. This program will end on December 31, 2024.

RECOMMENDED ACTION:

Staff recommends the Board approve the Resolution as presented.

Attachments

Revised Voucher Resolution

RESOLUTION

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION, A TYPE A ECONOMIC DEVELOPMENT CORPORATION AND A TEXAS NON-PROFIT CORPORATION, APPROVING A COVID-19 INCENTIVE PROGRAM AND THE FORM OF THE PROGRAM INCENTIVE AGREEMENT; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Little Elm Economic Development Corporation (hereinafter referred to as the “EDC”) is a Type A economic development corporation, created pursuant to Chapter 504 of the Texas Local Government Code, as amended; and

WHEREAS, the American Rescue Plan Act of 2021 signed into law, and established the coronavirus state Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds, which together make up the coronavirus state and local Fiscal Recovery Funds (“SLFRF”); and

WHEREAS, the SLRFR funds enable us to provide grants due to ongoing public health threats associated with COVID-19 have negatively impacted business development in the State of Texas, Denton County, and the Town of Little Elm; and

WHEREAS, the EDC recognizes the positive economic impact that the Project will bring to the Town’s commercial activity, and find that the Project will promote new or expanded business development; and

WHEREAS, the grant payments to Local Business under this Agreement are exclusively performance-based, so that no payments will be made to Local Business until and unless the EDC has been assured receipt of a benefit for the Town’s residents from the Project; and

WHEREAS, on August 9, 2021, the EDC Board determined that it is in the best interests of the citizens of Little Elm, Texas that economic development funds be provided to Local Business in exchange for their participation in the Project; and

WHEREAS, on August 9, 2021, the EDC Board determined that it is in the best interests of the citizens of Little Elm, Texas that economic development funds be provided to Local Business in exchange for their participation in the Project; and

WHEREAS, the EDC Board has further determined that the obligations it is undertaking in this Agreement, including expenditures of economic development funds, are suitable and necessary to promote or develop new or expanded business enterprises, namely the expenditures that constitute the Project, as hereinafter defined.

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

Section 1. That the foregoing recitals are hereby found to be true and correct findings

of the Board of Directors of the Little Elm Economic Development Corporation, and are fully incorporated into the body of this Resolution.

Section 2. That the Board of Directors of the Little Elm Economic Development Corporation hereby approve the form of the Incentive Agreement, a copy of which is attached hereto as ***Exhibit A***, and the COVID-19 Incentive Program.

Section 3. This Resolution shall be in force and effect from and after its passage on the date shown below.

PASSED AND ADOPTED, this the 9th day of August, 2021.

**LITTLE ELM ECONOMIC
DEVELOPMENT CORPORATION,**
A Texas non-profit corporation

Ken Eaken, President

ATTEST:

Jennette Espinosa, Executive Director

Exhibit A

[Form of Incentive Agreement]

INCENTIVE AGREEMENT

This Incentive Agreement (this “Agreement”) is entered into between the Little Elm Economic Development Corporation, a Texas non-profit corporation, and a Type A economic development corporation (“Little Elm EDC”), and _____ (“Local Business”), a business operating in the Town of Little Elm, Texas.

WHEREAS, Little Elm EDC is an economic development corporation operating pursuant to Chapter 504 of the Texas Local Government Code, as amended (also referred to as the “Act”), and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: (A) manufacturing and industrial facilities; (B) research and development facilities; (C) military facilities, including closed or realigned military bases; . . . (F) recycling facilities; . . . (I) distribution centers; (J) small warehouse facilities capable of serving as decentralized storage and distribution centers; (K) primary job training facilities for use by institutions of higher education; or (L) regional or national corporate headquarters facilities”; and

WHEREAS, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . .”; and

WHEREAS, residents of the Town of Little Elm, Texas (“Town”) voted to authorize the creation of the Little Elm EDC and the adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of one-half of one percent of EDC; and

WHEREAS, the corporation is authorized to study and fund various projects, including those prescribed in Chapters 501 and 504 of the Development Corporation Act (as amended), and which are found to promote or develop new or expanded business enterprises; and

WHEREAS, the Little Elm EDC exists for the purposes of encouraging and assisting entities with economic development projects and the creation of jobs for the benefit of the local economy and the citizens of Little Elm, Texas; and

WHEREAS, the Corporation is governed by a board of directors (the “LEEDC Board”), which are authorized to approve the Little Elm EDC’s respective projects and expenditures; and

WHEREAS, Section 501.073, Texas Local Government Code, formerly Section 21 of the Texas Development Corporation Act of 1979, Art. 5190.6, Vernon's Texas Revised Civil Statutes, requires a municipality's governing body to approve all programs and expenditures of a development corporation authorized by such municipality; and

WHEREAS, the American Rescue Plan Act of 2021 signed into law, and established the coronavirus state Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds, which together make up the coronavirus state and local Fiscal Recovery Funds ("SLFRF"); and

WHEREAS, the SLRFR funds enable us to provide grants due to ongoing public health threats associated with COVID-19 have negatively impacted business development in the State of Texas, Denton County, and the Town of Little Elm; and

WHEREAS, the Little Elm EDC recognizes the positive economic impact that the Project will bring to the Town's commercial activity, and find that the Project will promote new or expanded business development; and

WHEREAS, the grant payments to Local Business under this Agreement are exclusively performance-based, so that no payments will be made to Local Business until and unless the Little Elm EDC has been assured receipt of a benefit for the Town's residents from the Project; and

WHEREAS, on August 9, 2021, the LEEDC Board determined that it is in the best interests of the citizens of Little Elm, Texas that economic development funds be provided to Local Business in exchange for their participation in the Project; and

WHEREAS, on August 9, 2021, the LEEDC Board determined that it is in the best interests of the citizens of Little Elm, Texas that economic development funds be provided to Local Business in exchange for their participation in the Project; and

WHEREAS, the LEEDC Board has further determined that the obligations it is undertaking in this Agreement, including expenditures of economic development funds, are suitable and necessary to promote or develop new or expanded business enterprises, namely the expenditures that constitute the Project, as hereinafter defined; and

NOW, THEREFORE, in consideration of the covenants, promises, and conditions stated in this Agreement, the Little Elm EDC and Local Business agree as follows:

Section 1. Recitals Incorporated; Effective Date.

1.1 The recitals above are incorporated into the terms of this Agreement as if set forth in full.

1.2 The Effective Date of this Agreement shall be the date that the last of the following events have occurred: (1) the LEEDC Board has duly resolved to undertake the project that is the subject of this Agreement and to enter into this Agreement; (2) the Parties to this Agreement have duly executed this Agreement; and authorized said Project and associated expenditures by the Little Elm EDC. This Agreement shall be of no effect until and unless all of said events have occurred.

Section 2. Term and Termination.

2.1 The term of this Agreement shall commence on the Effective Date. Where not otherwise specified herein, the terms of this Agreement shall expire **December 31, 2024**.

2.2 This Agreement and all obligations of the Parties hereto, shall terminate upon full performance of the terms of this Agreement or upon any of the following events:

- (a) Written agreement of the Parties;
- (b) Local Business fails to continuously meet all requirements for Project eligibility, or breaches this Agreement, and such requirement or breach is not remedied within five (5) days after receipt of written notice from the Little Elm EDC;
- (c) Immediately upon receipt of written notice by the Town, if Local Business suffers an event of bankruptcy or insolvency;
- (d) This Agreement has been terminated in accordance with its terms; and
- (e) Upon written notice by the Little Elm EDC if the performance of obligations arising under this Agreement as to Local Business or Little Elm EDC is determined to be materially prohibited by executive order, disaster declaration, new legislation, or other equivalent governmental or regulatory action, or if any subsequent federal, state, or local legislation or decision of a court of competent jurisdiction renders this Agreement invalid, illegal, or unenforceable.

Section 3. Recitals Incorporated and Definitions.

3.1 The recitals in the preamble to this Agreement are hereby incorporated for all purposes.

3.2 The terms, "Agreement," "LEEDC Board," "Little Elm EDC", "Town," "Town Council," and "Local Business" shall have the meanings set forth in the preamble to this Agreement.

3.3 The following words or phrases shall have the following meanings:

"Town Council" means the governing body of the Town of Little Elm, Texas.

"Town Manager" means the Town Manager of the Town of Little Elm, Texas.

“Town Regulations” mean Town Code provisions, ordinances, design standards, uniform codes, and other policies duly adopted by the Town.

“Parties” mean the Little Elm EDC and Local Business.

