



**WORKSHOP & REGULAR MEETING
OF THE TOWN COUNCIL**

Tuesday, April 5, 2022

6:00 PM

Little Elm Town Hall

100 W Eldorado Parkway, Little Elm, TX 75068

1. **Call to Order Council Workshop at 6:00 p.m.**
 - A. Invocation.
 - B. Pledge to Flags.
 - C. Items to be Withdrawn from Consent Agenda.
 - D. Emergency Items if Posted.
 - E. Request by the Town Council for Items to be Placed on a Future Agenda for Discussion and Recognition of Excused Absences.
 - F. Presentation of Monthly Updates.
 - G. Town Council to Highlight Items on the Agenda Needing Further Discussion or Comments Prior to the Regular Session.

2. **Presentations.**
 - A. Present **Certificates of Completion for Class 6 of Citizens Government Academy.**
 - B. **Team Member Recognition.**
3. **Workshop.**
 - A. Present and Discuss the **Sex Offender Registration Program.**
 - B. Present an **Update on U.S. Highway 380.**
4. **Roll Call/Call to Order Regular Town Council Immediately Following Council Workshop.**
5. **Public Comments**

Persons may address the Town Council on any issue. This is the appropriate time for citizens to address the Council on any concern whether on this agenda or not. In accordance with the State of Texas Open Meeting Act, the council may not comment or deliberate such statements during this period, except as authorized by Section 551.072, Texas Government Code.
6. **Consent Agenda**

All matters listed under the Consent Agenda are considered to be routine by the Town Council and require little or no deliberation. There will not be a separate discussion of these items and the agenda will be enacted by one vote. If the Council expresses a desire to discuss a matter listed, that item will be removed from the consent agenda and considered separately.

 - A. Consider Action to Approve the **Minutes from the March 15, 2022, Regular Town Council Meeting.**
 - B. Consider Action to Approve the **First Amendment to the Spiritas Ranch Development Agreement between the Town of Little Elm and MM Little Elm 548, LLC.**
 - C. Consider Action to Approve the **First Amendment to the Spiritas East Development Agreement between the Town of Little Elm and MM Little Elm 43, LLC.**
 - D. Consider Action to Approve the **Purchase of Dippin' Dots for The Cove at The Lakefront®.**

- E. Consider Action to Award **Bid 2022-03 for Demolition of 651 Lakeshore Drive to Hawkins Construction, LLC, in the estimated amount of \$50,000.**
- F. Consider Action to Approve a **Sales Order to Zachry Construction in the amount of \$168,649.80 for Powder Coating Enhancements to Traffic Signals along U.S. 380.**
- G. Consider Action to Approve an **Agreement between the Town of Little Elm and Highway 380 Municipal Management District (MMD) regarding the Relocation of Existing Electrical Vaults within Phase 6B-1 of the Union Park Subdivision.**
- H. Consider Action to Approve a **Developers Agreement between the Town of Little Elm, Little Elm Economic Development Corporation and Palladium Little Elm Phase 2, LTD for the Construction of a Masonry Screening Wall located within Lot 1 Block A of the Palladium II Addition.**

7. **Convene in Executive Session pursuant to Texas Government Code:**

- Section 551.071 for private consultation with the Town Attorney to discuss the COVID-19 pandemic and municipal authority to respond to the COVID-19 outbreak and to seek legal advice with respect to pending and contemplated litigation and including all matters on this agenda to which the Town Attorney has a duty under the Texas Rules of Discipline and Professional conduct regarding confidential communication with the Town Council.
- Section 551.072 to discuss certain matters regarding real property.
- Section 551.074 of the Texas Government Code to discuss and deliberate personal matters to evaluate performance duties, of a public officer or employee(s).
- Section 551.076 to discuss security matters.
- Section 551.087 to discuss Economic Development.

8. **Reconvene into Open Session**

Discussion and consideration to take any action necessary as the result of the Executive Session:

- COVID-19 Pandemic and the Town's response thereto, including the consideration of an emergency declaration ordinance.
- Section 551.071 for private consultation with the Town Attorney to discuss the COVID-19 pandemic and municipal authority to respond to the COVID-19 outbreak and to seek legal advice with respect to pending and contemplated litigation and including all matters on this agenda to which the Town Attorney has a duty under the Texas Rules of Discipline and Professional conduct regarding confidential communication with the Town Council.
- Section 551.072 to discuss certain matters regarding real property.
- Section 551.074 of the Texas Government Code to discuss and deliberate

personal matters to evaluate performance duties, of a public officer or employee(s).

- Section 551.076 to discuss security matters.
- Section 551.087 to discuss Economic Development.

9. **Adjourn.**

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

Persons with disabilities who plan to attend this meeting and who may need auxiliary aide of service such as interpreters for the hearing impaired, reader or large print are requested to contact the secretary at 214-975-0452 two days prior to the meeting so appropriate arrangements can be made.
BRAILLE IS NOT PROVIDED.

Respectfully,

Town Secretary

This is to certify that the above notice was posted on the Town's website this 1st day of April 2022 before 5:00 p.m.



Date: 04/05/2022
Agenda Item #: 2. A.
Department: Administrative Services
Strategic Goal: Ensure strong relationship within the community and region
Staff Contact: Kate Graham, Assistant to the Town Manager

AGENDA ITEM:

Present **Certificates of Completion for Class 6 of Citizens Government Academy.**

DESCRIPTION:

Mayor Cornelious will recognize the participants from Class 6 of Citizens Government Academy. These individuals completed an eight-week program where they learned about and participated in different Town departments and functions.

Graduates of this year's program are:

Neil Blais
Jeff Burton
Michelle Durkin
Andrew Evans
Herbert Evans II
Sylvia Evans
James Gray
Butch Lem Jr.
Lindsey Lockett
George McCullough
Jenny McCullough
Jason Miller
Dr. Bonique Morton
Lisa Norman
Addison Owens
Frank Paulson
Jason Salsbury
Aryan Shroff
Brent Thibeaux
Tabitha Turner
Dan Werner

Naga Praveen Kumar Vutukuri

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.



Date: 04/05/2022
Agenda Item #: 3. A.
Department: Police
Strategic Goal: Provide a safe and welcoming environment for Little Elm residents and visitors
Staff Contact: Rodney Harrison, Police Chief

AGENDA ITEM:

Present and Discuss the **Sex Offender Registration Program**.

DESCRIPTION:

Town staff will discuss the current ordinance and state law regarding sex offender registration.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.



Date: 04/05/2022
Agenda Item #: 3. B.
Department: Administrative Services
Strategic Goal: Ensure strong relationship within the community and region
Staff Contact: Wesley Brandon, Town Engineer

AGENDA ITEM:

Present an **Update on U.S. Highway 380.**

DESCRIPTION:

Town staff will update the Council on the U.S. 380 expansion project.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.



Date: 04/05/2022
Agenda Item #: 6. A.
Department: Administrative Services
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Caitlan Biggs, Director of Administrative Services/Town Secretary

AGENDA ITEM:

Consider Action to Approve the **Minutes from the March 15, 2022, Regular Town Council Meeting.**

DESCRIPTION:

The minutes from the March 15, 2022, regular Town Council meeting are attached for approval.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Minutes - March 15, 2022

DRAFT

Minutes
Town of Little Elm
100 W Eldorado Parkway
Little Elm, Texas 75068
214-975-0404
<http://www.littleelm.org>

REGULAR TOWN COUNCIL MEETING TUESDAY MARCH 15, 2022 - 6:00 p.m.

Present: Mayor Curtis J. Cornelious; Mayor Pro Tem Neil Blais; Council Member Jamell Johnson; Council Member Tony Singh; Council Member Lisa Norman; Council Member Michael McClellan

Absent: Council Member Jeremy Lukas

Staff Present: Caitlan Biggs, Director of Administrative Services/Town Secretary; Joe Florentino, Assistant Town Manager; Matt Mueller, Town Manager; Chad Hyde, Director of Community Services; Deidre Hale, Human Resources Director; Doug Peach, Deputy Town Manager; Fred Gibbs, Director of Development Services; Jason Shroyer, Director of Public Works; Jennette Espinosa, EDC Executive Director; Kate Graham, Assistant to the Town Manager; Kelly Wilson, Chief Financial Officer; Paul Rust, Fire Chief; Rebecca Hunter, Purchasing Manager; Robert Brown, Town Attorney; Rodney Harrison, Police Chief

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

Meeting was called to order at 6:00 p.m.

A. Invocation.

Invocation was given by Josh Youngblood.

B. Pledge to Flags.

C. Items to be Withdrawn from Consent Agenda.

None.

D. Emergency Items if Posted.

None.

E. Request by the Town Council for Items to be Placed on a Future Agenda for Discussion and Recognition of Excused Absences.

None.

- F.** Presentation of Monthly Updates.

Town Manager Matt Mueller gave an update on the construction of the Council Chambers/Council Executive Room.

Mayor Curtis Cornelious gave a recap of the first annual Mayor's Math Challenge and recognized student winners that were present at the meeting.

- G.** Town Council to Highlight Items on the Agenda Needing Further Discussion or Comments Prior to the Regular Session.

Town Manager Matt Mueller stated that the Town Attorney advises Council to go into Executive Session prior to item 7A.

2. Presentations.

- A.** Present a **Proclamation Recognizing The Make 380 Safe Coalition.**

Mayor Curtis Cornelious presented the proclamation.

- B.** Present a **Proclamation Recognizing Ram Mehta.**

Mayor Curtis Cornelious presented the proclamation.

- C.** Present a **Proclamation Declaring March 2022 as Irish-American Heritage Month.**

Mayor Curtis Cornelious presented the proclamation.

- D.** Present the **Fiscal Year 2019-2020 GFOA Excellence in Financial Reporting Award and the Fiscal Year 2019-2020 GFOA Outstanding Achievement in Popular Financial Reporting.**

Mayor Curtis Cornelious presented the awards.

3. Workshop.

- A.** Present and Discuss the **Magic of Lights 2021 Recap.**

Director of Community Services Chad Hyde gave an overview of the item in the attached presentation. He asked for direction for the 2022 event setup of drive-thru vs. walk through. Town Council gave direction to keep the community tree lighting and switch to a walk-through set up.

- B. Present and Discuss the **Building Codes Roof Requirements.**

Director of Development Services Fred Gibbs introduced Kevin Robinson, Building Official, who gave an overview of the item in the attached presentation.

Jake, SF5 Construction, stated that he would like the codes amended that were mentioned in the presentation.

Town Attorney Robert Brown stated he would advise Town Council during Executive Session.

- C. Present and Discuss the **Creation of a Veterans Commission.**

Assistant to the Town Manager Kate Graham gave an overview of the item in the attached presentation.

Bill Roebken, former Little Elm Council Member, asked what the purpose of starting the committee is and what the Town expects from them. Mayor Curtis Cornelious stated that the mission is how to get veterans more involved in the Town and provide the resources they need.

Town Council gave direction for the task force to meet and draft the commission framework for a Veterans Advisory Committee to bring back for formal approval.

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

5. **Public Comments**

Persons may address the Town Council on any issue. This is the appropriate time for citizens to address the Council on any concern whether on this agenda or not. In accordance with the State of Texas Open Meeting Act, the council may not comment or deliberate such statements during this period, except as authorized by Section 551.072, Texas Government Code.

Ericca Cordier, PO Box 511, Little Elm, TX 75068, stated that she likes the Christmas event and to track the ticket sales. She also stated names of veterans involved in the county for the advisory committee. She said she wants to see the beach patrol uniforms back for police and hopes we get the crowds back at the beach. She also wanted to bring attention to the large fish.

6. **Consent Agenda**

All matters listed under the Consent Agenda are considered to be routine by the Town Council and require little or no deliberation. There will not be a separate discussion of these items and the agenda will be enacted by one vote. If the Council expresses a desire to discuss a matter listed, that item will be removed from the consent agenda and considered separately.

Motion by Council Member Michael McClellan, seconded by Council Member Lisa Norman to approve the Consent Agenda.

Vote: 6 - 0 - Unanimously

- A. Consider Action to Approve the **Minutes from the February 26, 2022, Town Council Strategic Planning Retreat.**

- B. Consider Action to Approve the **Minutes from the March 1, 2022, Regular Town Council Meeting.**
- C. Consider Action to Approve the **2022 Strategic Plan.**
- D. Consider Action to Approve a **Request of a Refund Associated with the Town's Home Improvement Tax Incentive Program for the Property Owner of 316 Marion Drive, within Little Elm's Town Limits, and Authorization to the Town Manager to Execute the Home Improvement Tax Incentive Program Agreement.**
- E. Consider Action to Approve the **Award of Bid 2022-05 for Harvey Circle Sanitary Sewer Relocation to Maya Underground Contractors in the amount of \$76,962, and Authorize the Town Manager to Execute the Contract.**
- F. Consider Action to Accept the **Little Elm Police Department's 2021 Racial Profiling Report.**

7. Public Hearings.

- A. Hold a Public Hearing on **Little Elm Leased Housing Associates II, L.P.'s Proposal to Acquire, Develop, and Construct a Multifamily Housing Development for Tenants on Low and Moderate-Income that will be located at 902 W. Eldorado Pkwy, Little Elm, TX 75068, and within Denton County, Texas, and its Proposed Application for Financing of such Development, including the use of Low Income Housing Tax Credits from the Texas Department of Housing and Community Affairs.**

Open Public Hearing:

Receive Public Comments:

Close Public Hearing:

Director of Development Services Fred Gibbs gave an overview of the item in the attached presentation.

Open Public Hearing: 8:47 p.m.

Receive Public Comments: Mark Mayfield with Texas Housing Foundation spoke in favor of the item.

Close Public Hearing: 8:52 p.m.

- B. Hold a Public Hearing, Present, Discuss, and Consider Action on **Ordinance No. 1662 Regarding a Request to Rezone Approximately 9.8 Acres of Land, Currently Zoned as Agriculture (AG), in Order to Establish a New Planned Development District Based on Single-Family 4 (SF-4) District Requirements with Modified Development Standards, to Allow a New Single-Family Residential Subdivision.**

Open Public Hearing:

Receive Public Comments:

Close Public Hearing:

Take Action on Ordinance No. 1662:

Planning Manager Olga Chernomorets gave an overview of the item in the attached presentation.

Open Public Hearing: 9:05 p.m.

Receive Public Comments: None

Close Public Hearing: 9:06 p.m.

Take Action on Ordinance No. 1662:

Motion by Mayor Pro Tem Neil Blais, seconded by Council Member Tony Singh ***to approve Ordinance No. 1662.***

Vote: 5 - 0 - Unanimously

8. Reports and Requests for Town Council Consideration.

- A. Present, Discuss, and Consider Action on a **Development Agreement between the Town of Little Elm and R&M Materials.**

Motion by Council Member Jamell Johnson, seconded by Council Member Tony Singh ***to approve the development agreement.***

Vote: 5 - 0 - Unanimously

- B. Present, Discuss, and Consider Action on **Resolution No. 0315202201 for No Objection to the Applicant's Tax Credit Application; Authorizing the Texas Housing Foundation to Exercise its Powers within the Territorial Boundaries of the Town of Little Elm, Texas; and Authorizing a Cooperation Agreement.**

Motion by Council Member Michael McClellan, seconded by Council Member Tony Singh ***to approve Resolution 0315202201.***

Vote: 5 - 0 - Unanimously

- C. Present, Discuss, and Consider Action on a **Cooperation Agreement between the Town of Little Elm Texas and the Texas Housing Foundation.**

Motion by Mayor Pro Tem Neil Blais, seconded by Council Member Jamell Johnson ***to approve the Cooperation Agreement.***

Vote: 5 - 0 - Unanimously

Motion by Mayor Pro Tem Neil Blais, seconded by Council Member Jamell Johnson ***to approve the Cooperation Agreement.***

Vote: 5 - 0 - Unanimously

- D. Present, Discuss, and Consider Action to **Accept the Town's Independent Audit Report and the Annual Comprehensive Financial Statement and Federal Single Audit Report for the Fiscal Year ended September 30, 2021.**

Chief Financial Officer Kelly Wilson introduced John DeBurro with Weaver who presented the audit results in the attached presentation.

Motion by Council Member Michael McClellan, seconded by Mayor Pro Tem Neil Blais ***to accept the audit and Annual Comprehensive Financial Report.***

Vote: 5 - 0 - Unanimously

- E. Present, Discuss, and Consider Action to **Accept the Town's "Financial Highlights" for the Fiscal Year ended September 30, 2021.**

Chief Financial Officer Kelly Wilson presented the 2021 PAFR.

Motion by Council Member Jamell Johnson, seconded by Council Member Tony Singh ***to accept the Financial Highlights.***

Vote: 5 - 0 - Unanimously

9. Convene in Executive Session pursuant to Texas Government Code:

- Section 551.071 for private consultation with the Town Attorney to discuss the COVID-19 pandemic and municipal authority to respond to the COVID-19 outbreak and to seek legal advice with respect to pending and contemplated litigation and including all matters on this agenda to which the Town Attorney has a duty under the Texas Rules of Discipline and Professional conduct regarding confidential communication with the Town Council.
- Section 551.072 to discuss certain matters regarding real property.
- Section 551.074 of the Texas Government Code to discuss and deliberate personal matters to evaluate performance duties, of a public officer or employee(s).
- Section 551.076 to discuss security matters.
- Section 551.087 to discuss Economic Development.

Town Council convened into Executive Session at 7:55 p.m. prior to item 7A.

10. Reconvene into Open Session

Discussion and consideration to take any action necessary as the result of the Executive Session:

- COVID-19 Pandemic and the Town's response thereto, including the consideration of an emergency declaration ordinance.
- Section 551.071 for private consultation with the Town Attorney to discuss the COVID-19 pandemic and municipal authority to respond to the COVID-19 outbreak and to seek legal advice with respect to pending and contemplated litigation and including all matters on this agenda to which the Town Attorney has a duty under the Texas Rules of Discipline and Professional conduct regarding confidential communication with the Town Council.
- Section 551.072 to discuss certain matters regarding real property.
- Section 551.074 of the Texas Government Code to discuss and deliberate personal matters to evaluate performance duties, of a public officer or employee(s).
- Section 551.076 to discuss security matters.
- Section 551.087 to discuss Economic Development.

Town Council reconvened into Open Session at 8:44 p.m. No action was taken.

11. Adjourn.

Meeting was adjourned at 9:34 p.m.

Respectfully,

Caitlan Biggs
Town Secretary

Passed and Approved this 5th day of April 2022.



Date: 04/05/2022
Agenda Item #: 6. B.
Department: Economic Development Corporation
Strategic Goal: Promote and expand Little Elm's identity
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Consider Action to Approve the **First Amendment to the Spiritas Ranch Development Agreement between the Town of Little Elm and MM Little Elm 548, LLC.**

DESCRIPTION:

On or about February 2, 2021, the Town and Developer entered into the original Spiritas Ranch Development Agreement (hereinafter referred to as the "Original Agreement") regarding the development of approximately 544.132 acres of land within the Town of Little Elm, Denton County, Texas; and the Original Agreement is filed in the Denton County Real Property records as Instrument Number 2021-22381; and

The Town and Developer now desire to **amend Sections 10.1, 10.2 and 12.1** of the Original Agreement to better address the Capital Recovery Fees and the Fire Station EMS Center.

BUDGET IMPACT:

Section 10.1 Fees.

- \$1,000,000.00 to be paid by MM Little Elm 548, LLC to the Town of Little Elm within the latter of the following:
 - Within 90 days of the effective date of the First Amendment
 - Within 30 days of the DISD closing & acquiring the School Site consistent with Section 10.3 of the Original Agreement
- Capital Recovery Fee
 - \$2,750.00 per residential lot imposed by the Town
 - Capital Recovery Fee shall be collected from the applicant when the building permit is pulled and shall be paid to the Town and the Town shall be able to draw upon and expend the Capital Recovery Fees received by the Town, to be used as determined by the Town.

Section 10.2 Fire Station EMS Center

- MM Little Elm 548, LLC shall convey approximately three acre site, as show on the Concept Plan within 90 days of the effective date of the First Amendment
- The Town of Little Elm shall construct or cause the construction of the Fire Station EMS

Center on the three acre site and the Town shall be responsible for all cost associated with the construction of the Fire Station EMS Center

Section 12.1 Assignment

- The Agreement may be assigned without the written consent of the Town, however written notice of such assignment must be provided to the Town

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

First Amendment Spiritas Ranch Development Agreement

FIRST AMENDMENT TO SPIRITAS RANCH DEVELOPMENT AGREEMENT

This **FIRST AMENDMENT TO SPIRITAS RANCH DEVELOPMENT AGREEMENT** (hereinafter referred to as the “First Amendment”) is made and entered into by and between the **TOWN OF LITTLE ELM, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the “Town”), and **MM LITTLE ELM 548, LLC**, a Texas limited liability company (hereinafter referred to as the “Developer”):

RECITALS:

WHEREAS, on or about February 2, 2021, the Town and Developer entered into the original Spiritas Ranch Development Agreement (hereinafter referred to as the “Original Agreement”) regarding the development of approximately 544.132 acres of land within the Town of Little Elm, Denton County, Texas; and

WHEREAS, the Original Agreement is filed in the Denton County Real Property records as Instrument Number 2021-22381; and

WHEREAS, the Town and Developer now desire to amend Sections 10.1 and 10.2 of the Original Agreement to better address the Capital Recovery Fees and the Fire Station EMS Center.

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 Town and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. AMENDMENT TO ORIGINAL AGREEMENT.

(a) **Amendment to Original Agreement.** That Section 10.1 of the Original Agreement is hereby amended and restated to read as follows:

“10.1 **Fees.** The Town shall waive and not collect any park fees and roadway impact fees. The Town shall impose a capital recovery fee (the “**Capital Recovery Fee**”) of \$2,750.00 per residential lot. The Capital Recovery Fee shall be collected from the applicant when the applicant pulls a building permit and the collected Capital Recovery Fee shall be paid to the Town. In addition, as consideration for the Town constructing or causing the construction of the Fire Station EMS Center, the Developer shall pay to the Town the sum of **One Million and No/100 Dollars (\$1,000,000.00)** within the latter of the following: (1) ninety (90) days of the Effective Date of this First Amendment; or (2) within thirty (30) days of the Denton Independent School District closing and acquiring the School Site consistent with Section 10.3 of the Original Agreement. All other fees for the Development shall be set as they are at the time of the Effective Date.”

- (b) **Amendment to Original Agreement.** That Section 10.2 of the Original Agreement is hereby amended and restated to read as follows:

“10.2 Fire Station EMS Center. An approximately three-acre site, as shown on the Concept Plan, shall be conveyed to the Town within ninety (90) days of the Effective Date of the First Amendment. The Town shall construct or cause the construction of a Fire Station EMS Center on such three-acre site. The Fire Station EMS Center shall generally include the specifications as outlined in **Exhibit E-1.** The Town shall be responsible for all costs associated with the construction of the Fire Station EMS Center subject to, however, that the Town shall be able to draw upon and expend the Capital Recovery Fees received by the Town, to be used as determined by the Town.”

- (c) **Amendment to Original Agreement.** That Section 12.1 of the Original Agreement is hereby amended and restated to read as follows:

“12.1 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto. The obligations, requirements, or covenants to develop the Property in this Agreement shall be able to be assigned to (a) any person or entity that is or will become an owner of any portion of the Property (an “Owner”), (b) any affiliate or related entity of the Developer, or (c) any lien holder on the Property, without the prior written consent of the Town; provided however, that written notice of such assignment must be provided to the Town in accordance with Section 12.5 of this Agreement. The obligations, requirements or covenants to develop the Property shall not be assigned by Developer to a non-affiliate or non-related entity of the Developer, or to a non-Owner without the prior written consent of the Town Manager, which consent shall not be unreasonably withheld if the assignee demonstrates financial ability to perform. Any receivables due under this Agreement, any reimbursement agreement, or any TIRZ revenues owed to the Developer may be assigned by the Developer without the consent of, but upon written notice to the Town pursuant to Section 12.5 of this Agreement. An assignee shall be considered a “Party” for the purposes of this Agreement. Each assignment shall be in writing executed by Developer and the assignee and shall obligate the assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. No assignment by the Developer shall release the Developer from any liability that resulted from an act or omission by the Developer that occurred prior to the effective date of the assignment unless the Town approves the release in writing. The Developer shall maintain written records of all assignments made by the Developer to assignees, including a copy of each executed assignment and, upon written request from any Party or assignee, shall provide a copy of such records to the requesting person or entity, and this obligation shall survive the assigning Party’s sale, assignment, transfer, or other conveyance of any interest in this Agreement or the Property.”

SECTION 3. MISCELLANEOUS PROVISIONS.

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

- (a) **Amendments.** This First Amendment constitutes the entire understanding and agreement of the parties as to the matters set forth in this First Amendment. No alteration of or amendment to this First 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.
- (b) **Applicable Law and Venue.** This First 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 Amendment shall lie in the state district courts of Denton County, Texas.
- (c) **Binding Obligation.** This First Amendment shall become a binding obligation on the signatories upon execution by all signatories hereto. Town warrants and represents that the individual executing this First Amendment on behalf of Town has full authority to execute this First Amendment and bind Town to the same. Developer warrants and represents that the individual executing this First Amendment on Developer's behalf has full authority to execute this First Amendment and bind it to the same.
- (d) **Caption Headings.** Caption headings in this First Amendment are for convenience purposes only and are not to be used to interpret or define the provisions of this First Amendment.
- (e) **Counterparts.** This First 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.
- (f) **Effective Date.** The effective date (the "Effective Date") of this First Amendment shall be the date of the latter to execute this First Amendment by the Town and Developer.
- (g) **Original Agreement and First Amendment.** All of the terms, conditions, and obligations of the Original Agreement shall remain in full force and effect except where specifically modified by this First Amendment.
- (h) **Severability.** The provisions of this First Amendment are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this First 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 this First Amendment shall be enforced as if the invalid provision had never been included.
- (i) **Time is of the Essence.** Time is of the essence in the performance of this First Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

TOWN:
TOWN OF LITTLE ELM, TEXAS,
A Texas Home-Rule Municipality

By: _____
Curtis J. Cornelious, Mayor

Date: _____

ATTEST:

Caitlan Biggs, Town Secretary

APPROVED AS TO FORM:

Robert F. Brown, Town Attorney

STATE OF TEXAS §
 §
COUNTY OF DENTON §

This instrument was acknowledged before me on the __ day of _____, 20__ by Curtis J. Cornelious, the Mayor of the Town of Little Elm, Texas, a Texas home-rule municipality, on behalf of said Texas municipality.

(SEAL)

Notary Public, State of Texas

Name printed or typed

Commission Expires: _____

DEVELOPER:

MM Little Elm 548, LLC,
a Texas limited liability company

By: MMM Ventures, LLC,
a Texas limited liability company
Its Manager

By: 2M Ventures, LLC,
a Delaware limited liability company
Its Manager

By: _____
Name: Mehrdad Moayed
Its: Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the ____ day of _____, 2022 by Mehrdad Moayed, Manager of 2M Ventures, LLC, as Manager of MMM Ventures, LLC, as Manager of MM Little Elm 548, LLC, a Texas limited liability company on behalf of said company.