“Project” means the expenditure of economic development funds to be made by the Little Elm EDC in accordance with this Agreement and the Little Elm EDC’s procedural rules for the purpose of promoting or developing new or expanded business enterprises.

“Registry” means the list of eligible persons or business entities created for the Project and maintained by the Little Elm EDC under Section 5.2 below.

“Retailer” means any person, company, business or other entity or establishment that locates and maintains a retail sales operation through the operation of a restaurant, bar, or ice cream store at any location in the designated incorporated Town limits during the term of this Agreement, not including grocery stores, fast food restaurants, liquor stores and gas stations.

Section 4. Local Business Obligations. The following obligations of Local Business described in this section serve as conditions precedent for eligibility for any Grant of Project Funds pursuant to Section 5.

4.1 Application, Agreement, & Registration. Local Business must complete the Little Elm EDC’s application form, execute a copy of this Agreement, and deliver those forms and other required supporting materials to the Little Elm EDC. The application and Agreement documents must be complete, and accepted by the Little Elm EDC, and the applicant listed in the Registry for the Project in order for Local Business to be eligible for any grant funds from the Project. Applications from persons or entities which do not meet all of the requirements detailed in the application materials shall be rejected, and no Grant of Project Funds will be made to any person or entity not validly registered into the Project.

4.2 Records. In addition to maintaining all other records which must kept by law, Local Business shall retain all records regarding the administration of the Project and this Agreement for a time period of no less than one year following its termination or expiration. Upon reasonable request by one of the Little Elm EDC, Local Business shall provide copies of records necessary to verify compliance with the Agreement and the size of any Grant of Project Funds which Local Business requests.

4.3 Recognition of Little Elm EDC Vouchers. To receive any Grant of Project Funds, Local Business agrees and understands that it must provide its customers with value in goods and/or services equal to the amount stated on official vouchers distributed by the Little Elm EDC during certain conditions (“Qualifying Transactions”). The following requirements must be strictly observed for Local Business to obtain a Grant of Project Funds:

- (a) In order to constitute a Qualifying Transaction, the provision of goods or services by the Local Business must be subject to the sales and use taxes collected on

behalf of the Town and the Little Elm EDC. Online transactions or other payments subject to Town sales taxes can be Qualifying Transactions if all other requirements are met.

- (b) Local Business shall monitor and timely observe all new restrictions or requirements imposed by public health authorities which affect their operations.
- (c) Local Business recognizes and agrees that the vouchers issued by the Little Elm EDC have no intrinsic value, are not redeemable for cash, and are not legal tender, and that possession or delivery of vouchers to the Little Elm EDC or the Town of Little Elm shall not entitle Local Business to any Project funds unless all other requirements of eligibility have been satisfied.
- (d) Local Business shall only request a Grant of Project Funds for vouchers obtained through Qualifying Transactions having all of the following characteristics:
 - (1) Each voucher can be used only once and shall be physically collected from the customer and retained for delivery to the Little Elm EDC.
 - (2) The total amount of the transaction must be greater than the amount stated on the voucher.
 - (3) Only one voucher may be used in each Qualifying Transaction, and the customer must receive the same value of goods and services as provided by Local Business for equivalent non-voucher transactions.
 - (4) All applicable sales and use taxes must be applied to the transaction based on the total value of taxable goods and services provided by the Local Business in accordance with standard practices.
 - (5) The transaction must occur during the time period printed on the voucher by the Corporation.
 - (6) An itemized receipt showing the discount, in the amount of the voucher, must accompany each voucher.
 - (7) Provided a copy of the business's W9, Sales Tax Certificate, Business Owner contact information and general manager contact information.
- (e) Local Business will receive a 1099 from the Little Elm EDC for the amount corresponding with the combined total check amount they receive for the vouchers submitted for reimbursement, and the end of each tax year (2021, 2022, 2023, and 2024)

4.4 Conditions of Grants. Local Business must, as a condition precedent to the payment of any Grant of Project Funds, timely provide the Little Elm EDC with all documentation necessary to issue payment, including but not limited to the Application for inclusion in the Registry, a written request for a Grant of Project Funds on the required form, the corresponding vouchers, and such other information as may reasonably be requested. Local Business must remain in good standing with all federal, state, and/or local licensing authorities and shall not have any uncured breach or default of this Agreement. The Little Elm EDC shall have the right to demand that Local Business

repay some or all Grant(s) of Project Funds received by Local Business, if Local Business does not conduct business enterprises in the Town of Little Elm.

4.5 Town Regulations. Local Business acknowledges that its operations must comply with all applicable Town Regulations. Except to the extent this Agreement provides for stricter or more restrictive requirements than those in applicable Town Regulations, the applicable Town Regulations shall control; provided, however, that Local Business acknowledges that the Grant of Project Funds to be paid to Local Business in accordance with this Agreement are in lieu of any and all rights to any other type of payment or reimbursement by the Little Elm EDC or the Town with respect to the Project, the vouchers, or any other aspect of Qualifying Transactions, and that by entering into this Agreement Local Business expressly waives any and all of said rights to any other type of compensation for participation in the Project or acceptance of a voucher from the Little Elm EDC or the Town, notwithstanding any other Town Regulations.

Section 5. Little Elm EDC Obligations; Grants of Project Funds.

5.1 Administration. The Little Elm EDC authorizes and designates the Executive Director and the EDC Coordinator of Little Elm EDC to coordinate, administer, execute, and oversee all aspects of the Project by any lawful means available. Prior to administering the distribution of vouchers for the Project, the Little Elm EDC shall ensure that sufficient Project funds have been dedicated to issue all of the grants for the corresponding Qualifying Transactions.

5.2 Registry of Eligible Local Businesses. The Little Elm EDC shall create and maintain a registry list of Local Businesses who have timely submitted complete Applications, executed and returned a copy of this Agreement, and provided all other materials requested by the Little Elm EDC for participation in the Project (“Registry”), such that the Little Elm EDC declare the Application approved and cause the Local Business to be included in the Registry.

5.3 Processing Grants of Project Funds. Little Elm EDC shall issue one or more Grants of Project Funds to Local Business in accordance with the following:

- (a) Local Business may submit a written request for a Grant of Project Funds in the form attached hereto as Exhibit “1”, and accompanied by physical delivery of the corresponding Project vouchers, to the Little Elm EDC through designated Town staff. Requests shall be generally be processed by the EDC the order they are received.
- (b) All requests for a Grant of Project Funds must be received by the Little Elm EDC on or before the close of the City’s business day on **August 15, 2021**.
- (c) Local Business shall not be eligible for any Grant of Project Funds until it has been approved for inclusion in the Registry. If Local Business does not complete an Application for inclusion in the Registry on or before **August 15, 2021**, Local Business irrevocably waives and releases any claim to Project Funds or other reimbursement for participation in the Project.

- (d) The Little Elm EDC shall approve requests by Local Business for one or more Grant(s) of Project Funds submitted in accordance with this Agreement. The amount of the Grant of Project Funds approved for Local Business shall be equal to the aggregate values assigned to the vouchers returned by the Little Elm EDC prior to issuance (printed on the voucher) which were collected during Qualifying Transactions.
- (e) For each approved request for a Grant of Project Funds, the Little Elm EDC cause a corresponding payment to issue to Local Business to the contact listed in Local Business' application. Vouchers returned to Little Elm EDC which are unable to be verified as collected during a Qualifying Transaction shall not be considered in calculating payments to be issued to Local Business.
- (f) The Town, at its option, may offset any amounts due and payable to Local Business under this Agreement against any debt (including taxes) lawfully due to the Town or the Little Elm EDC by Local Business, regardless of whether the amount arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt due to the Town has been reduced to judgment by a court.
- (g) Notwithstanding any other provision of this Agreement, requests for a Grant of Project Funds are only valid so long as Project funds have not been exhausted. Grants of Project Funds under this Agreement shall be paid solely from lawfully available funds comprising the current revenue of the Little Elm EDC. Under no circumstances shall the obligations of the Little Elm EDC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. All disbursements of funds by the Little Elm EDC or Town shall be consistent with Article III, Section 52(a) of the Texas Constitution.

5.4 Disputed Amounts. If the Local Business seeks to dispute the amount disbursed by Little Elm EDC in association with any request for Grant of Project Funds, then Local Business must notify the Little Elm EDC in writing of the disputed amount and provide supplemental documentation explaining the factual basis for the dispute. The Little Elm EDC's designee shall review such requests and cause issuance of corrective payments to conform to the terms of this Agreement, but the Little Elm EDC will not be required to pay or accrue interest on such disputed amount.