Notary Public, State of Texas



Date: 04/05/2022
Agenda Item #: 6. C.
Department: Economic Development Corporation
Strategic Goal: Promote and expand Little Elm's identity
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Consider Action to Approve the **First Amendment to the Spiritas East Development Agreement between the Town of Little Elm and MM Little Elm 43, LLC.**

DESCRIPTION:

On or about November 16, 2021, the Town and Centurion American Acquisitions, LLC, a Texas limited liability company ("Centurion Acquisitions") entered into the original Spiritas East Development Agreement (hereinafter referred to as the "Original Agreement") regarding the development of approximately 43.823 acres of land within the Town of Little Elm, Denton County, Texas; and pursuant to that certain Assignment of Spiritas East Development Agreement, effective as of December 3, 2021, Centurion Acquisitions assigned its rights, covenants, and obligations under the Original Agreement and Developer accepted such rights, covenants, and obligations that were assigned to Developer; and

The Town and Developer now desire to amend **Sections 2, 8.1, 8.4 and 10.1** of the Original Agreement to better address the Capital Recovery Fees and the Fire Station/EMS Center and Ryan Spiritas Parkway.

BUDGET IMPACT:

Section 8.1 Fees

- Capital Recovery Fee
 - \$2,750.00 per residential lot imposed by the Town
 - Capital Recovery Fee shall be collected from the applicant when the building permit is pulled & shall be paid to the Town and the Town shall be able to draw upon and expend the Capital Recovery Fees received by the Town, to be used as determined by the Town

Section 8.4 Ryan Spiritas Parkway

- When a permit is applied for a single family residential structure on a lot in this Property, that number shall be included and count towards the total number of single family structures that trigger the construction of a portion of Ryan Spiritas Parkway

Section 10.1 Assignment

- The Agreement may be assigned without the written consent of the Town, however written notice of such assignment must be provided to the Town

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

First Amendment Spiritas East Development Agreement

FIRST AMENDMENT TO SPIRITAS EAST DEVELOPMENT AGREEMENT

This **FIRST AMENDMENT TO SPIRITAS EAST DEVELOPMENT AGREEMENT** (hereinafter referred to as the “First Amendment”) is made and entered into by and between the **TOWN OF LITTLE ELM, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the “Town”), and **MM LITTLE ELM 43, LLC**, a Texas limited liability company (hereinafter referred to as the “Developer”):

RECITALS:

WHEREAS, on or about November 16, 2021, the Town and Centurion American Acquisitions, LLC, a Texas limited liability company (“Centurion Acquisitions”) entered into the original Spiritas East Development Agreement (hereinafter referred to as the “Original Agreement”) regarding the development of approximately 43.823 acres of land within the Town of Little Elm, Denton County, Texas; and

WHEREAS, pursuant to that certain Assignment of Spiritas East Development Agreement, effective as of December 3, 2021, Centurion Acquisitions assigned its rights, covenants, and obligations under the Original Agreement and Developer accepted such rights, covenants, and obligations that were assigned to Developer; and

WHEREAS, the Town and Developer now desire to amend Sections 2, 8.1, and 8.4 of the Original Agreement to better address the Capital Recovery Fees and the Fire Station/EMS Center and Ryan Spiritas Parkway.

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 Town and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. AMENDMENT TO ORIGINAL AGREEMENT.

- (a) **Amendment to Original Agreement.** That Section 2 of the Original Agreement is hereby amended by repealing in its entirety the definition of “Segregated Account.”
- (b) **Amendment to Original Agreement.** That Section 8.1 of the Original Agreement is hereby amended and restated to read as follows:
 - “8.1 Fees. The Town shall waive and not collect any park fees and roadway impact fees. The Town shall impose a capital recovery fee (the “Capital Recovery Fee”) of \$2,750.00 per residential lot. The Capital Recovery Fee shall be collected from the

applicant when the applicant pulls a building permit and the collected Capital Recovery Fee shall be paid to the Town, to be used as determined by the Town.”

- (c) **Amendment to Original Agreement.** That Section 8.4 of the Original Agreement is hereby amended and restated to read as follows:

“8.4 Ryan Spiritas Parkway. When a permit is applied for a single family residential structure on a lot in this Property, that number shall be included and count towards the total number of single family structures that trigger the construction of a portion of Ryan Spiritas Parkway.”

- (d) **Amendment to Original Agreement.** That Section 10.1 of the Original Agreement is hereby amended and restated to read as follows:

“10.1 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto. The obligations, requirements, or covenants to develop the Property in this Agreement shall be able to be assigned to (a) any person or entity that is or will become an owner of any portion of the Property (an “Owner”), (b) any affiliate or related entity of the Developer, or (c) any lien holder on the Property, without the prior written consent of the Town; provided however, that written notice of such assignment must be provided to the Town in accordance with Section 10.5 of this Agreement. The obligations, requirements or covenants to develop the Property shall not be assigned by Developer to a non-affiliate or non-related entity of the Developer, or to a non-Owner without the prior written consent of the Town Manager, which consent shall not be unreasonably withheld if the assignee demonstrates financial ability to perform. Any receivables due under this Agreement, any reimbursement agreement, or any TIRZ revenues owed to the Developer may be assigned by the Developer without the consent of, but upon written notice to the Town pursuant to Section 10.5 of this Agreement. An assignee shall be considered a “Party” for the purposes of this Agreement. Each assignment shall be in writing executed by Developer and the assignee and shall obligate the assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. No assignment by the Developer shall release the Developer from any liability that resulted from an act or omission by the Developer that occurred prior to the effective date of the assignment unless the Town approves the release in writing. The Developer shall maintain written records of all assignments made by the Developer to assignees, including a copy of each executed assignment and, upon written request from any Party or assignee, shall provide a copy of such records to the requesting person or entity, and this obligation shall survive the assigning Party’s sale, assignment, transfer, or other conveyance of any interest in this Agreement or the Property.”

SECTION 3. MISCELLANEOUS PROVISIONS.

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

- (a) **Amendments.** This First Amendment constitutes the entire understanding and agreement of the parties as to the matters set forth in this First Amendment. No alteration of or amendment to this First 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.
- (b) **Applicable Law and Venue.** This First 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 First Amendment shall lie in the state district courts of Denton County, Texas.
- (c) **Binding Obligation.** This First Amendment shall become a binding obligation on the signatories upon execution by all signatories hereto. Town warrants and represents that the individual executing this First Amendment on behalf of Town has full authority to execute this First Amendment and bind Town to the same. Developer warrants and represents that the individual executing this First Amendment on Developer's behalf has full authority to execute this First Amendment and bind it to the same.
- (d) **Caption Headings.** Caption headings in this First Amendment are for convenience purposes only and are not to be used to interpret or define the provisions of this First Amendment.
- (e) **Counterparts.** This First 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.
- (f) **Effective Date.** The effective date (the "Effective Date") of this First Amendment shall be the date of the latter to execute this First Amendment by the Town and Developer.
- (g) **Original Agreement and First Amendment.** All of the terms, conditions, and obligations of the Original Agreement shall remain in full force and effect except where specifically modified by this First Amendment. In the event of a conflict between this First Amendment and the Original Agreement, the terms of this First Amendment shall control.
- (h) **Severability.** The provisions of this First Amendment are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this First 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 this First Amendment shall be enforced as if the invalid provision had never been included.
- (i) **Time is of the Essence.** Time is of the essence in the performance of this First Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

TOWN:
TOWN OF LITTLE ELM, TEXAS,
A Texas Home-Rule Municipality

By: _____
Curtis J. Cornelious, Mayor

Date: _____

ATTEST:

Caitlan Biggs, Town Secretary

APPROVED AS TO FORM:

Robert F. Brown, Town Attorney

STATE OF TEXAS §
 §
COUNTY OF DENTON §

This instrument was acknowledged before me on the __ day of _____, 20__ by Curtis J. Cornelious, the Mayor of the Town of Little Elm, Texas, a Texas home-rule municipality, on behalf of said Texas municipality.

(SEAL)

Notary Public, State of Texas

Name printed or typed

Commission Expires:_____

DEVELOPER:

MM LITTLE ELM 43, LLC,
a Texas limited liability company

By: MMM Ventures, LLC,
a Texas limited liability company
Its Manager

By: 2M Ventures, LLC,
a Delaware limited liability company
Its Manager

By: _____
Name: Mehrdad Moayed
Its: Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the ____ day of _____, 2022 by Mehrdad Moayed, Manager of 2M Ventures, LLC, as Manager of MMM Ventures, LLC, as Manager of MM LITTLE ELM 43, LLC, a Texas limited liability company on behalf of said company.

Notary Public, State of Texas



Date: 04/05/2022
Agenda Item #: 6. D.
Department: Community Services
Strategic Goal: Maximize community recreation and leisure activities
Staff Contact: Chad Hyde, Director of Community Services

AGENDA ITEM:

Consider Action to Approve the **Purchase of Dippin' Dots for The Cove at The Lakefront®.**

DESCRIPTION:

In March 2022, Town staff added a Dippin' Dots cart at The Cove at The Lakefront® to add an additional snack option. Dippin' Dots estimated our sales based on their other water park vendors to be \$3,000 in the month of March. At the end of the month, our sales achieved over \$16,000.

Based on our March sales and purchases, we anticipate surpassing the purchasing threshold of \$50,000.

Why Dippin' Dots?

Dippin' Dots is best suited for The Cove at The Lakefront® because they are a top recognized ice cream brand. Dippin' Dots is seen in water parks, zoos, Disney World, hotels, and many other successful business venues. Having a recognized name brand vendor like Dippin' Dots will benefit top line sales at The Cove at The Lakefront®. What separates Dippin' Dots from other ice cream vendors is that the ice cream is hard frozen three times, allowing the ice cream to maintain composure longer- without melting. The composure of Dippin' Dots allows the employee working the ice cream cart to maintain a clean work space to sell the ice cream. Dippin' Dots also promotes fewer spills, fewer napkins, and easier messes to clean in the event of a spill. Dippin' Dots is staff friendly, since there are no added toppings, no mixing, and only requires a light scoop. They also offer 10 flavors for us to choose from and an additional flavor to match the theme of all major holidays. Dippin' Dots has also proven to be a great partner by providing us with three coolers, scoops, cleaning equipment, and hands-on training at no additional cost.

Do we have to use this Dippin' Dots Vendor?

Elaine Coston is a franchisee in good standing with Dippin' Dots – franchise contract #18093, working out of McKinney, TX. She is their only approved vendor for The Cove®, located in Denton County, TX. Elaine is an excellent franchisee and comes with their highest recommendation.

BUDGET IMPACT:

The Cove's Full Year Projections from Dippin' Dots Based on Other Indoor Waterparks

Estimated Cost: \$38,450

Estimated Sales: \$83,606

Estimated Profit: \$49,942

The Cove's Full Year Projections based on The Cove's Dippin' Dots sales in March

Estimated Cost: \$57,973

Estimated Sales: \$133,700

Estimated Profit: \$88,642

Profit Margin: 62%-28% based on the size ordered

RECOMMENDED ACTION:

Staff recommends Council approve the continued purchase and sales of Dippin' Dots at The Cove at The Lakefront®.



Date: 04/05/2022
Agenda Item #: 6. E.
Department: Finance
Strategic Goal: Maximize community recreation and leisure activities
Staff Contact: Chad Hyde, Director of Community Services

AGENDA ITEM:

Consider Action to Award **Bid 2022-03 for Demolition of 651 Lakeshore Drive to Hawkins Construction, LLC, in the estimated amount of \$50,000.**

DESCRIPTION:

On February 17, 2022, the Town received bids for the demolition of 651 Lakeshore Drive. Bids were advertised in the local paper and posted on the Town's eProcurement system. Four (4) vendors responded. The lowest responsible bidder is Hawkins Construction, LLC of McKinney, Texas.

BUDGET IMPACT:

Funding has been identified in the General Fund, and the project will be funded out of Facilities Capital Outlay.

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

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Tabulation - Demolition of 651 Lakeshore Dr
Contract - Demolition of 651 Lakeshore Dr

Town of Little Elm
Bid 2022-03 Demolition of 651 Lakeshore Drive

Rank	Supplier	Lump Sum Price
1	Hawkins Construction L.L.C.	\$48,900.00
2	Lloyd D. Nabors Demolition LLC	\$53,000.00
3	Midwest Wrecking Co. of Texas, Inc.	\$55,440.00
4	Garrett Demolition, Inc	\$72,775.00

STANDARD FORM OF AGREEMENT

This Agreement is by and between the Town of Little Elm (Owner) and Hawkins Construction, LLC (Contractor). Owner and Contractor, in mutual consideration agree as follows:

ARTICLE 1 - THE WORK

1.1 Work

- A. Work includes all labor, materials, equipment, services, and documentation necessary to perform the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- B. The Contractor shall complete all Work as specified in Bid 2022-03 – Demolition of 615 Lakefront Drive. The Project is generally described as follows:
 - 1. Demolition, haul off, and grading of 615 Lakeshore Drive, Little Elm, Texas, 76068. Entire structure & contents, concrete slab, driveway, sidewalk, exterior structures and contents must be demolished and removed.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 Intent of Contract Documents

- A. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Owner and Engineer. This Contract supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- B. During the performance of the Work and until final payment, Contractor and Owner shall submit all matters in question concerning the requirements of the Contract Documents, or relating to the acceptability of the Work under the Contract Documents to the Engineer. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- C. Engineer will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.
- D. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media editions) prepared by Engineer or its consultants.

2.2 Contract Documents Defined

- A. The Contract Documents consist of the following documents:
 - 1. This Contract.
 - 2. Performance bond.

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3. Payment bond.
4. Maintenance bond.
5. Specifications listed in the Table of Contents.
6. Addenda.
7. The following which may be delivered or issued on or after the Effective Date of the Contract:
 - a. Work Change Directives
 - b. Change Orders

ARTICLE 3 - ENGINEER

3.1 The Engineer for this Project is:

Wesley Brandon, P.E. - Town Engineer

ARTICLE 4 - CONTRACT TIMES

4.1 Contract Times

- A. The Work will be substantially completed within **30** days after the Effective Date of the Contract and completed and ready for final payment within **45** days after the Effective Date of the Contract.

4.2 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence in the performance of the Contract, and that Owner will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 4.1. Because such damages for delay would be difficult and costly to determine, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner \$1,000 for each day that expires after the Contract Time for substantial completion.

4.3 Delays in Contractor's Progress

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor or their subcontractors or suppliers.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times.

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- D. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor or Contractor's subcontractors or suppliers.

4.4 Progress Schedules

- A. Contractor shall develop a progress schedule and submit to the Engineer for review and comment before starting Work on the Site. The Contractor shall modify the schedule in accordance with the comments provided by the Engineer.
- B. The Contractor shall update and submit the progress schedule to the Engineer each month. The Owner may withhold payment if the Contractor fails to submit the schedule.

ARTICLE 5 - CONTRACT PRICE

5.1 Payment

- A. Owner shall pay Contractor in accordance with the Contract Documents, the lump sum amount of \$48,900 for all Work.
- B. Owner shall pay Contractor in accordance with the Contract Documents at the unit prices displayed in Exhibit A for each unit of Work completed.

Payment will be made in an amount equal to the total of all extended prices for actual Work completed.

ARTICLE 6 - BONDS AND INSURANCE

6.1 Bonds

- A. Before starting Work, Contractor shall furnish a performance bond and a payment bond from surety companies that are duly licensed or authorized to issue bonds in the required amounts in the jurisdiction in which the Project is located. Each bond shall be in an amount equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until the completion of the correction period specified in Paragraph 7.12 but in any case, not less than one year after the date when final payment becomes due.

6.2 Insurance

- A. Before starting Work, Contractor shall furnish evidence of insurance from companies that are duly licensed or authorized in the State of Texas in which the Project is located with a minimum AM Best

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rating of A-VII or better. **Contractor shall provide insurance in accordance with the Town's Standard Insurance Requirements.**

- B. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
- C. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.

ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

7.1 Supervision and Superintendence

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, safety, and procedures of construction.
- B. Contractor shall assign a competent resident superintendent who is to be present at all times during the execution of the Work. This resident superintendent shall not be replaced without written notice to and approval by the Owner and Engineer except under extraordinary circumstances.
- C. Contractor shall at all times maintain good discipline and order at the Site.
- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday.

7.2 Other Work at the Site

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

7.3 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be new, of good quality and shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

7.4 Subcontractors and Suppliers

- A. Contractor may retain subcontractors and suppliers for the performance of parts of the Work. Such subcontractors and suppliers must be acceptable to Owner.

7.5 Quality Management

- A. Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

7.6 Licenses, Fees and Permits

- A. Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. Contractor shall obtain and pay for all construction permits and licenses unless otherwise provided in the Contract Documents.

7.7 Laws and Regulations; Taxes

- A. Contractor shall give all notices required by and shall comply with all local, state, and federal Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages if Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations.
- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes Contractor is required to pay in accordance with Laws and Regulations.

7.8 Record Documents

- A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to Engineer upon completion of the Work.

7.9 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- B. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. All persons on the Site or who may be affected by the Work;
 - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- C. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Contract Documents or to the acts or

omissions of Owner or Engineer and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).

- D. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.
- E. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.10 Shop Drawings, Samples, and Other Submittals

- A. Contractor shall review and coordinate the shop drawing and samples with the requirements of the Work and the Contract Documents and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information.
- B. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- C. With each submittal, Contractor shall give Engineer specific written notice, in a communication separate from the submittal, of any variations that the shop drawing or sample may have from the requirements of the Contract Documents.
- D. Engineer will provide timely review of shop drawings and samples.
- E. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs.
- F. Engineer's review and approval of a separate item does not indicate approval of the assembly in which the item functions.
- G. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of shop drawings and submit, as required, new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
- H. Shop drawings are not Contract Documents.

7.11 Warranties and Guarantees

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

7.12 Correction Period

- A. If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by

Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost to Owner, correct such defective Work.

7.13 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts they may be liable.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.1 Owner's Responsibilities

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through Engineer.
- B. Owner shall make payments to Contractor as provided in this Contract.
- C. Owner shall provide Site and easements required to construct the Project.
- D. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.
- E. The Owner shall be responsible for performing inspections and tests required by applicable codes.
- F. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- G. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- H. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.1 Engineer's Status

- A. Engineer will be Owner's representative during construction. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in this Contract.
- B. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise

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owed by Engineer to Contractor, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- C. Engineer will make visits to the Site at intervals appropriate to the various stages of construction. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.
- D. Engineer has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.
- E. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

ARTICLE 10 - CHANGES IN THE WORK

10.1 Authority to Change the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

10.2 Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Engineer's decision, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 - 3. Changes in the Contract Price or Contract Times or other changes, which embody the substance of any final binding results under Article 12.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 11 - DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS

11.1 Differing Conditions Process

- A. If Contractor believes that any subsurface or physical condition including but not limited to utilities or other underground facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify Owner and Engineer in writing about such

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condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. After receipt of written notice, Engineer will promptly:
 - 1. Review the subsurface or physical condition in question;
 - 2. Determine necessity for Owner obtaining additional exploration or tests with respect to the condition;
 - 3. Determine whether the condition falls within the differing site condition as stated herein;
 - 4. Obtain any pertinent cost or schedule information from Contractor;
 - 5. Prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and
 - 6. Advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

ARTICLE 12 - CLAIMS AND DISPUTE RESOLUTION

12.1 Claims Process

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Engineer promptly (but in no event later than 10 days) after the start of the event-giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.
- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK

13.1 Tests and Inspections

- A. Owner and Engineer will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.
- B. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

- C. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense.

13.2 Defective Work

- A. Contractor shall ensure that the Work is not defective.
- B. Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all such defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

ARTICLE 14 - PAYMENTS TO CONTRACTOR

14.1 Progress Payments

- A. The Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form of application for payment acceptable to Owner and Engineer. The unit price breakdown submitted with the bid will be used for unit price work. Break lump sum items into units that will allow for measurement of Work in progress.

14.2 Applications for Payments:

- A. Contractor shall submit an application for payment in a form acceptable to the Owner and Engineer, by the tenth (10th) of each month for the prior month (1st – 31st), to Engineer. Applications for payment will be prepared and signed by Contractor. Contractor shall provide supporting documentation required by the Contract Documents. Payment will be paid for Work completed as of the date of the application for payment.
- B. Beginning with the second application for payment, each application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior applications for payment.

14.3 Retainage

- A. The Owner shall retain five percent (5%) of each progress payment until the Work is substantially complete.

14.4 Review of Applications

- A. Within 10 days after receipt of each application for payment, the Engineer will either indicate in writing a recommendation for payment and present the application for payment to Owner or return the application for payment to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and resubmit the application for payment.

- B. Engineer will recommend reductions in payment (set-offs) which, in the opinion of the Engineer, are necessary to protect Owner from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner on account of Contractor's conduct in the performance of the Work, incurred costs, losses, or damages on account of Contractor's conduct in the performance of the Work, or liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

14.5 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

14.6 Substantial Completion

- A. The Contractor shall notify Owner and Engineer in writing that the Work is substantially complete and request the Engineer issue a certificate of substantial completion when Contractor considers the Work ready for its intended use. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Engineer will inspect the Work with the Owner and Contractor to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor and Owner in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete or upon resolution of all reasons for non-issuance of a certificate identified in 14.06.B, Engineer will deliver to Owner a certificate of substantial completion, which shall fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

14.7 Final Inspection

- A. Upon written notice from Contractor that the entire Work is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.8 Final Payment

- A. Contractor may make application for final payment after Contractor has satisfactorily completed all Work defined in the Contract, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents and other documents.
- B. The final application for payment shall be accompanied (except as previously delivered) by:
 - 1. All documentation called for in the Contract Documents;
 - 2. Consent of the surety to final payment;
 - 3. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects, or will so pass upon final payment;
 - 4. A list of all disputes that Contractor believes are unsettled; and

5. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work and of liens filed in connection with the Work.
- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

14.9 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.1 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

15.2 Owner May Terminate for Cause

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.
- B. If Contractor defaults in its obligations, then after giving Contractor and any surety ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and
 2. Enforce the rights available to Owner under any applicable performance bond.
- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- E. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.

15.3 Owner May Terminate for Convenience

- A. Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for, without duplication of any items:
 - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid because of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

15.4 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

ARTICLE 16 - CONTRACTOR'S REPRESENTATIONS

16.1 Contractor Representations

- A. Contractor makes the following representations when entering into this Contract:
 - 1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - 3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - 4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
 - a. The cost, progress, and performance of the Work;
 - b. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
 - c. Contractor's safety precautions and programs.

5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
7. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 17 - MISCELLANEOUS

17.1 Cumulative Remedies

- A. The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.2 Limitation of Damages

- A. Neither Owner, Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

17.3 No Waiver

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.4 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.5 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

17.6 Controlling Law

- A. This Contract is governed by the laws of the state of Texas.

IN WITNESS WHEREOF, Owner and Contractor have signed this Contract.

This Contract will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: Matthew Mueller

By: _____

Title: Town Manager

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Address for giving notices:

Address for giving notices:

Town of Little Elm

100 West Eldorado Pkwy

Little Elm, TX 75068

rhunter@littleelm.org

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Exhibit A

Town of Little Elm

Bid 2022-03 Demolition of 651 Lakeshore Drive

Rank	Supplier	Lump Sum Price
1	Hawkins Construction L.L.C.	\$48,900.00



Specifications
TOWN OF LITTLE ELM
DEMOLITION OF 615 LAKESHORE DRIVE
IFB 2022-03

Purpose

The Town is accepting bids for the demolition, haul off, and grading of 615 Lakeshore Drive, Little Elm, Texas, 76068. Entire structure & contents, concrete slab, driveway, sidewalk, exterior structures and contents must be demolished and removed.

Scope of Work

The successful proposer will demo the property in accordance with the following general conditions and requirements.

1. Demolition shall be performed in a safe, satisfactory condition, starting with the roof and working down, with the safety and welfare of all people and property being of the highest priority.
2. All items/ materials remaining inside the structure and on the property, debris, and rubble from the demolition of the structure specified herein will become the property of the Contractor upon contract execution. Salvage can only begin **immediately** prior to the beginning of demolition.
3. Contractor shall safely disconnect any utilities before demolition may commence. The Contractor shall serve notice to all suppliers of utilities to the structure and arrange for disconnection and removal of meters and equipment. Forty-eight (48) hour written notice must be given to the Town for termination of utilities. All piping and wiring shall be properly terminated. Any costs incurred in the termination of utilities and services shall be borne by the Contractor.
4. Demolition and clean-up includes, but is not limited to, the removal of all lumber, doors, windows, wire, sheet metal, piping, appliances, furniture, loose rock, brick, mortar, concrete, exterior peripherals, and cleaning and removal of all rubbish, trash or other debris that would inhibit or prevent the mechanical mowing of said lot and premises.
5. The Contractor shall haul off all debris and unsalvageable materials, and no debris or rubble which may pose a threat to public safety will be left on the site overnight. No such debris or material will be placed on a sidewalk or public right of way so that it poses a danger to any person.
6. The Contractor shall leave the area in satisfactory condition. Contractor will be held responsible for repair of broken or damaged water, gas, or any other type of lines, which occur during the course of the demolition work. The Contractor shall repair or replace, if necessary, to the Town's satisfaction, any damage to the work site, the adjacent areas, the access areas to the work site and to any elements within these areas that may have suffered damage as a result of the Contractor's or any of the subcontractor's operations.
7. Upon completion of the demolition, all excavated areas shall be backfilled and compacted using on-site native material that is free of building materials and/or other deleterious material. The site shall also be graded to ensure positive drainage and stabilized with hydromulch.
8. All demolition work must be carried out to the satisfaction of the Town.



Date: 04/05/2022
Agenda Item #: 6. F.
Department: Development Services
Strategic Goal: Promote and expand Little Elm's identity
Staff Contact: Wesley Brandon, Town Engineer

AGENDA ITEM:

Consider Action to Approve a **Sales Order to Zachry Construction in the amount of \$168,649.80 for Powder Coating Enhancements to Traffic Signals along U.S. 380.**

DESCRIPTION:

As part of the current project to expand U.S. 380, the proposed traffic signals are currently designed to be a standard galvanized steel material. In order to improve the aesthetic appearance and match other signals within the Town, the Texas Department of Transportation (TxDOT) has given the Town the option to add a black powder coating material to the proposed traffic signal poles. The increased costs for the enhancements must be covered by the Town and paid directly to the contractor, Zachry Construction.

BUDGET IMPACT:

The total cost of these enhancements is \$168,649.80. Funding for the project is allocated and available in the North Roadway Impact Fee Fund.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Sales Order (Agreement)
Pricing Information



This Sales Order ("**Agreement**") is dated as of [DATE] ("**Effective Date**"), and is entered into by Zachry Construction Corporation, a Delaware corporation, with principal offices 11440 Wurzbach Parkway, Suite 120, San Antonio, Texas 78216 ("**Zachry**") and [Municipality], a Texas Municipality, with offices at [ADDRESS] ("**Short Name for Municipality**"), each a "Party" and collectively "the Parties" to this Agreement.

Whereas, Zachry is providing signal poles as part of TXDOT Contract No. 08213015 for US380, Denton TX, (the "Prime Agreement") and that agreement states [Municipality] would like those poles to be powder coated. Accordingly, the Parties agree as follows:

Article 1 SCOPE OF SUPPLY

Zachry shall provide electrostatically applied thermoset polyester powder coat color Traffic Black (RAL 9017) of signal poles and pedestal poles as described on the attached quote utilizing the products and methods described therein (the "Work"). The signal poles themselves are furnished and installed under the requirements of the Prime Agreement.

Article 2 DELIVERY

Delivery is addressed under the Prime Agreement.