5.5 Payee Information. With respect to any and every payment due to be paid at anytime by the Little Elm EDC to Local Business under this Agreement, the name of Payee for such payment shall be the name provided by Local Business for receipt of Project disbursements, and the payment shall be sent or delivered to the following address:

ATTN: _____

Local Business may change the name and address of the Payee upon written notice to the Little Elm EDC provided at least 15 days in advance of the date that a payment is due. Said written notice must be duly executed by Local Business and acknowledged before a Notary Public.

Section 6. Warranties. Local Business warrants and represents to Little Elm EDC the following:

6.1 Local Business is lawfully engaged in conducting business in the State of Texas, and if not a natural person, is validly existing and in good standing under the laws of the State of Texas, having satisfied all conditions precedent for power and authority to carry on its business as presently conducted in the State of Texas.

6.2 Local Business has the authority to enter into and perform, and will perform, the terms of this Agreement to the best of its ability.

6.3 Local Business has timely filed and will timely file all local, State, and Federal tax reports and returns required by law to be filed and all taxes, assessments, fees, and other governmental charges related to any property it owns in the Town or uses in association with the Project, including applicable ad valorem taxes, have been timely paid, and will be timely paid, during the term of this Agreement.

6.4 Any individual executing this Agreement on behalf of Local Business has been duly authorized to bind Local Business to its terms, and Local Business has directed them to do so without improper or undue influence of any kind.

6.5 In accordance with Chapter 2264 of the Texas Government Code, Local Business certifies that neither it, nor a branch, division, or department of Local Business, will ever knowingly employ an undocumented worker and that if, after receiving any public subsidies under this Agreement, Local Business, or a branch, division, or department of Local Business, is convicted of a violation under 8 U.S.C. §1324a(f), as amended or re-codified, Local Business shall repay the total amount of all public subsidies and/or incentives theretofore received under this Agreement with interest at two percent (2%) per annum not later than the 120th day after the date the Little Elm EDC notifies Local Business in writing of the violation.

6.6 No litigation or governmental proceeding is pending or, to the knowledge of Local Business and its general partner and officers, is threatened against or affecting Local Business, or the Property that may result in any material adverse change in Local Business's business, properties or operation.

6.7 Local Business shall not be in breach of any other contract by entering into and performing this Agreement. Local Business shall amend or enter into any other contract that may be necessary for Local Business to fully and timely perform its obligations under this Agreement.

6.8 Local Business recognizes and agrees that all vouchers issued by the Little Elm EDC in association with the Project are not legal tender and have no inherent cash value or fair market value.

Section 7. Miscellaneous.

7.1 Compliance with Laws. Local Business shall observe and obey all applicable laws, ordinances, regulations, and rules of the Federal, State, county, and city governments related to the Project.

7.2 Non-Discrimination. Local Business covenants and agrees that Local Business will not discriminate nor permit discrimination against any person or group of persons, with regard to employment and the provision of services for the Project on the grounds of race, religion, national origin, marital status, sex, age, disability, or in any manner prohibited by the laws of the United States or the State of Texas.

7.3 Time Periods. Time is of the essence in the performance of this Agreement.

7.4 Force Majeure. If the Little Elm EDC or Local Business are prevented, wholly or in part, from fulfilling their respective obligations under this Agreement by reason of any act of God, unavoidable accident, acts of enemies, fires, floods, governmental restraint or regulation, other causes of force majeure, or by reason of circumstances beyond its control, then the obligations of the Little Elm EDC or Local Business are temporarily suspended during continuation of the force majeure. If either party's obligation is affected by any of the causes of force majeure, the party affected shall promptly notify the other party in writing, giving full particulars of the force majeure as soon as possible after the occurrence of the cause or causes relied upon. As it pertains to Local Business, the COVID-19 coronavirus and related public health measures shall not constitute a force majeure for purposes of this Agreement.

7.5 No Assignment. Local Business may not assign all or part of its rights and obligations under this Agreement to a third party without prior written approval of Town Council and the Little Elm EDC, which approval will not be unreasonably withheld or delayed. Any unapproved assignment of Local Business's rights under this Agreement shall not release Local Business from its obligations hereunder. The Town Council or the Little Elm EDC may withhold approval of a third-party assignment without violation of this paragraph if it is determined that allowing the Assignment would frustrate or impair the purposes of the Project.

7.6 INDEMNITY. LOCAL BUSINESS COVENANTS TO FULLY INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS THE LITTLE ELM EDC, THE TOWN, AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND ASSOCIATED EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS) ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, THE NEGLIGENT OR OTHERWISE WRONGFUL ACTS OR OMISSIONS OF LOCAL BUSINESS, ITS AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, MATERIAL MEN OR EMPLOYEES THAT RELATE IN ANY MANNER TO LOCAL BUSINESS'S PERFORMANCE OF THIS

AGREEMENT OR PARTICIPATION IN THE PROJECT. LOCAL BUSINESS'S OBLIGATIONS UNDER THIS SECTION 7.6 SHALL SURVIVE THE TERM OF THIS AGREEMENT.

7.7 Events of Default by Local Business. The following events constitute a default of this Agreement by Local Business:

- (a) The Little Elm EDC or the Town determines that any representation or warranty on behalf of Local Business contained in this Agreement or in any financial statement, certificate, report, or opinion submitted to either of the Little Elm EDC in connection with this Agreement was incorrect or misleading in any material respect when made.
- (b) If taxes owed to the Town by Local Business become delinquent, and Local Business fails to timely and properly follow the legal procedures for protest or contest.
- (c) Local Business fails to timely, fully and completely comply with any one or more of the material requirements, obligations, duties, terms, conditions or warranties of this Agreement.
- (d) Any attempt to copy, fabricate, duplicate, imitate, simulate, spoof, or otherwise fraudulently create vouchers resembling those issued by the Little Elm EDC for the Project, or to knowingly allow or assist others in doing same.

7.8 Notice of Default. Should the Little Elm EDC or Town determine that Local Business is in default according to the terms of this Agreement, the Little Elm EDC or Town shall notify Local Business in writing of the event of default and provide 60 days from the date of the notice ("Cure Period") for Local Business to cure the event of default. Should the Little Elm EDC fail to timely, fully and completely comply with any one or more of its obligations under this Agreement, such failure shall be an act of default by the Little Elm EDC and the Little Elm EDC shall have sixty (60) days to cure and remove the Default after receipt of written notice to do so from Local Business.

7.9 Estoppel. The Little Elm EDC shall, at any time upon reasonable written request by Local Business, provide to any interested parties an estoppel certificate or other document evidencing that this Agreement is in full force and effect, that no event of default by Local Business exists hereunder (or, if appropriate, specifying the nature and duration of any existing event of default), the status of completion of any public infrastructure improvements for which economic incentives are being provided by the Little Elm EDC, and the payment of funds and/or any other obligations set forth in this Agreement.

7.10 Results of Uncured Default by Local Business. After exhausting good faith attempts to address any default during the cure Period, and taking into account any extenuating circumstances that might have occurred through no fault of Local Business, as determined by the EDC Board, the following actions must be taken for any default that remains uncured after the Cure Period. Further, Local Business shall immediately repay all funds paid by the Little Elm EDC to them under this Agreement and shall pay the Little Elm EDC reasonable attorney fees and costs of court to collect

amounts due to Little Elm EDC if not immediately repaid upon demand from the Little Elm EDC. Upon full payment by Local Business of all sums due, the Little Elm EDC and Local Business shall have no further obligations to one another under this Agreement. Neither the Town, the Little Elm EDC, nor Local Business may be held liable for any consequential damages.

7.11 No Waiver. No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, constitutes a waiver of any subsequent breach of the covenant or condition of the Agreement. No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, justifies or authorizes the nonobservance on any other occasion of the covenant or condition or any other covenant or condition of this Agreement. Any waiver or indulgence of Local Business's default may not be considered an estoppel against the Little Elm EDC. It is expressly understood that if at any time Local Business is in default in any of its conditions or covenants of this Agreement, the failure on the part of the Little Elm EDC to promptly avail itself of the rights and remedies that the Little Elm EDC may have, will not be considered a waiver on the part of the Little Elm EDC, but the Little Elm EDC may at any time avail itself of the rights or remedies or elect to terminate this Agreement on account of the default.

7.12 Limitation of Remedies. Local Business specifically agrees that the Little Elm EDC shall only be liable to Local Business for the actual amount of the Project Funds to be conveyed to Local Business in association with a request for Grant of Project Funds meeting all requirements of this Agreement (including without limitation association with a Qualifying Transaction and collection and return of the physical voucher(s) issued by Little Elm EDC), and shall not be liable to Local Business for any actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by the Little Elm EDC under the terms of this Agreement. Payment by the Little Elm EDC is strictly limited to those Project Funds so allocated, budgeted, and actually received solely during the term of this Agreement. Payments to be made shall also require a written request from Local Business to be accompanied by all necessary supporting documentation in accordance with this Agreement.

7.13 Allocation of Risk. Local Business understands and agrees that the Little Elm EDC and the Town shall be in no circumstances be liable, or otherwise responsible, for any act of fraud or abuse by any other person or entity associated with the Project, including but not limited to members of the general public who patronize Local Business. The Little Elm EDC shall administer the Project in a manner reasonably calculated to prevent successful attempts to defraud the Project or Local Business, but makes no guarantee or warranty of any kind regarding its efforts, and Local Business accepts the associated risks as part of the consideration it supplies in this Agreement.

7.14 Notices. Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing the same in the United States mail, certified with return receipt requested, proper postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the Parties in writing.

LOCAL BUSINESS:

Owner: _____ Manager: _____
Address: _____ Address: _____

Phone : _____ Phone: _____

LITTLE ELM EDC:

Little Elm Economic Development Corporation
Attn: Jennette Espinosa, Executive Director
100 West Eldorado Parkway
Little Elm, Texas 75068

A copy of all notices and correspondence sent to the Little Elm EDC must be sent to the Town and the Town Attorney at the following respective addresses:

TOWN:

Town of Little Elm
Attn.: Town Manager
100 West Eldorado Parkway
Little Elm, Texas 75068

Mr. Robert F. Brown, Esq.
Brown & Hofmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Texas 75081

Notice is effective upon deposit in the United States mail in the manner provided above.

7.15 Incorporation of Other Documents. The Exhibits referenced in this Agreement and attached hereto are incorporated herein as if set forth in full for all purposes. Said Exhibits include the following:

Exhibit 1: Request for a Grant of Project Funds form

7.16 Amendments or Modifications. No amendments or modifications to this Agreement may be made, nor any provision waived, unless in writing signed by a person duly authorized to sign Agreements on behalf of each party.

7.17 Relationship of Parties. In performing this Agreement, both the Little Elm EDC and Local

Business will act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-ventures, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose. At no time shall the Little Elm EDC or the Town have any control over or charge of Local Business's design, construction or installation of any of the Infrastructure Improvements that are the subject of this agreement, nor the means, methods, techniques, sequences or procedures utilized for said design, construction or installation. This Agreement does not create a joint enterprise between the Little Elm EDC and Local Business.

7.18 Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.

7.19 Severability. If for any reason, any section, paragraph, subdivision, clause, provision, phrase or word of this Agreement or the application of this Agreement to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected by the law or judgment, for it is the definite intent of the Parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement be given full force and effect for its purpose. To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future law effective during the term of this Agreement, then the remainder of this Agreement is not affected by the law, and in lieu of any illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable, will be added to this Agreement automatically.

7.20 Venue. Venue for any legal action related to this Agreement is in Denton County, Texas.

7.21 Interpretation. The Parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. This Agreement was drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

7.22 Sole Agreement. This Agreement constitutes the sole Agreement between the Little Elm EDC and Local Business. Any prior Agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in this Agreement, are of no force and effect.

7.23 Third Party Beneficiaries. Except and solely to the extent that this Agreement benefits the Town, this Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

7.24 Binding Agreement. This Agreement shall be binding on and inure to the benefit of the

Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

7.25 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and the binding agreement of each Party to the terms herein, but all of which together will constitute one and the same instrument.

EXECUTED BY THE PARTIES:

Little Elm Economic Development Corporation,
a Texas non-profit corporation

By: _____

Date: _____

President

Town of Little Elm, Texas
a Texas home-rule municipality

By: _____

Date: _____

Mayor

ON BEHALF OF LOCAL BUSINESS _____,

A Texas _____ [entity type]

By: _____

Date: _____

(Printed Name)

Title

EXHIBIT 1

REQUEST FOR GRANT OF PROJECT FUNDS – COVID-19 VOUCHER PROJECT



REQUEST FOR GRANT OF PROJECT FUNDS



By completing and signing this Request for Grant of Project Funds, the undersigned represents to the Town of Little Elm, and the Little Elm Economic Development Corporation, that all of the information contained herein and required supporting materials is true and correct as of the date signed. The Town anticipates processing times of 5 business days from receipt of a complete request to issuance of approved grants.

Local Business Name: _____ Date submitted: _____

MATERIALS WHICH MUST ACCOMPANY THIS REQUEST

This form will not be processed unless and until the applicant has also been approved for inclusion in the project registry and provided all required materials. In addition, to be considered for complete, Applicant must deliver the following with this form:

- ☐ One or more voucher(s) issued by Corporations, accompanied by suitable documentation showing they were collected in association with Qualifying Transactions (as that term is defined by the Agreement). The vouchers must be physically returned to EDC staff via mail to 100 West Eldorado Parkway, Little Elm, TX 75068, **or via the after-hours library book drop box on the east side of Town Hall.**
- ☐ Additional documents **required** by EDC staff:
 - Copy of business W9 (see attachment)
 - Copy of Texas Sales Tax Certificate
 - Building/Business owner: name, cell phone number, and email
 - General manager: name, cell phone number, and email

GUIDELINES FOR EDC ACCEPTING VOUCHER FOR REIMBURSEMENT

- ☐ Additional documents required by EDC staff:
 - Must attach itemized ticket to voucher
 - Ticket must show removal of a \$25 amount
 - All transactions must be greater than \$25 stated on voucher
 - All vouchers must be redeemed by April 1, 2022 and submitted for reimbursement by April 15, 2022

****If the proper documentation noted above is not provided, no reimbursement will be issued per EDC audit policy****

VERIFICATION & SIGNATURE

By my signature below, I verify that the information used to complete this Request for Grant of Project Funds form is true and correct.

SIGNED BY _____ (printed name), in my capacity as

_____ (title) of _____ (business name)

on this the _____ day of _____, 2020.

Signature

****NOTE: Deadline to turn in all vouchers for reimbursement is April 15, 2022.**



Date: 08/09/2021
Agenda Item #: 7.
Department: Economic Development Corporation
Strategic Goal: Ensure strong relationship within the community and region
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to Approve the Seventh Amendment to the Ground Lease Purchase Agreement between Hula Hut and Little Elm EDC. (Jennette Espinosa, Executive Director)

DESCRIPTION:

The Agreement amends the following items:

- Starting October 1, 2021, Hula Hut will pay rent equal to 1% of the revenue quarterly, at the end of every three (3) month period on or before the 10 day of each month.
- On October 1, 2022, Hula Hut will pay rent equal to 2% of the revenue quarterly, at the end of every three (3) month period on or before the 10 day of each month.
- On October 1, 2023, Hula Hut will pay rent equal to 3% of the revenue quarterly, at the end of every three (3) month period on or before the 10 day of each month.

Hula Hut will consent to a 3rd party firm evaluating the restaurant for overall customer experience, customer service and cleanliness, after which the company will provide a summary of their evaluation with benchmarks and timelines for improvements, if needed. If Hula Hut does not heed the recommendations in the allocated proposed time, rent will go to 3% and will not revert to a lesser percentage.

The advertising requirements stated in the 5th Amendment of \$35,000 with a marketing firm agreeable to the EDC is still in effect.

Section 9.2 Future Competition, 9.3 First Right of Refusal for 290 Restaurant, 9.4 Right of First Refusal for Cable Park Site at 280 East Eldorado Parkway, 9.5 Beach Snack Bar; and 9.6 First Option for Other Retail have all been removed from this amendment.

BUDGET IMPACT:

Starting October 1, 2021, the EDC will now receive annual rent payments from Hula Hut in the amount of 1% of the revenue, quarterly, at the end of every three (3) month period on or before the 10th day of each month. That amount increases to 2% in year two and 3% in year three.

RECOMMENDED ACTION:

Staff recommends that the Board approve the agreement as presented.

Attachments

Hula Hut 7th Amendment Ground Lease

AFTER RECORDING RETURN TO:
Little Elm Economic Development Corporation
100 West Eldorado Parkway
Little Elm, TX 75068

**SEVENTH AMENDMENT TO
GROUND LEASE PURCHASE AGREEMENT
FOR PROPERTY IN LITTLE ELM, DENTON COUNTY, TEXAS**

This **SEVENTH AMENDMENT TO GROUND LEASE PURCHASE AGREEMENT** ("**Seventh Amendment**") is made and entered into on the ____ day of _____, 2021 (the "**Effective Date**") by and between **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation having its principal address at 100 W. Eldorado Parkway, Little Elm, Texas 75068-5060 ("**Little Elm EDC**"), and **LITTLE ELM HULA HUT, LLC**, a Texas Limited Liability Company, or its permitted assigns ("**Hula Hut**"), having its principal address at 10750 Strait Lane, Dallas, Texas 75229.