Article 3 (not used)

Article 4 AGREEMENT DOCUMENTS

This Agreement comprises the entire agreement between Zachry and [Municipality]. All oral agreements and representations have been reduced to writing and are included herein. This Agreement is exclusively for the purpose of providing specifications and payment provisions for the Work and does not alter the Prime Agreement.

Article 5 TERMS OF SALE

5.1 COMPLIANCE WITH LAWS. The Parties will comply with all laws pertaining to the Work.

5.2 TAXES, PERMITS AND LICENSES. Required licenses, certificates, permits, fees, and inspections, are addressed in the Prime Agreement.

5.3 (not used).

5.4 PASSAGE OF TITLE. Title and risk of loss of the Work are addressed in the Prime Agreement.

5.5 WARRANTY. Warranty obligations regarding the Work are addressed in the Prime Agreement.

5.6 PAYMENT. Upon completion of the Work or portion thereof, Zachry shall invoice [Municipality] in accordance with the pricing included in this Agreement, and [Municipality] shall pay invoices within 30 days of the invoice date. Zachry may complete the Work in stages and invoice accordingly.

5.7 INSURANCE. Insurance requirements are addressed in the Prime Agreement.

Article 6 MISCELLANEOUS PROVISIONS

6.1 ASSIGNMENT. Neither Party may assign this Agreement, in whole or in part, without the other Party's prior written consent. Any such assignment without the required written consent shall be null, void and of no force and effect whatsoever.

6.2 GOVERNING LAW. This Agreement shall be governed by, and construed and enforced in accordance with, the laws in effect in the State of Texas.

6.3 SEVERABILITY. If any provision, or any part thereof, of this Agreement is found by any court or governmental agency of competent jurisdiction to be invalid or unenforceable for any reason whatsoever, such invalidity or unenforceability shall not affect the remainder of such provision or any other provision hereof which shall remain in full force and effect.

6.4 NO WAIVER OF PERFORMANCE. The failure of either Party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant or right as to further performance. Any waiver by either Party of any breach of any provision of this Agreement shall be in writing signed by the waiving Party; provided, however, no such waiver shall be construed as a waiver of any continuing or succeeding breach of such provisions, a waiver or modification of the provision itself, or a waiver or modification of any right under this Agreement, unless the instrument constituting the waiver so states.

6.5 AMENDMENTS AND CHANGES. Except as provided herein, no amendment, modification, limitation or supplement of or to this Agreement or any provision hereof shall bind either Party unless it is in writing and signed by an officer or authorized agent of [Municipality] and Zachry.

6.6 DEFINED TERMS. Each term that is defined in one article, section or subsection of this Agreement shall have the same meaning in every other article, section or subsection of this Agreement.



Sales Order
Project: _____
ZCC Job # _____

The Parties have caused this Agreement to be executed and delivered by their duly authorized officers or agents effective as of the Effective Date.

ZACHRY CONSTRUCTION CORPORATION

By: _____

(Signature)

(Printed Name)

Title: _____

Date: _____

[MUNICIPALITY]

By: _____
(Signature)

(Printed Name)

Title: _____

Date: _____

ZCC COR #: Little Elm 01

Item	Description		Quantity		Labor		Equipment		Materials / Supplies		Subcontract		Sub Total
			Quantity	UM	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	
			1.00	LS									
Traffic Signal & Ped Poles													
Sub	MICA Corporation	FM 720	1.00	LS							\$ 30,765.00	\$ 30,765.00	\$ 30,765.00
Sub	MICA Corporation	FM 2931	1.00	LS							\$ 17,445.00	\$ 17,445.00	\$ 17,445.00
Sub	MICA Corporation	Providence Blvd	1.00	LS							\$ 15,275.00	\$ 15,275.00	\$ 15,275.00
Sub	MICA Corporation	Paloma Creek Blvd	1.00	LS							\$ 20,475.00	\$ 20,475.00	\$ 20,475.00
Sub	MICA Corporation	Navo Rd	1.00	LS							\$ 30,885.00	\$ 30,885.00	\$ 30,885.00
Sub	MICA Corporation	Magnolia	1.00	LS							\$ 12,080.00	\$ 12,080.00	\$ 12,080.00
Sub	MICA Corporation	FM 1385	1.00	LS							\$ 18,275.00	\$ 18,275.00	\$ 18,275.00
Subtotals						\$ -		\$ -		\$ -		\$ 145,200.00	\$ 145,200.00
Labor Burden						\$ -							\$ -
Total Direct Costs						\$ -		\$ -		\$ -		\$ 145,200.00	\$ 145,200.00
Contractor's Markup						\$ -		\$ -		\$ -	15%	\$ 21,780.00	\$ 21,780.00
Subtotals with Markup						\$ -		\$ -		\$ -		\$ 166,980.00	\$ 166,980.00
Bond												1.0%	\$ 1,669.80
Total Change Request													\$ 168,649.80
												Units	1.00
												Unit Price	\$ 168,649.80



MICA Corporation

P.O. Box 161609
Fort Worth, Texas 76161
817-847-6121
Metro 817-577-2088
Fax 817-847-6885

January 18, 2022

Zachry Construction Corp.

Re : Control 0135-10-050
Project F 2021(536)
Highway US 380
County DENTON
MICA Job No.: 221780

Attention: Ben Miron

Per the general notes, I have calculated the costs to add powder coating to the traffic signal and pedestrian poles on the above referenced project. Lump sum intersections include powder coating for all the signal poles, mast arms, luminaire arms and the pedestrian poles.

Pricing per intersection is as follows:

Specification	Bid Item Description	Item		Units	Unit Cost	Extension
		No	Quantity			
	CITY OF LITTLE ELM					
	FM 720	1	1.000	LS	\$30,765.00	\$30,765.00
	FM 2931	2	1.000	LS	\$17,445.00	\$17,445.00
	Providence Blvd.	3	1.000	LS	\$15,275.00	\$15,275.00
	Paloma Creek Blvd.	4	1.000	LS	\$20,475.00	\$20,475.00
	Navo Rd.	5	1.000	LS	\$30,885.00	\$30,885.00
	Magnolia	6	1.000	LS	\$12,080.00	\$12,080.00
	FM 1385	7	1.000	LS	\$18,275.00	\$18,275.00
						\$145,200.00

This quote valid for thirty days.

Respectfully submitted,

MICA CORPORATION

James Baker
Chief Estimator

Branch Offices (reply to)

☐ Fort Worth
Construction Office
4425 Haltom Road
Fort Worth, Texas 76117
Metro 817-577-0455
Fax 817-428-0577

☐ 1951 Probandt Street
San Antonio, Texas 78214
210-532-7211
Fax 210-532-7211

☐ 9250 Keough Street
P.O. Box 41045
Houston, Texas 77241
713-896-4288
Fax 713-896-6717

☐ 4960 Hanson Drive
Irving, Texas 75038
972-812-1094



Date: 04/05/2022
Agenda Item #: 6. G.
Department: Development Services
Strategic Goal: Ensure excellence in public services while keeping up with the growth in the community
Staff Contact: Wesley Brandon, Town Engineer

AGENDA ITEM:

Consider Action to Approve an **Agreement between the Town of Little Elm and Highway 380 Municipal Management District (MMD) regarding the Relocation of Existing Electrical Vaults within Phase 6B-1 of the Union Park Subdivision.**

DESCRIPTION:

As part of the upcoming Phase 6B-1 improvements within the Union Park Subdivision, the proposed right-of-way of Carnation Street will incorporate existing electrical vaults owned by Coserv Electric. These vaults are located within an existing electric easement, and the Town could be responsible for costs related to their relocation, should it become necessary in the future. In order to accommodate the proposed public right-of-way and ensure the Town is not required to bear these potential relocation costs, the Highway 380 MMD has agreed to cover the costs if required in the future.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Proposed Agreement
Exhibits

**INTERLOCAL AGREEMENT BY AND BETWEEN
THE TOWN OF LITTLE ELM, TEXAS AND
HIGHWAY 380 MUNICIPAL MANAGEMENT DISTRICT NO. 1**

STATE OF TEXAS §
 §
COUNTY OF DENTON §

This Interlocal Agreement (this “Agreement”) is made and entered into effective _____, 2021 (the “Effective Date”) pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, by and between the Town of Little Elm, Texas, a home rule municipality situated in Denton County, acting by and through its governing body, the Town Council of the Town of Little Elm, Texas (the “Town”) and Highway 380 Municipal Management District No. 1 (the “District”), a conservation and reclamation district created pursuant to Article XVI, Section 59 and Article III, Section 52, Texas Constitution and operating pursuant to Chapter 375, Texas Local Government Code, and Chapter 49, Texas Water Code (each a “Party” and collectively, the “Parties”).

RECITALS

WHEREAS, the Town is a home rule municipality that provides a full range of governmental services to its citizens; and

WHEREAS, the District is a political subdivision with the authority to construct and maintain water, sewer, drainage, roads and other facilities within the boundaries of the District; and

WHEREAS, the Town desires the District to conduct all relocation, should it be necessary, relating to the existing electrical vaults placed by Denton County Electric Cooperative, Inc., d/b/a Coserv Electric, as shown in **Exhibit A** (the “Vaults”), within the electric line easements and rights-of-way recorded as Instrument Nos. 58248, 58249, and 58251 in the Official Records of Denton County, Texas, and attached here to as **Exhibit B** (collectively, the “Easements”) (the “Work”); and

WHEREAS, the Parties are entering into this Agreement to set forth their understanding regarding the Work of the Easements and the Vaults; and

NOW, THEREFORE, for an in consideration of these premises and of the mutual promises, obligations, covenants, and benefits herein contained, the Parties contract and agree as follows:

ARTICLE I
PURPOSE

The purpose of this Agreement is to provides for the terms and conditions associated with the District’s obligation to perform the Work.

ARTICLE II

TERM AND TERMINATION

2.1 Term. Subject to the approval of the governing bodies of both Parties, this Agreement shall be effective on the Effective Date and shall continue in force and effect until otherwise terminated pursuant to the Section 2.2 of this Agreement.

2.2 Termination. It is understood and agreed between the Parties hereto that should the District fail to properly fulfill its obligations as outlined herein, the Town may terminate this agreement upon thirty (30) days written notice of any deficiency in its performance of the Work. As a condition precedent to this forcible termination, however, the District shall have thirty (30) days (the “Cure Period”) to correct the deficiency. If the deficiency is not corrected during the Cure Period, the Town may terminate this Agreement pursuant to the procedure defined herein. Notwithstanding the foregoing, this Agreement may be terminated by mutual agreement and consent of both Parties.

ARTICLE III

SCOPE

The District shall be responsible for all of the Work, at its sole cost and expense.

ARTICLE IV

MISCELLANEOUS

4.1 Remedies for Breach. In the event a Party shall be determined to be in material breach of the terms hereof, the exclusive remedies available hereunder shall be injunctive relief specifying the actions to be taken by or prohibited of the defaulting Party and the action, if any, permitted to be taken by the non-defaulting Party to remedy the default. Such injunctive relief shall be directed solely to the default and shall not address or include any activity or actions not directly related to the default. A Party shall not be deemed in breach of its obligations hereunder until the non-defaulting Party has given such Party written notice of such alleged breach and a commercially reasonable time, that shall not be less than 30 days, in which to cure.

4.2 Address and Notice. Unless otherwise provided in this Agreement, any notice to be given under this Agreement shall be given in writing and may be given either by depositing the notice in the United States mail postpaid, registered or certified mail, with return receipt requested; delivery the notice to an officer of such party, or sending the notice by facsimile, when appropriate. Notice deposited by mail in the foregoing manner shall be effective the day after the day on which it is deposited. Notice given in any other manner shall be effective only when received by the party to be notified. For the purposes of notice, the addresses of the parties shall be as follows:

If to the Town, to:

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

If to the District, to:

Highway 380 Municipal Management District No. 1
c/o Coats Rose, P.C.
14755 Preston Road, Suite 600
Dallas, Texas 75254

A Party shall have the right from time to time to change its address by giving at least 15 days' written notice of such change to the other Party.

4.3 No Additional Waiver Implied. The failure of any Party to insist upon performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other Party.

4.4 Reservation of Rights. All rights, powers, privileges, and authority of the Parties not restricted or affected by the express terms and provisions hereof are reserved by the Parties and, from time to time, may be exercised or enforced by the Parties.

4.5 Merger; Amendments. This Agreement embodies the entire understanding between the Parties regarding the subject matter of this Agreement and there are no separate representations, warranties, or agreements between the Parties covering the subject matter of this Agreement. All amendments to this Agreement shall be in writing and shall be signed by both Parties.

4.6 Captions. The captions of each section of this Agreement are inserted solely for convenience and shall never be given effect in construing the duties, obligations, or liabilities of the Parties or any provisions hereof, or in ascertaining the intent of either Party, with respect to the provisions hereof.

4.7 Interpretations. This Agreement shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

4.8 Exhibits. Exhibit A and Exhibit B are attached hereto and incorporated herein for all purposes.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple copies, each of equal dignity.

Accepted and executed on this ____ day of _____, 2021.