RECITALS

WHEREAS, on or about September 9, 2013, Little Elm EDC and Hula Hut executed the original Ground Lease Purchase Agreement ("**Original Agreement**") concerning the Premises; and

WHEREAS, on or about September 8, 2014, the Town and Little Elm EDC amended the Original Agreement to extend the term of the Original Agreement and to extend other designated deadlines in the Original Agreement ("**First Amendment**"); and

WHEREAS, on or about March 15, 2015, Little Elm EDC and Hula Hut amended the Original Agreement (as amended by the First Amendment) to address various matters and obligations ("**Second Amendment**"); and

WHEREAS, on or about June 1, 2015, Little Elm EDC and Hula Hut amended the Original Agreement (as amended by the First Amendment and Second Amendment) to more clearly address the Premises subject to the Original Agreement, as amended ("**Third Amendment**"); and

WHEREAS, on or about March 6, 2017, Little Elm EDC and Hula Hut amended the Original Agreement (as amended by the First Amendment, Second Amendment, and Third Amendment) to address the Annual Percentage Rent, Percentage Rent, and Rent Commencement Date ("**Fourth Amendment**"); and

WHEREAS, on or about May 15, 2018, Little Elm EDC and Hula Hut amended the Original Agreement (as amended by the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment) to address Annual Percentage Rent, Rent Commencement Date, and Advertising ("**Fifth Amendment**"); and

WHEREAS, on or about June 8, 2020, Little Elm EDC and Hula Hut amended the Original Agreement (as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, and Fifth Amendment) to address Annual Percentage Rent, Rent Commencement Date, and certain “Impositions” (“**Sixth Amendment**”); and

WHEREAS, the parties, through this Seventh Amendment, desire to further amend the Original Agreement, as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, and Sixth Amendment to address the certain obligations of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, and subject to the terms, provisions and conditions of this Seventh Amendment, and each in consideration of the duties, covenants and obligations of the other hereunder, Little Elm EDC does hereby lease, demise, and let the Premises (as hereinafter defined) unto Hula Hut, and Hula Hut does hereby lease the Premises from Little Elm EDC and the parties hereby agree as follows.

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Seventh Amendment and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. AMENDMENTS TO AGREEMENT.

- (a) **Amendment to Agreement.** That Section 1.3 of the Agreement is hereby amended to read as follows:

“1.3 “Annual Percentage Rent” or “Percentage Rent” means an amount for each full Lease Year of the Term determined and calculated as follows: For the time period of October 1, 2021, through September 30, 2022, “Annual Percentage Rent” or “Percentage Rent” shall be one percent (1%) of Gross Revenue. For the time period of October 1, 2022, through September 30, 2023, “Annual Percentage Rent” or “Percentage Rent” shall be two percent (2%) of Gross Revenue. And, for the time period of October 1, 2023, through the end of the Lease Term, “Annual Percentage Rent” or “Percentage Rent” shall be three percent (3%) of Gross Revenue.”

- (b) **Amendment to Agreement.** That Section 1.29 of the Agreement is hereby amended to read as follows:

“1.29 Rent Commencement Date” means October 1, 2021.”

- (c) **Amendment to Agreement.** That Section 8.10 of the Agreement is hereby amended to read as follows:

“8.10 Advertising and Customer Service. Hula Hut, in its advertising efforts, must spend annually during the Term of this Agreement a minimum of Thirty-Five Thousand and No/100 Dollars (\$35,000.00) with a marketing firm agreeable to Little Elm EDC and Hula Hut. Further, Hula Hut shall provide Little Elm EDC invoices and receipts of said marketing efforts on an annual basis. Said advertising shall emphasize its location in, and affiliation with, the Town of Little Elm, rather than its proximity to Lake Lewisville. In addition, Hula Hut consents to a third-party firm, agreeable to Little Elm EDC and Hula Hut, to evaluate the restaurant for overall customer experience, customer service, and cleanliness, after which said firm will provide a summary of their evaluation with benchmarks and timelines for improvement, if any. In the event, Hula Hut does not implement the recommendations proposed by said firm in the allocated time, the “Annual Percentage Rent” or “Percentage Rent” as provided in Section 1.3 of this Agreement shall be three percent (3%) of Gross Revenue through the end of the Lease Term.”

- (d) **Amendment to Agreement.** That Sections 9.2, 9.3, 9.4, 9.5, and 9.6 of the Agreement are hereby repealed in its entirety.

SECTION 3. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Seventh Amendment:

- (a) **Agreement and Amendment.** All of the terms, conditions, and obligations of the Original Agreement, and any amendments, remain in full force and effect except where specifically modified by this Seventh Amendment.
- (b) **Amendments.** This Seventh Amendment constitutes the entire understanding and agreement of the parties as to the matters set forth in this Seventh Amendment. No alteration of or amendment to this Seventh Amendment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (c) **Applicable Law and Venue.** This Seventh Amendment shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Seventh Amendment shall lie in the state district courts of Denton County, Texas.
- (d) **Assignment.** This Seventh Amendment may not be assigned without the express written consent of the other party, which shall not be unreasonably withheld.
- (e) **Binding Obligation.** This Seventh Amendment shall become a binding obligation on the signatories upon execution by all signatories hereto. Little Elm EDC warrants and

represents that the individual executing this Seventh Amendment on behalf of the Little Elm EDC has full authority to execute this Seventh Amendment and bind the Little Elm EDC to the same. Hula Hut warrants and represents that the individual executing this Seventh Amendment on Hula Hut's behalf has full authority to execute this Seventh Amendment and bind Hula Hut to the same.

- (f) **Caption Headings.** Caption headings in this Seventh Amendment are for convenience purposes only and are not to be used to interpret or define the provisions of the Seventh Amendment.
- (g) **Counterparts.** This Seventh Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (h) **Effective Date.** The effective date (the "**Effective Date**") of this Seventh Amendment shall be the date of the latter to execute this Amendment by Hula Hut and the Little Elm EDC.
- (i) **Severability.** The provisions of this Seventh Amendment are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Seventh Amendment is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Seventh Amendment shall be enforced as if the invalid provision had never been included.
- (j) **Time is of the Essence.** Time is of the essence in the performance of this Seventh Amendment.

[The Remainder of this Page Intentionally Left Blank]

EXECUTED IN MULTIPLE ORIGINAL COUNTERPARTS, which constitute but one and the same instrument, as of the day and year first above written. Upon the final execution hereof by Little Elm EDC and Hula Hut, the last to sign of such parties shall complete the date on the first page thereof.

LITTLE ELM EDC:

**LITTLE ELM ECONOMIC
DEVELOPMENT CORPORATION,**
a Texas non-profit corporation

By: _____

Ken Eaken, President

Date Executed: _____

ATTEST:

Jennette Espinosa, Executive Director

HULA HUT:

LITTLE ELM HULA HUT, LLC,
A Texas limited liability company

By: _____

Stephen Oyster, Managing Partner

Date Executed: _____



Date: 08/09/2021
Agenda Item #: 8.
Department: Administrative Services
Strategic Goal: Promote and expand Little Elm's identity
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to Approve the Performance Agreement between Hurtado Barbecue LLC, Little Elm and the EDC (Jennette Espinosa, Executive Director)

DESCRIPTION:

Term of the Agreement:

The term is a 15-year lease with a descending claw back clause, for every year of the lease, in the event of default on the agreement. The term expires on December 31, 2036.

The establishment will be approximately 5,935 square feet and will occupy Suites 100 and 120 at 100 Hardwicke. By March 1, 2022, and through the term of this Agreement, Hurtado will employ and maintain a minimum of 35 full time, or equivalent, employees.

The owner of the building, Richard Pray, in conjunction with the tenant, Brandon Hurtado, have and are investing \$1.6M in the conversion and finish out of the building. Hurtado Barbecue has a huge following and will be a great draw to the Lakefront. On the North Texas Barbecue Addicts Facebook page, Hurtado Barbecue has over 130,000 members. The Little Elm location will be the primary location that will include a full service restaurant and bar, as well as an area for sausage production and distribution. Days of operation will be Tuesday through Sunday.