DISTRICT

HIGHWAY 380 MUNICIPAL MANAGEMENT
DISTRICT NO. 1 OF DENTON COUNTY

By: _____
Name: _____
Title: President, Board of Directors

ATTEST:

By: _____
Name: _____
Title: Secretary, Board of Directors

TOWN

TOWN OF LITTLE ELM, TEXAS

By: _____
Name: _____
Title: Mayor, Town of Little Elm, Texas

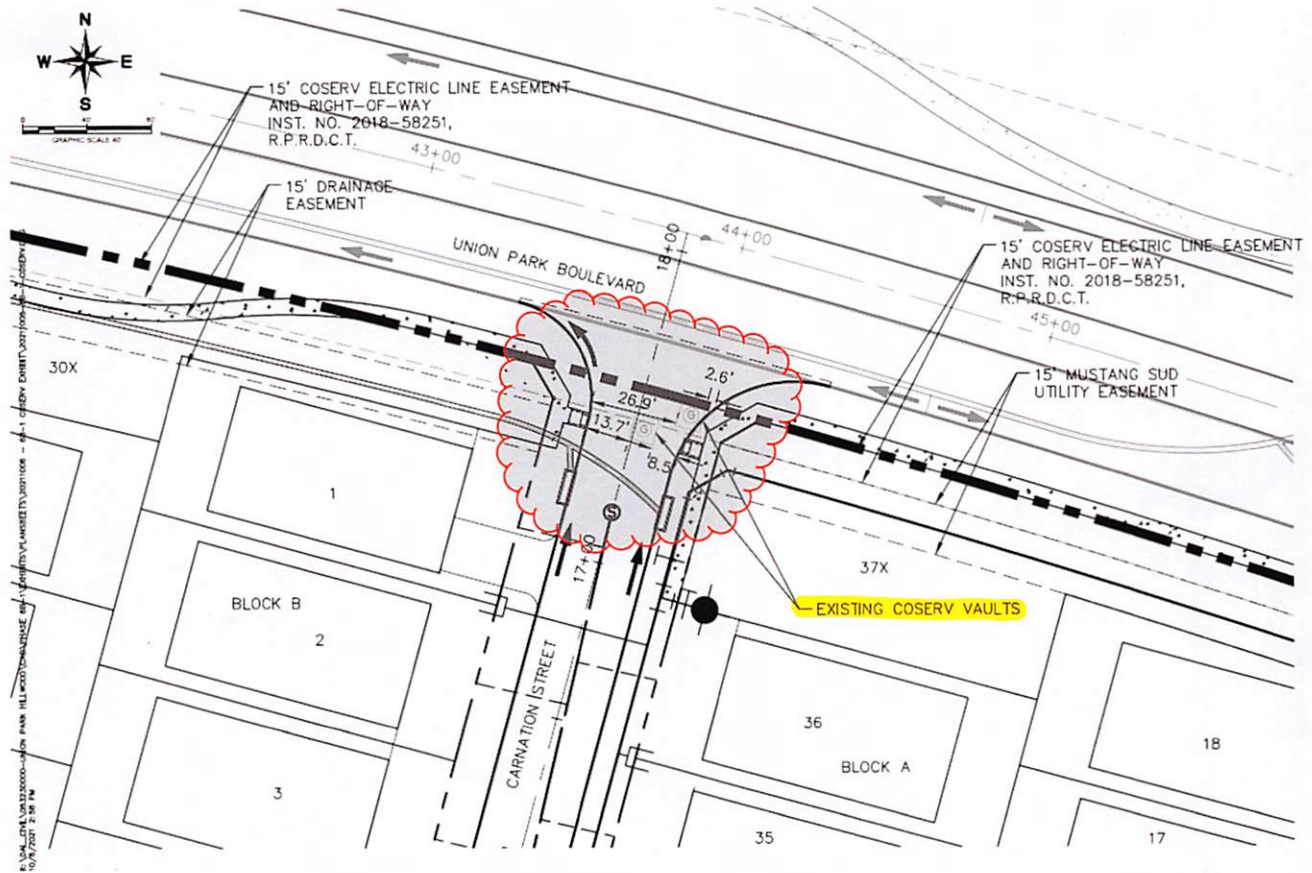
ATTEST:

By: _____
Name: _____
Title: Town Secretary, Town of Little Elm, Texas

Exhibit A
The Vaults

Exhibit B
The Easements

Exhibit A The Vaults



Union Park Phase 6B-1

PLANNED BY
LST BOARD
Little Elm, Texas
October 2021

Exhibit B
The Easements



VG-226-2018-58248

Denton County
Juli Luke
County Clerk

Instrument Number: 58248

Real Property Recordings

EASEMENT

Recorded On: May 22, 2018 01:45 PM

Number of Pages: 11

" Examined and Charged as Follows: "

Total Recording: \$66.00

***** THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 58248
Receipt Number: 20180522000401
Recorded Date/Time: May 22, 2018 01:45 PM
User: Connor B
Station: Station 10

Record and Return To:

COSERV ELECTRTIC
7701 S STEMMONS

CORINTH TX 76210



STATE OF TEXAS
COUNTY OF DENTON

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Juli Luke
County Clerk
Denton County, TX

After Recording, Return to:

Kevin W. Haney
Haney Law, PC
c/o 7701 South Stemmons
Corinth, Texas 76210

For CoServ Use Only:

MAP GRID: _____
WO NO.: 1005413 SO NO.: _____
EASEMENT NO.: _____

ELECTRIC LINE EASEMENT AND RIGHT-OF-WAY

STATE OF TEXAS

§
§
§

COUNTY OF DENTON

KNOW ALL MEN BY THESE PRESENTS:

EFFECTIVE DATE: May 14, 2018.

GRANTOR: H4 LITTLE ELM, LP, a Texas limited partnership.

GRANTOR'S MAILING ADDRESS (including county):

3000 Turtle Creek Blvd
Dallas, TX 75219
Dallas County

GRANTEE: DENTON COUNTY ELECTRIC COOPERATIVE, INC., d/b/a COSERV ELECTRIC
7701 South Stemmons
Corinth, Denton County, Texas 76210

CONSIDERATION: The provision of electrical service and/or other benefits inuring to GRANTOR and/or Ten and No/100's dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of some consideration deemed valuable to GRANTOR being hereby expressly acknowledged and accepted by GRANTOR.

EASEMENT PROPERTY: The EASEMENT PROPERTY is that certain tract or tracts of land more particularly described in the attached Exhibit A, incorporated herein by this reference for all purposes, together with the subsurface below and air space above the tract(s) of land.

PROJECT: The PROJECT(s) means underground-type electric transmission and/or electric distribution line or lines, consisting of a variable number and sizes of wires, cables, and circuits, and all necessary or desirable appurtenances, appliances, facilities and equipment (including but not limited to supporting structures, insulators, above-ground padmounted transformers and equipment, and other facilities whether made of wood, metal or other materials).

GRANT: GRANTOR, for the CONSIDERATION received by GRANTOR, hereby grants, sells, and conveys to GRANTEE an EASEMENT appurtenant and Right-of-Way in, upon, and across the EASEMENT PROPERTY, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to GRANTEE and GRANTEE'S successors and assigns forever.

PURPOSE: The EASEMENT, right-of-way, rights, and privileges herein granted shall be used for the purpose of providing electric utility service, constructing, placing, operating, maintaining, reconstructing, replacing, relocating, reconstituting, changing the size or nature of, rebuilding, upgrading, expanding, removing, inspecting, patrolling, and/or repairing the PROJECT(s) or any part of the PROJECT(s), and making connections to GRANTEE's electric system. The PURPOSE shall also include use of the EASEMENT, right-of-way, rights and privileges granted herein for any use directly related to the PROJECT(s) or financing of the PROJECT(s), including but not limited to performing archeological, historical, environmental, or other studies. GRANTEE shall have the right to place temporary poles, towers, anchorages, guys, and supporting structures for use in erecting or repairing the PROJECT(s). GRANTEE shall have the right to temporarily use such portions of the property along and adjacent to the EASEMENT PROPERTY and right-of-way as may be reasonably necessary in connection with the PURPOSE stated, or any one or more of them relating to the PROJECT(s), or any part thereof, from time to time; provided, however, that no portion of the PROJECT(s) shall be installed outside the EASEMENT PROPERTY.

ACCESS: GRANTEE shall have the right of pedestrian, equipment, and vehicular ingress and egress at all times upon and across the EASEMENT PROPERTY for the above stated PURPOSE. GRANTEE shall also have the right of pedestrian, equipment, and vehicular ingress and egress over existing roads across the adjacent or remainder property of GRANTOR for the purpose of obtaining access. In the event that access is not reasonably available over existing roads, GRANTEE shall have the right of reasonable pedestrian, equipment, and vehicular ingress and egress over the adjacent property of GRANTOR along any route that is reasonable and appropriate under the circumstances then existing in order to obtain access.

TERM: The EASEMENT, right-of-way, rights, other privileges and access rights granted herein, as well as the covenants made herein, shall be perpetual and appurtenant to the land, unless expressly abandoned by GRANTEE and each of GRANTEE's licensees and/or permittees, if any, for a continuous period of 10 years.

TREES: GRANTEE shall have the right to cut, trim, chemically treat with herbicides, and/or remove trees, shrubs, bushes, brush and vegetation within or adjacent to the EASEMENT PROPERTY or otherwise necessary to realize the PURPOSE herein stated.

STRUCTURES: GRANTOR shall not construct or locate on the EASEMENT PROPERTY any structure, obstruction or improvement, except that GRANTOR shall be permitted to place within the EASEMENT PROPERTY paved driveways, paved parking areas, paved sidewalks, paved walkways, concrete curbing, and landscaping that does not unreasonably restrict or prevent GRANTEE from utilizing the EASEMENT PROPERTY for the stated PURPOSE (collectively, the "PERMITTED IMPROVEMENTS"). Upon the request of GRANTEE, GRANTOR promptly shall remove from the EASEMENT PROPERTY any structure, improvement, or obstruction that GRANTEE determines in its reasonable discretion must be removed in connection with its use of the EASEMENT PROPERTY for the stated PURPOSE; provided, however, if such structure, improvement or obstruction requested to be removed by GRANTEE is a PERMITTED IMPROVEMENT, the cost of removal and the cost to restore and/or replace such PERMITTED IMPROVEMENT shall be borne by GRANTEE. In all other events, the cost of removal of any structures, improvements or obstructions shall be borne by GRANTOR. Additionally, if GRANTOR fails to promptly remove the item requested by GRANTEE, GRANTEE shall have the right to remove same from the EASEMENT PROPERTY with the cost of removal and the cost of any subsequent restoration and/or replacement to be borne by the applicable of GRANTOR or GRANTEE as provided above in this paragraph.

DAMAGES: It is understood and agreed that the CONSIDERATION received by GRANTOR includes adequate compensation for the grant of the easement, right-of-way and other rights, privileges and appurtenances contained in this instrument and any damages arising out of GRANTEE's lawful exercise of any PURPOSE. GRANTEE shall not be liable for damages caused by keeping the EASEMENT PROPERTY clear of trees, undergrowth, brush, and obstructions. Notwithstanding the foregoing, GRANTEE shall repair and/or restore the surface of the EASEMENT PROPERTY and the surface of GRANTOR's adjacent property to substantially the same condition as existed immediately prior to any damage thereto that is directly caused by GRANTEE's exercise of its rights hereunder; provided, however, that in no event shall GRANTEE have any obligation or liability to repair and/or restore any structure, obstruction or improvement located on the EASEMENT PROPERTY that is not permitted to be located thereon in this instrument.

MINERALS: GRANTOR expressly reserves all oil, gas, and other minerals owned by GRANTOR in, on, and under the EASEMENT PROPERTY, provided that GRANTOR shall not be permitted to, and shall not allow any party to, drill or excavate for minerals on or from the surface of the EASEMENT PROPERTY, but GRANTOR may extract oil, gas, or other minerals from and under the EASEMENT PROPERTY by directional drilling or other means which do not interfere with or disturb GRANTEE's use of the EASEMENT PROPERTY. GRANTOR agrees to consult with GRANTEE concerning the location of GRANTEE's facilities in the EASEMENT PROPERTY prior to exercising GRANTOR's rights under this paragraph. GRANTOR indemnifies and agrees to hold GRANTEE harmless for and against all losses, costs, expenses, and other claims that may be suffered by, or otherwise claimed against GRANTEE in whole or in part due to GRANTOR's exercise of its rights under this paragraph.

OWNERSHIP: GRANTOR agrees that all poles, wires, cables, circuits, appurtenances, facilities, appliances and equipment installed upon the EASEMENT PROPERTY shall at all times remain the property of the GRANTEE and are removable at the option of the GRANTEE, regardless of the extent to which such items are attached or affiliated to the EASEMENT PROPERTY or any improvements thereon, or the extent to which removal of such items may damage such items or the EASEMENT PROPERTY or improvements located thereon.

AUTHORITY: GRANTOR represents and warrants to GRANTEE that GRANTOR has the full right, power, and authority to execute and deliver this Electric Line Easement and Right-of-Way, that this Electric Line Easement and Right-of-Way does not violate the terms or provisions of any other agreement to which GRANTOR is a party (including from any mortgage) or to which the EASEMENT PROPERTY is subject, that each person signing this Electric Line Easement and Right-of-Way on behalf of GRANTOR is authorized to do so, and that GRANTOR has obtained any and all third party consents (including from any mortgagee) necessary for the execution and delivery of this Electric Line Easement and Right-of-Way.

ASSIGNMENT AND MISCELLANEOUS: This instrument, and the terms and conditions contained herein, shall inure to the benefit of and be binding upon GRANTEE and GRANTOR, and their respective heirs, personal and legal representatives, successors, and assigns, and shall be covenants running with the land for the benefit of GRANTEE. When the context requires, singular nouns and pronouns include the plural. When appropriate, the term "GRANTEE" includes the employees, authorized agents, licensees and permittees of GRANTEE. GRANTEE shall have the right to assign this instrument, and the rights and privileges hereunder in favor of GRANTEE, in whole or in part.

MULTIPLE COUNTERPARTS: This Electric Line Easement and Right-of-Way may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which shall be deemed collectively to be one and the same instrument.

WARRANTY: GRANTOR warrants and shall forever defend the EASEMENT to GRANTEE against anyone lawfully claiming or to claim the EASEMENT or any part thereof.

EXECUTED as of the EFFECTIVE DATE.