BUDGET IMPACT:

The EDC is proposing incentives for the project in the amount of \$400,000, which will be submitted as Qualified Expenditures accompanied by proper documentation by April 1, 2022. Funds will not be reimbursed until after Hurtado Barbecue has obtained a CO from the Town of Little Elm and is open for business.

RECOMMENDED ACTION:

Staff recommends that Council approves the Performance Agreement as presented.

Attachments

Hurtado Barbecue Agreement

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** by and between **HURTADO BARBECUE, LITTLE ELM LLC**, a Texas limited liability company (hereinafter referred to as "Developer"), and the **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the "LEEDC"), is made and executed on the following recitals, terms and conditions.

WHEREAS, LEEDC is an economic development corporation operating pursuant to Chapter 504 of the Texas Local Government Code, as amended (also referred to as the "Act"), and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

WHEREAS, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . ."; and

WHEREAS, Section 501.158 of the Texas Local Government Code prohibits the provision of a direct incentive unless LEEDC enters into an Agreement with Developer providing at a minimum a schedule of additional payroll or jobs to be created or retained by LEEDC's investment; a schedule of capital investments to be made as consideration for any direct incentives provided by LEEDC to Developer; and a provision specifying the terms and conditions upon which repayment must be made should Developer fail to meet the agreed to performance requirements specified in this Agreement; and

WHEREAS, Developer has applied to LEEDC for financial assistance necessary for the construction of Qualified Expenditures to be made to the property generally located at 100 Hardwicke, Suite 100 and Suite 120, Town of Little Elm, Texas (hereinafter referred to as the "Property"); and

WHEREAS, the LEEDC's Board of Directors have determined the financial assistance provided to Developer for the Qualified Expenditures to be made to the Property is consistent with and meets the definition of "project" as that term is defined in Section 501.103 of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code; and

WHEREAS, Developer agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the Town Council of the Town of Little Elm, Texas, to approve all programs and expenditures of the LEEDC, and accordingly this Agreement is not effective until Town Council has approved this project at a Town Council meeting called and held for that purpose.

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 LEEDC and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, and shall continue thereafter until **December 31, 2036**, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Performance Agreement from time to time, if any.
- (c) **Developer.** The word “Developer” means Hurtado Barbecue, Little Elm LLC, a Texas limited liability company, its successors and assigns, whose address for the purposes of this Agreement is 100 Hardwicke, Suite 100, Little Elm, Texas 75068.
- (d) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the LEEDC and Developer.
- (e) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (f) **Full-Time Equivalent Employment Position.** The words “Full-Time Equivalent Employment Position” or “Full-Time Equivalent Employment Positions” mean and include a job requiring a minimum of One Thousand Eight Hundred Twenty (1,820) hours of work averaged over a twelve (12) month period.
- (g) **LEEDC.** The term “LEEDC” means the Little Elm Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 100 W. Eldorado Parkway, Little Elm, Texas 75068.

- (h) **Property.** The word “Property” means 100 Hardwicke, Suite 100 and Suite 120, Little Elm, Texas 75068.
- (i) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures consisting of the construction and installation of improvements, consisting of a minimum 5,935 square foot Hurtado Barbecue Restaurant located on the Property, and those expenses which otherwise meet the definition of “project” as that term is defined by Section 501.103 of the Act, and the definition of “cost” as that term is defined by Section 501.152 of the Act.
- (j) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE COVENANTS OF DEVELOPER.

Developer covenants and agrees with LEEDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Qualified Expenditures.** Developer covenants and agrees to submit to the LEEDC upon request, invoices, receipts, or other documentation of the Qualified Expenditures made to the Property in a form acceptable to the LEEDC prior to any reimbursement. Developer covenants and agrees to provide to the LEEDC upon request said invoices, receipts, or other documentation in the amount not to exceed **Four Hundred Thousand and No/100 Dollars (\$400,000.00)** by **April 1, 2022**.
- (b) **Rules Governing Construction, Additions, and Alterations.** The following rules will govern construction, additions, and alterations of the building or other improvements on the Property and the landlord will have final authority.
 - i. Landlord must at his own expense, engage a licensed architect or engineer to prepare plans and specifications for finish out, improvements, additions and/or alterations to the building and submit the same to the Town of Little Elm for approval in advance of any construction; which such approval shall not be unreasonably withheld or delayed. A simulation of plans for building renovations are depicted in *Exhibit A*.
 - ii. **Building Permit.** The Developer covenants and agrees to make application to receive a building permit by **October 31, 2021** from the Town of Little Elm, Texas, for 5,935 square feet of commercial space located on the land at 100 Hardwicke, Little Elm, Texas. The LEEDC shall cause the Town of Little Elm to waive all permit fees.
 - iii. **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained by **March 1, 2022**, a Certificate of Occupancy from the Town of

Little Elm, Texas, for a minimum of 5,935 square feet for Hurtado Barbecue Restaurant space located on the Property.

- (b) **Name of Business.** The Developer agrees not to change the advertised name of the place of business operated in the premises from "Hurtado Barbecue" to another name without the LEEDC's written consent.
- (c) **Operation of Developer's Business.** Throughout the Term, Developer shall keep its business in the Property fully stocked and adequately staffed to meet reasonably anticipatable demand and Developer shall conduct such business in good faith and in a reputable manner. Throughout the Term, Developer shall occupy the entire Property and hold such business open to the public not fewer than six hours per day, six (6) days per week, except that Developer need not be open on legal holidays.
- (d) **Other Locations.** Developer and those owning a majority of the outstanding membership interest of Developer shall not operate a similar business to the business operated at the Property within a 25 minute drive time of the Property during the Term of this Agreement.
- (e) **Operate Hurtado Barbecue Restaurant.** Developer covenants and agrees by **March 1, 2022**, and during the Term of this Agreement to keep open to the general public the Hurtado Barbecue Restaurant located on the Property, for a term of fifteen (15) years.
- (f) **Job Creation and Retention.** Developer covenants and agrees by **March 1, 2022**, and during the Term of this Agreement to employ and maintain a minimum of **thirty-five (35)** Full-Time Equivalent Employment Positions working at the Property. Developer covenants and agrees beginning on **April 1, 2023** (for the initial reporting period of March 1, 2022 to February 28, 2023), and during the Term of this Agreement, Developer shall deliver to LEEDC upon request an annual compliance verification signed by a duly authorized representative of Developer that shall certify the number of Full-Time Equivalent Employment Positions, and shall disclose and certify the average wage for all Full-Time Equivalent Employment Positions (the "Annual Compliance Verification"). The Developer covenants and agrees beginning on **April 1, 2023**, and annually thereafter during the Term of this Agreement, there will be a total of **fifteen (15)** Annual Compliance Verifications due and submitted to LEEDC covering the Full-Time Equivalent Employment Positions created and maintained during the Term of this Agreement. All Annual Compliance Verifications shall include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports.
- (e) **Chamber of Commerce.** Developer agrees to obtain a Pontoon Level membership or higher prior to opening for business (obtained CO) and agrees to maintain said membership for the Term of this Agreement.
- (f) **Performance Conditions.** Developer agrees to make, execute and deliver to LEEDC

such other promissory notes, instruments, documents and other agreements as LEEDC or its attorneys may reasonably request to evidence this Agreement. Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Developer and LEEDC.

- (h) **Property Rights.** All alterations, additions, improvements, floor coverings, fixtures and removable trade fixtures which may be made or installed by any of the parties hereto upon the Property and which in any manner are attached to the floors, roof, walls, or ceilings, and all exterior signs, shall remain at the termination of this agreement become the property thereof without damage or injury to the Property or to such property, or landlord may require removal of any of the same.

SECTION 5. AFFIRMATIVE COVENANTS OF LEEDC.

LEEDC covenants and agrees with Developer that, while this Agreement is in effect, LEEDC shall comply with the following terms and conditions:

- (a) **Financial Assistance.** LEEDC covenants and agrees to submit reimbursement for Qualified Expenditures made by the Developer in the amount of **Four Hundred Thousand and No/100 Dollars (\$400,000.00)** within thirty (30) days of receipt of invoices, receipts, or other documentation in the minimum amount of **Four Hundred Thousand and No/100 Dollars (\$400,000.00)** by **April 1, 2022**, consistent with Section 4(a) of this Agreement, and receives a certificate of occupancy and is open for business consistent with Sections 4(b) and 4(c) of this Agreement.
- (b) **Performance.** LEEDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between LEEDC and the Developer.

SECTION 6. CESSATION OF ADVANCES.

If LEEDC has made any commitment to provide financial assistance to Developer, whether under this Agreement or under any other agreement, LEEDC shall have no obligation to advance or disburse financial assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or LEEDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or LEEDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and LEEDC is an

Event of Default.