GRANTOR:

H4 LITTLE ELM, LP, a Texas Limited Partnership

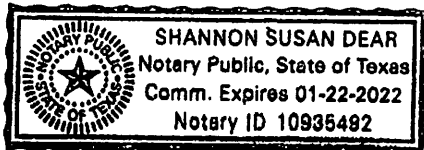
By: BOH Investments GP, LLC, a Delaware Limited Liability Company
its general partner

By: Clairie Ford
Name: Clairie Ford
Title: Senior VP

THE STATE OF Texas §
COUNTY OF Dallas §

This instrument was acknowledged before me on this 14 day of May, 2018,
by Clairie Ford, SVP
of BOH Investments GP, LLC, a Delaware limited liability company, the general partner of H4 Little Elm, LP, a Texas limited partnership,
on behalf of said limited liability company and limited partnership.

Shannon Susan Dear
NOTARY PUBLIC



BEING a tract of land situated in the W. Lumpkin Survey, Abstract No. 730, Denton County, Texas, and being a portion of a called 757.040-acre tract of land conveyed to H4 Little Elm, LP, as evidenced in Special Warranty Deed recorded in Instrument No. 2013-48961, Real Property Records, Denton County, Texas, and being more particularly described as follows:

TRACT 1

BEGINNING at the east common corner of a Road Easement (Union Park Boulevard Section 1B), recorded in Instrument No. 2016-158368, said Real Property Records, and a Road Easement (Union Park Boulevard Section 1A), recorded in Instrument No. 2016-158368, said Real Property Records, same being on the northerly line of said 757.040-acre tract, and on the southerly line of a called 91.884-acre tract of land as evidenced in Correction Deed recorded in Instrument No. 2018-9436, said Real Property Records, from which, a 4 inch metal fence post found for the northwest corner of said 757.040-acre tract, common to the southwest corner of said 91.884-acre tract bears North 88°41'50" West, 2075.54 feet;

THENCE South 88°41'50" East, along the northerly line of said 757.040 acre tract and the southerly line of said 91.884-acre tract, a distance of 15.20 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 4°10'50", a radius of 835.00 feet, a chord bearing and distance of South 8°34'47" West, 60.91 feet, from which, a 5/8 inch iron rod with plastic cap stamped "KHA" set for the southeast corner of said 91.884-acre tract bears South 88°41'50" East, 2116.36 feet;

THENCE departing the northerly line of said 757.040 acre tract and the southerly line of said 91.884-acre tract, and crossing said 757.040-acre tract, the following courses and distances:

In a southwesterly direction, with said curve to the left, an arc distance of 60.92 feet to a point at the end of said curve to the left;

North 85°21'48" West, a distance of 5.01 feet to a point for corner;

North 39°17'05" West, a distance of 13.87 feet to a point for corner on the easterly line of said Road Easement (Section 1A), and at the beginning of a non-tangent curve to the right having a central angle of 3°22'21", a radius of 850.00 feet, a chord bearing and distance of North 8°49'02" East, 50.02 feet;

In a northeasterly direction, along the easterly line of said Road Easement (Section 1A) and with said curve to the right, an arc distance of 50.03 feet to the **POINT OF BEGINNING** and containing 0.020 of an acre (857 sq. ft.) of land, more or less.

NOTES:

Bearing system for this survey is based upon NAD 83 - Texas North Central Zone, Horizontal Adjustment to NAD 83 (1993). To convert the Surface distances to Grid Values, multiply the distances by a Combined Scale Factor of 0.999853696.

EXHIBIT "A"
15' UTILITY EASEMENT
W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

SYLVIANA GUNAWAN
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6481
5750 GENESIS COURT, SUITE 200
FRISCO, TEXAS 75034
PH. 972-335-3580
sylviana.gunawan@kimley-horn.com

Kimley»Horn					
5750 Genesis Court, Suite 200 Frisco, Texas 75034		FIRM # 10193822		Tel. No. (972) 335-8580 Fax No. (972) 335-3779	
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JMH/SG	KHA	03/27/2018	067705500	1 OF 7

TRACT 2

COMMENCING at the east common corner of a Road Easement (Union Park Boulevard Section 1B), recorded in Instrument No. 2016-158368, said Real Property Records, and a Road Easement (Union Park Boulevard Section 1A), recorded in Instrument No. 2016-158368, said Real Property Records, same being on the northerly line of said 757.040-acre tract, and on the southerly line of a called 91.884-acre tract of land as evidenced in Correction Deed recorded in Instrument No. 2018-9436, said Real Property Records, and at the beginning of a curve to the left having a central angle of 08°21'40", a radius of 850.00 feet, a chord bearing and distance of South 06°19'22" West, 123.93 feet, and from which, a 4 inch metal fence post found for the northwest corner of said 757.040-acre tract, common to the southwest corner of said 91.884-acre tract bears North 88°41'50" West, 2075.54 feet;

THENCE in a southwesterly direction departing the northerly line of said 757.040-acre tract and the southerly line of said 91.884-acre tract, and crossing said 757.040-acre tract, an arc distance of 124.04 feet to the **POINT OF BEGINNING** of the herein described easement tract;

THENCE continuing across said 757.040-acre tract, the following courses and distances:

North 48°33'29" East, a distance of 13.87 feet to a point for corner;

South 85°21'48" East, a distance of 5.01 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 01°20'02", a radius of 835.00 feet, a chord bearing and distance of South 02°07'00" West, 19.44 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 19.44 feet to a point for corner;

South 01°26'59" West, a distance of 22.03 feet to a point for corner;

South 88°33'01" East, a distance of 5.00 feet to a point for corner;

South 01°26'59" West, a distance of 40.00 feet to a point for corner;

North 88°33'01" West, a distance of 5.00 feet to a point for corner;

South 01°26'59" West, a distance of 120.23 feet to a point at the beginning of a tangent curve to the left having a central angle of 18°38'00", a radius of 1035.00 feet, a chord bearing and distance of South 7°52'01" East, 335.12 feet;

In a southeasterly direction, with said curve to the left, an arc distance of 336.60 feet to a point for corner;

North 72°48'58" East, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 02°12'52", a radius of 1030.00 feet, a chord bearing and distance of South 18°17'27" East, 39.80 feet;

In a southeasterly direction, with said curve to the left, an arc distance of 39.81 feet to a point for corner;

South 70°36'07" West, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 18°54'34", a radius of 1035.00 feet, a chord bearing and distance of South 28°51'10" East, 340.03 feet;

EXHIBIT "A"
15' UTILITY EASEMENT
W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

SYLVIANA GUNAWAN
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6461
5750 GENESIS COURT, SUITE 200
FRISCO, TEXAS 75034
PH. 972-335-3580
sylviana.gunawan@kimley-horn.com

Kimley»Horn					
5750 Genesis Court, Suite 200 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779					
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JMH/SG	KHA	03/27/2018	067705500	2 OF 7

In a southeasterly direction, with said curve to the left, an arc distance of 341.58 feet to a point for corner;

South 38°18'27" East, a distance of 149.13 feet to a point for corner;

South 33°00'39" East, a distance of 22.07 feet to a point for corner on the northerly line of Lot 9X, Block DD of Union Park Phase 2C, according to the plat thereof recorded in Document No. 2017-496 of the Plat Records of Denton County, Texas;

THENCE South 51°48'18" West, along the northerly line of said Lot 9X, a distance of 8.22 feet to a 5/8 inch iron rod with plastic cap stamped "Jones Carter" found for corner;

THENCE South 06°43'10" West, continuing along the northerly line of said Lot 9X, a distance of 10.65 feet to a point for corner;

THENCE departing the northerly line of said Lot 9X, and crossing said 757.040-acre tract, the following courses:

North 33°00'39" West, a distance of 30.32 feet to a point for corner;

North 38°18'27" West, a distance of 148.43 feet to a point at the beginning of a tangent curve to the right having a central angle of 39°45'26", a radius of 1050.00 feet, a chord bearing and distance of North 18°25'44" West, 714.06 feet;

In a northwesterly direction, with said curve to the right, an arc distance of 728.59 feet to a point for corner;

North 01°26'59" East, a distance of 182.26 feet to a point at the beginning of a tangent curve to the right having a central angle of 00°41'34", a radius of 850.00 feet, a chord bearing and distance of North 01°47'45" East, 10.28 feet;

In a northeasterly direction with said curve to the right, an arc distance of 10.28 feet to the **POINT OF BEGINNING** and containing 0.386 of an acre (16,826 square feet) of land, more or less.

NOTES:

Bearing system for this survey is based upon NAD 83 - Texas North Central Zone, Horizontal Adjustment to NAD 83 (1993). To convert the Surface distances to Grid Values, multiply the distances by a Combined Scale Factor of 0.999853696.

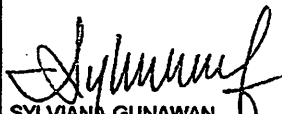

SYLVIANA GUNAWAN
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6461
5750 GENESIS COURT, SUITE 200
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EXHIBIT "A"
15' UTILITY EASEMENT
W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

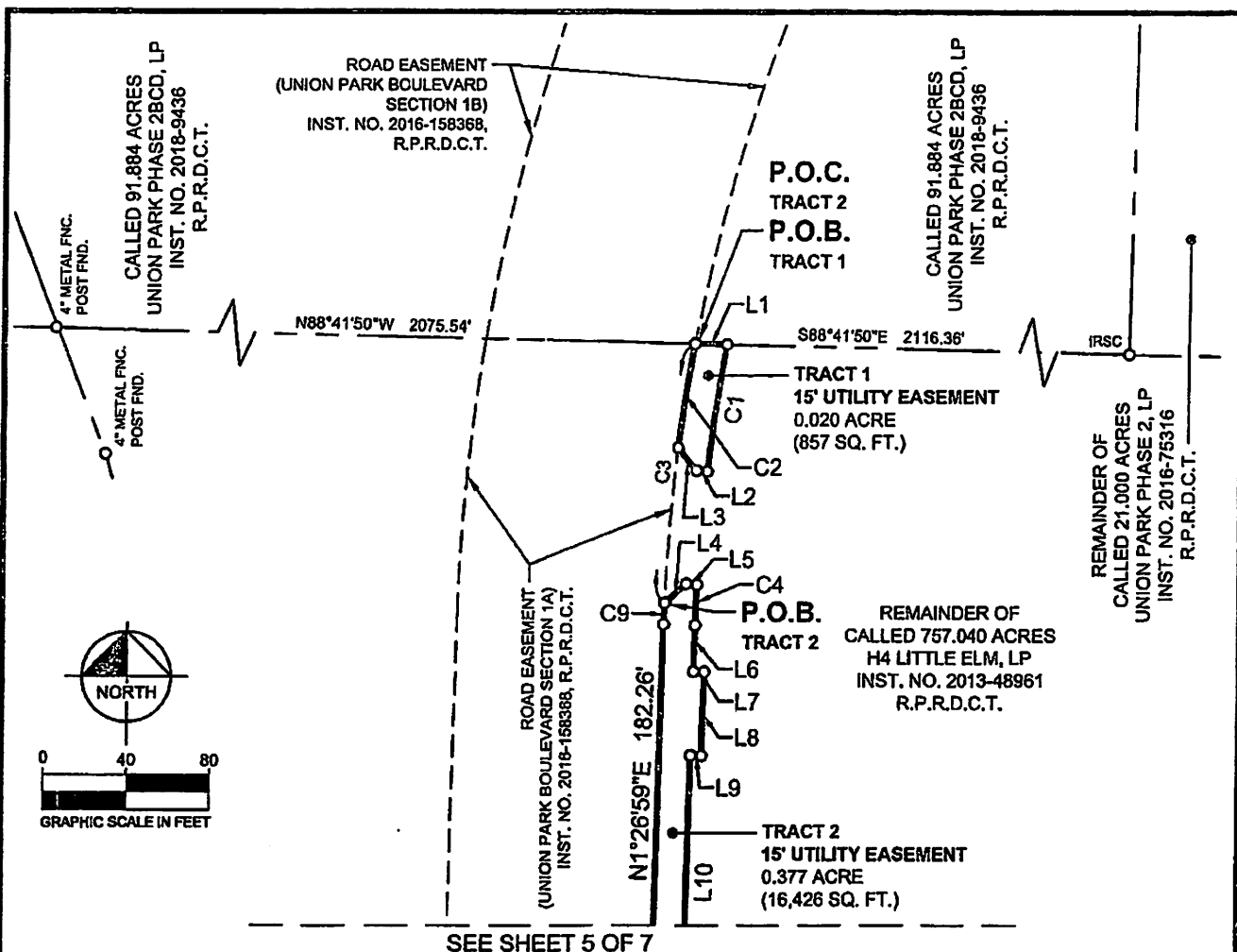
Kimley»Horn

5750 Genesis Court, Suite 200
Frisco, Texas 75034

FIRM # 10-93822

Tel. No. (972) 335-3580
Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JMH/SG	KHA	03/27/2018	067705500	3 OF 7



NOTES:

Bearing system for this survey is based upon NAD 83 - Texas North Central Zone, Horizontal Adjustment to NAD 83 (1993). To convert the Surface distances to Grid Values, multiply the distances by a Combined Scale Factor of 0.999853696.