- (b) **False Statements.** Any warranty, representation, or statement made or furnished to LEEDC by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the Town of Little Elm, Texas, to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from LEEDC and/or Denton County Central Appraisal District is an Event of Default.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement. In the event, Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by LEEDC to Developer pursuant to Section 5(a) of this Agreement (the "Total Incentive") shall become immediately due and payable by Developer to LEEDC, in the follow manner. The Event of Default occurs:

Effective Date through December 31, 2022	100% of Total Incentive;
Calendar Year 2023	93.33% of Total Incentive;
Calendar Year 2024	86.67% of Total Incentive;
Calendar Year 2025	80.00% of Total Incentive;
Calendar Year 2026	73.33% of Total Incentive;
Calendar Year 2027	66.67% of Total Incentive;
Calendar Year 2028	60.00% of Total Incentive;
Calendar Year 2029	53.33% of Total Incentive;
Calendar Year 2030	46.67% of Total Incentive;
Calendar Year 2031	40.00% of Total Incentive;
Calendar Year 2032	33.33% of Total Incentive;
Calendar Year 2033	26.67% of Total Incentive;
Calendar Year 2034	20.00% of Total Incentive;
Calendar Year 2035	13.33% of Total Incentive; and
Calendar Year 2036	6.67% of Total Incentive.

SECTION 9. INDEMNIFICATION.

Developer shall indemnify, save, and hold harmless LEEDC, its directors, officers, agents, attorneys, and employees (collectively, the "Indemnitees") from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnatee if the claim, demand, action or cause of action directly or indirectly relates to tortious interference with contract or business interference, or wrongful or negligent use of LEEDC's financial assistance by Developer or its agents and employees; (ii) any administrative or investigative proceeding by any governmental authority directly or indirectly related, to a claim, demand, action or cause of action in which LEEDC is a disinterested party; (iii) any claim, demand, action or cause of action which directly or indirectly contests or challenges the legal authority of LEEDC or Developer to enter into this Agreement; and (iv) any and all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements) that any Indemnatee suffers or incurs as a result of any of the foregoing; provided, however, that Developer shall have no obligation under this Section to LEEDC with respect to any of the foregoing arising out of the gross negligence or willful misconduct of LEEDC or the breach by LEEDC of this Agreement. If any claim, demand, action or cause of action is asserted against any Indemnatee, such Indemnatee shall promptly notify Developer, but the failure to so promptly notify Developer shall not affect Developer's obligations under this Section unless such failure materially prejudices Developer's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by Developer in writing, as so long as no Default or Event of Default shall have occurred and be continuing, such Indemnatee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Developer to participate in such contest. Any Indemnatee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Developer may be liable for payment of indemnity hereunder shall give Developer written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Developer's concurrence thereto.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under

this Agreement shall lie in the state district courts of Denton County, Texas.

- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Developer warrants and represents that the individual or individuals executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. LEEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to LEEDC:

Little Elm Economic Development Corporation
100 W. Eldorado Parkway
Little Elm, Texas 75068
Attn: Jennette Espinosa, Executive Director
Telephone: (214) 975-0455
jke@littleelm.org

With copy to:

Brown and Hofmeister, LLP.
740 East Campbell Road, Suite 800
Richardson, Texas 75081
Attn: Jeff Moore, Esq.
214-747-6109
jmoore@bhlaw.net

if to Developer:

Hurtado Barbecue, Little Elm LLC
100 Hardwicke Lane, Suite 100
Little Elm, Texas 75068
Attn: Brandon Hurtado
Telephone: 682-401-7888

info@hurtadobbq.com

With copy to:

Kobty Law Firm, PLLC
900 West Abram Street
Arlington, Texas 76013
Attn: Hani Kobty
817-223-0989
hani@kobtylawfirm.com

- (h) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (i) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (j) **Undocumented Workers.** Developer certifies that the Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of six percent (6%), not later than the 120th day after the date the LEEDC notifies Developer of the violation.

[The Remainder of this Page Intentionally Left Blank]

DEVELOPER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS PERFORMANCE AGREEMENT, AND DEVELOPER AGREES TO ITS TERMS. THIS PERFORMANCE AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.

LEEDC:

***LITTLE ELM ECONOMIC
DEVELOPMENT CORPORATION,***
a Texas non-profit corporation

By: _____
Ken Eaken, President

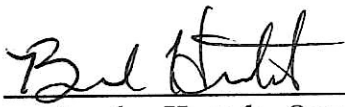
Date Signed: _____

ATTEST:

Jennette Espinosa, Executive Director

DEVELOPER:

HURTADO BARBECUE, LITTLE ELM LLC
a Texas limited liability company,

By: 
Brandon Hurtado, Owner

Date Signed: 7/31/21

Exhibit A

Building Plans for Remodel

DATE: 07/12/2021

Hardwicke Lane

W Eldorado Parkway

LANDSCAPE TO
ADJUST TO SITE PLAN
NEW CONCRETE
PAVING
DEMO (DASHED LINE)
EXISTING CONCRETE
PAVING

Existing 1-Story Building
7,500 s.f.

1/A0.02

EXISTING
PARKING LOT

EXISTING
PARKING LOT



SITE DEMOLITION PLAN

Scale: 3/32" = 1'-0"

RGA PROJECT NUMBER:

21091

DATE:

7.12.2021

REVISIONS:

△ 5.9.2018 Revision 1
△
△
△
△

SHEET:

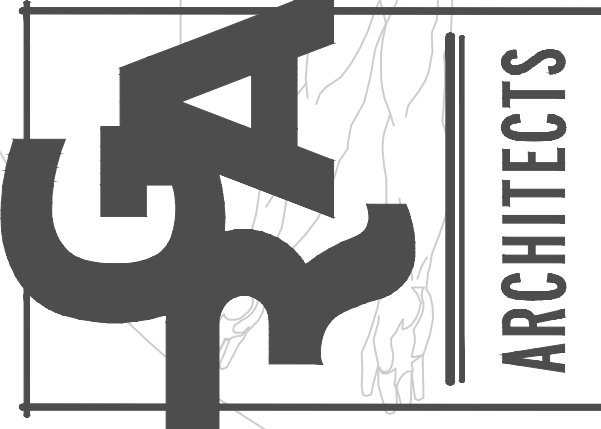
A0.01

100 HARDWICKE - HURTADO BBQ RENOVATION

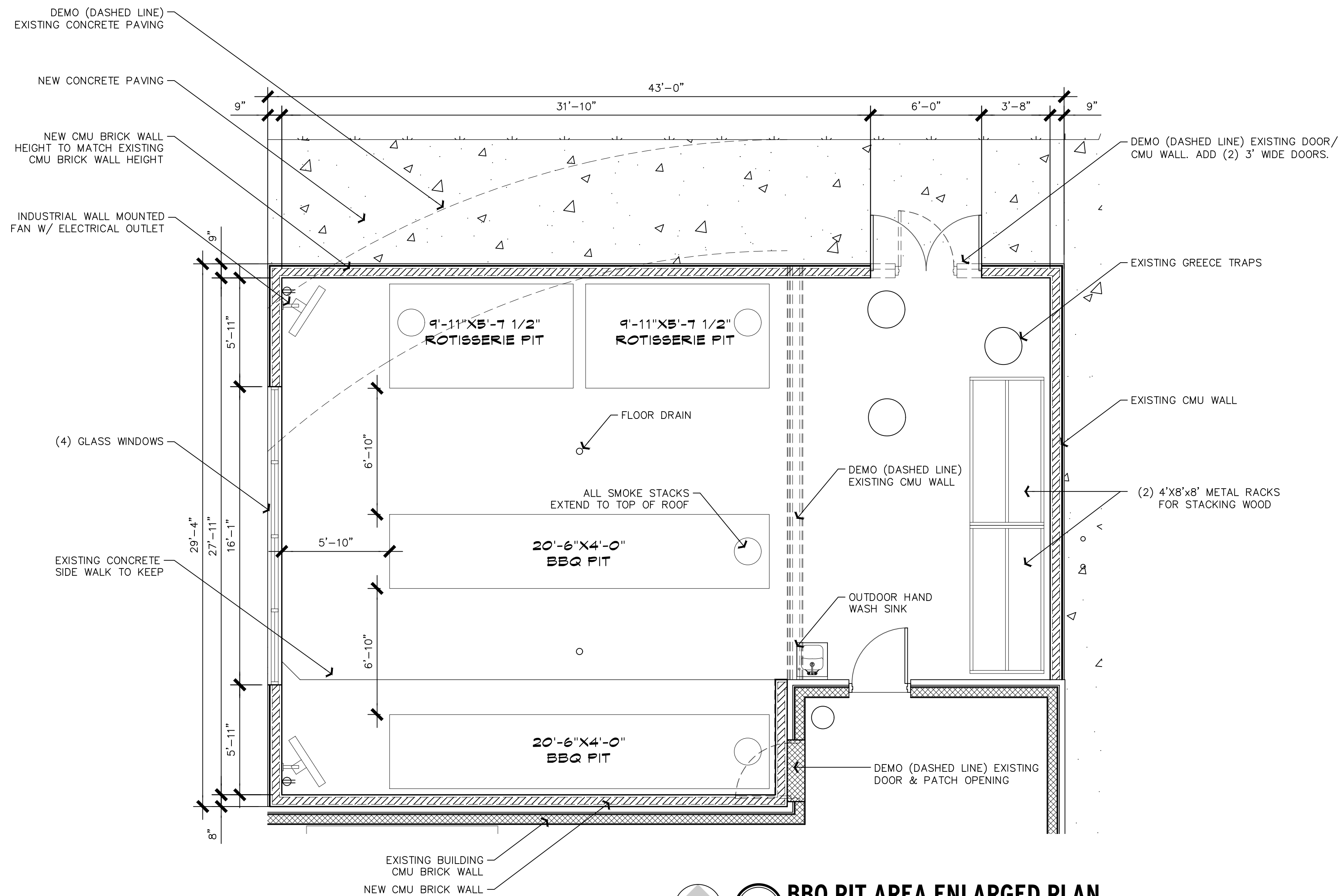
100 Hardwicke Lane
Little Elm, Texas 75068

PRELIMINARY

NOT FOR REGULATORY APPROVAL,
PERMITTING, OR CONSTRUCTION.
THIS PRELIMINARY DOCUMENT
IS RELEASED UNDER THE AUTHORITY OF
JAMES R. GILLILAND
TEXAS REGISTRATION NO. 8962
ON DATE INDICATED BELOW.



301 S. OAK STREET, STE 100
ROANOKE, TX 76262
PH | 817 430 3382
RGAARCHITECTS.COM



BBQ PIT AREA ENLARGED PLAN

Scale: 1/4" = 1'-0"

100 HARDWICKE - HURTADO BBQ RENOVATION

100 Hardwicke Lane
Little Elm, Texas 75068

RGA PROJECT NUMBER: 21091

DATE: 7.12.2021

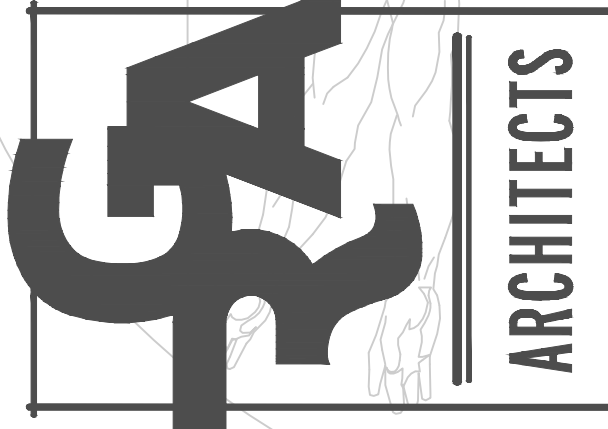
REVISIONS:

- △ 5.9.2018 Revision 1
- △
- △
- △
- △

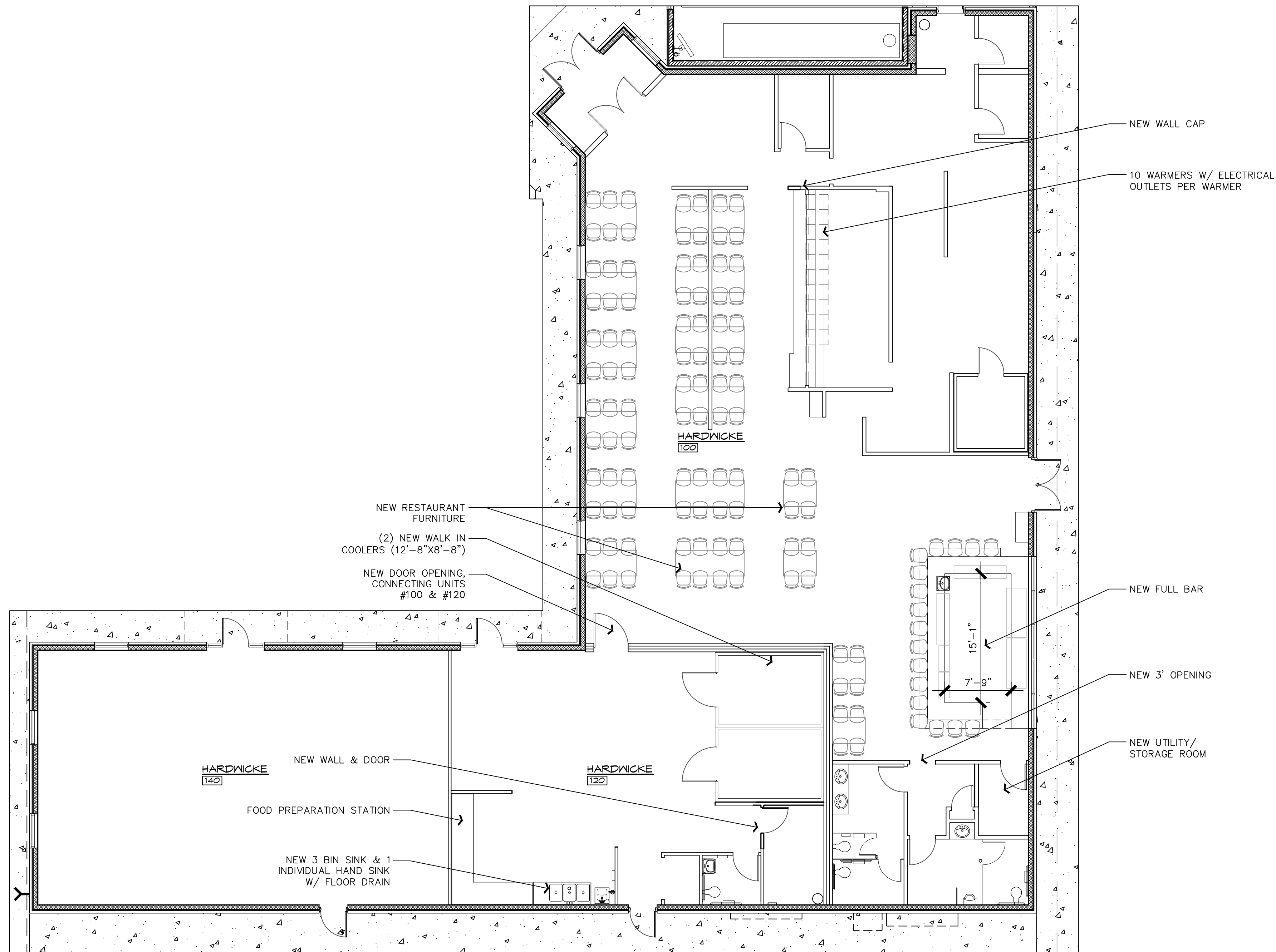
SHEET:

A0.02

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1 FINISH FLOOR PLAN
Scale: 1/8" = 1'-0"

100 HARDWICKE - HURTADO BBQ RENOVATION

100 Hardwicke Lane
Little Elm, Texas 75068

RGA PROJECT NUMBER: 21091

DATE: 7.12.2021

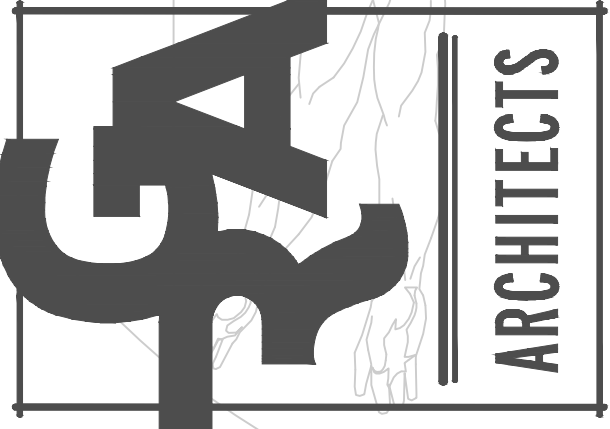
REVISIONS:

5.9.2018 Revision 1

SHEET:

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