LEGEND

Δ = CENTRAL ANGLE
P.O.C. = POINT OF COMMENCING
P.O.B. = POINT OF BEGINNING
IRSC = IRON ROD WITH PLASTIC CAP SET
IRF = IRON ROD FOUND
R.P.R.D.C.T. = REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS

EXHIBIT "A"

15' UTILITY EASEMENT

W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

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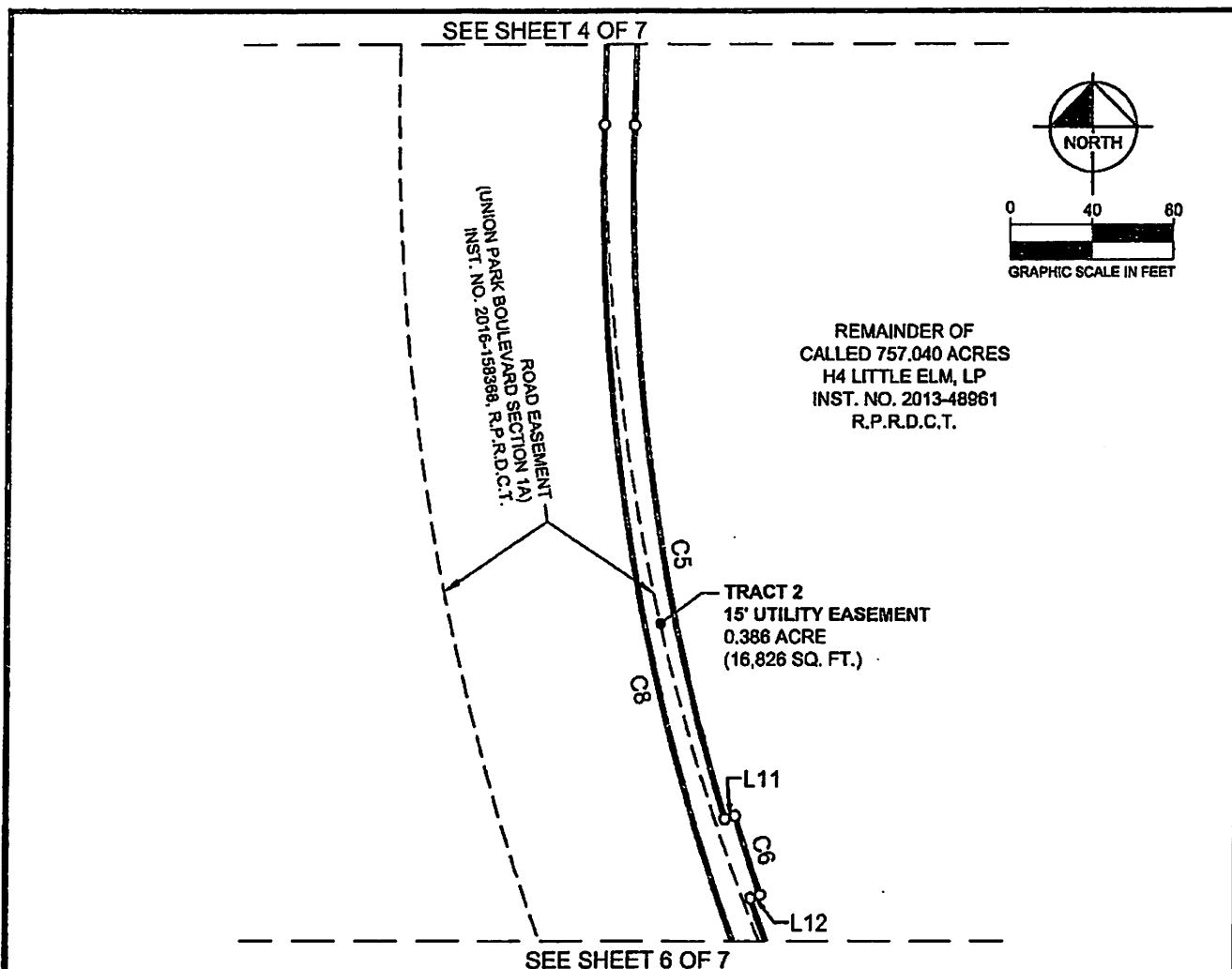
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5750 Genesis Court, Suite 200
Frisco, Texas 75034

FIRM # 10193822

Tel. No. (972) 335-3580
Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 80'	JMH/SG	KHA	03/27/2018	067705500	4 OF 7



NOTES:

Bearing system for this survey is based upon NAD 83 - Texas North Central Zone, Horizontal Adjustment to NAD 83 (1993). To convert the Surface distances to Grid Values, multiply the distances by a Combined Scale Factor of 0.999853696.

LEGEND

Δ = CENTRAL ANGLE
P.O.C. = POINT OF COMMENCING
P.O.B. = POINT OF BEGINNING
IRSC = IRON ROD WITH PLASTIC CAP SET
IRF = IRON ROD FOUND
R.P.R.D.C.T. = REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS

EXHIBIT "A"

15' UTILITY EASEMENT

W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

SYLVIANA GUNAWAN
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6461
5750 GENESIS COURT, SUITE 200
FRISCO, TEXAS 75034
PH. 972-335-3580
sylviana.gunawan@kimley-horn.com

Kimley»Horn

5750 Genesis Court, Suite 200
Frisco, Texas 75034

FIRM # 10193822

Tel. No. (972) 335-3580
Fax No. (972) 336-3779

Scale
1" = 80'

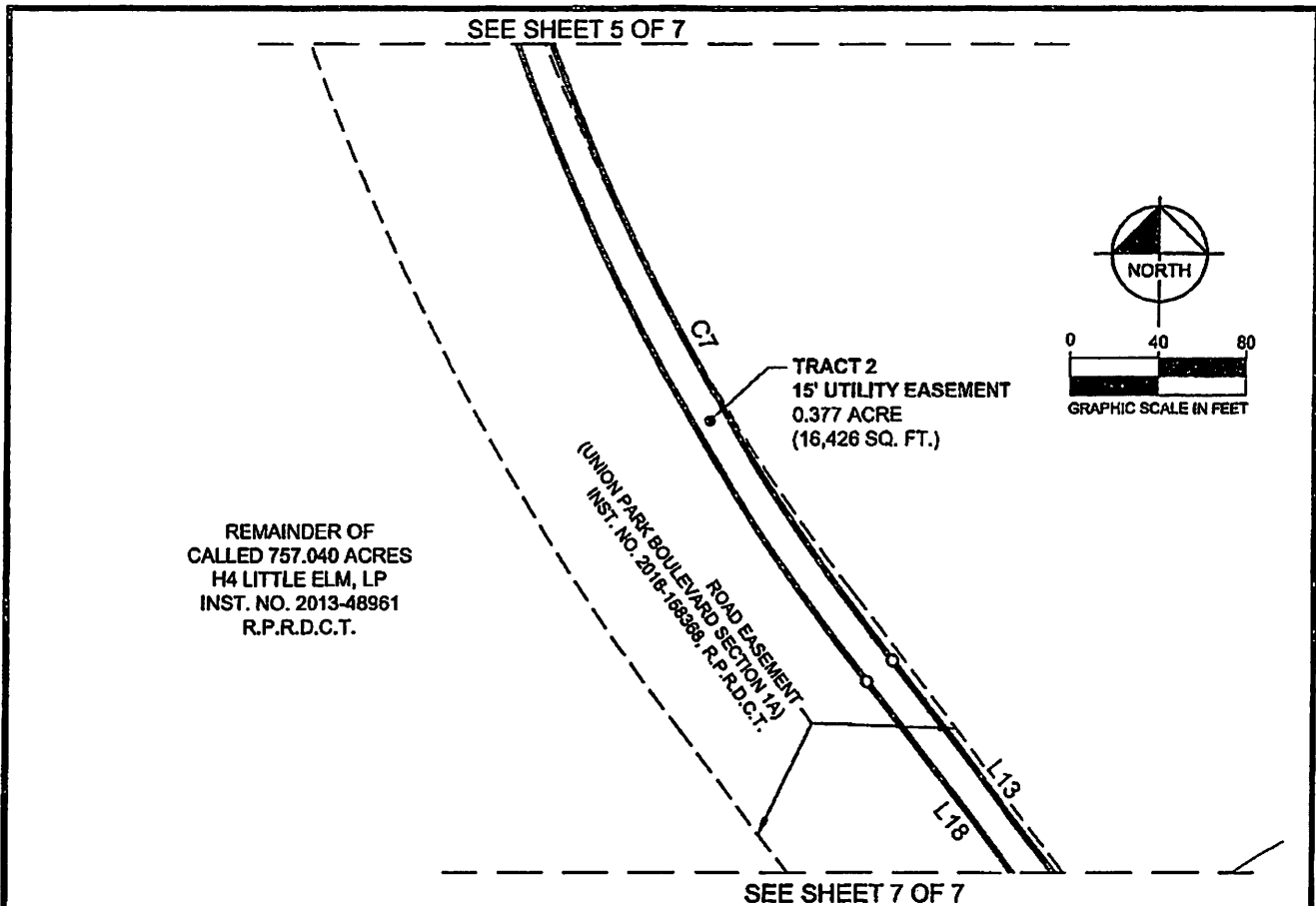
Drawn by
JMH/SG

Checked by
KHA

Date
03/27/2018

Project No.
067705500

Sheet No.
6 OF 7



NOTES:

Bearing system for this survey is based upon NAD 83 - Texas North Central Zone, Horizontal Adjustment to NAD 83 (1993). To convert the Surface distances to Grid Values, multiply the distances by a Combined Scale Factor of 0.999853696.

LEGEND

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R.P.R.D.C.T. = REAL PROPERTY
RECORDS, DENTON COUNTY, TEXAS

EXHIBIT "A"

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Tel. No. (972) 335-3580
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Scale
1" = 60'

Drawn by
JMH/SG

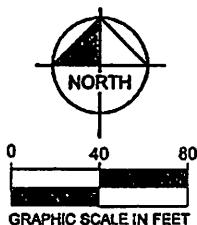
Checked by
KHA

Date
03/27/2018

Project No.
067705500

Sheet No.
8 OF 7

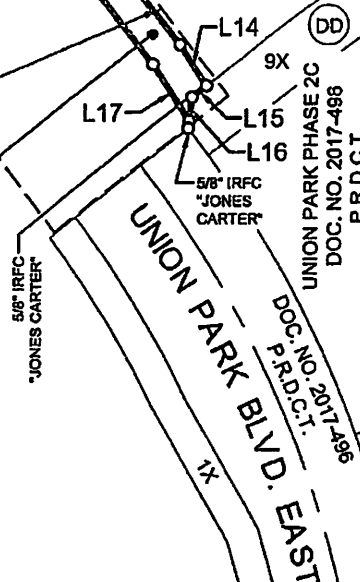
SEE SHEET 6 OF 7



ROAD EASEMENT
(UNION PARK BOULEVARD SECTION 1A)
INST. NO. 2016-158368, R.P.R.D.C.T.

TRACT 2
15' UTILITY EASEMENT
0.377 ACRE
(16,426 SQ. FT.)

REMAINDER OF
CALLED 757.040 ACRES
H4 LITTLE ELM, LP
INST. NO. 2013-48961
R.P.R.D.C.T.



LINE TABLE

NO.	BEARING	LENGTH
L1	S88°41'50"E	15.20'
L2	N85°21'48"W	5.01'
L3	N39°17'05"W	13.87'
L4	N48°33'29"E	13.87'
L5	S85°21'48"E	5.01'
L6	S01°26'59"W	22.03'
L7	S88°33'01"E	5.00'
L8	S01°26'59"W	40.00'
L9	N88°33'01"W	5.00'
L10	S01°26'59"W	120.23'
L11	N72°48'58"E	5.00'
L12	S70°36'07"W	5.00'
L13	S38°18'27"E	149.13'
L14	S33°00'39"E	22.07'
L15	S51°48'18"W	8.22'
L16	S06°43'10"W	10.65'
L17	N33°00'39"W	30.32'
L18	N38°18'27"W	148.43'

CURVE TABLE

NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	4°10'50"	835.00'	60.92'	S08°34'47"W	60.91'
C2	3°22'21"	850.00'	50.03'	N08°49'02"E	50.02'
C3	8°21'40"	850.00'	124.04'	S06°19'22"W	123.93'
C4	1°20'02"	835.00'	19.44'	S02°07'00"W	19.44'
C5	18°38'00"	1035.00'	336.60'	S07°52'01"E	335.12'
C6	2°12'52"	1030.00'	39.81'	S18°17'27"E	39.80'
C7	18°54'34"	1035.00'	341.58'	S28°51'10"E	340.03'
C8	39°45'26"	1050.00'	728.59'	N18°25'44"W	714.06'
C9	0°41'34"	850.00'	10.28'	N01°47'45"E	10.28'

LEGEND

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P.O.C. = POINT OF COMMENCING
P.O.B. = POINT OF BEGINNING
IRSC = IRON ROD WITH PLASTIC CAP SET
IRF = IRON ROD FOUND
R.P.R.D.C.T. = REAL PROPERTY
RECORDS, DENTON COUNTY, TEXAS

NOTES:

Bearing system for this survey is based upon NAD 83 - Texas North Central Zone, Horizontal Adjustment to NAD 83 (1993). To convert the Surface distances to Grid Values, multiply the distances by a Combined Scale Factor of 0.999853686.

Sylviana Gunawan
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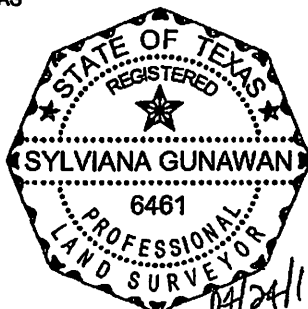


EXHIBIT "A"
15' UTILITY EASEMENT
W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200
Frisco, Texas 75034

FIRM # 10193822

Tel. No. (972) 335-3580
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Scale
1" = 80'

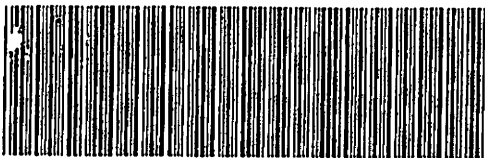
Drawn by
JMH/USG

Checked by
KHA

Date
03/27/2018

Project No.
067705500

Sheet No.
7 OF 7



VG-226-2018-58249

Denton County
Juli Luke
County Clerk

Instrument Number: 58249

Real Property Recordings

EASEMENT

Recorded On: May 22, 2018 01:45 PM

Number of Pages: 8

" Examined and Charged as Follows: "

Total Recording: \$54.00

***** THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 58249
Receipt Number: 20180522000401
Recorded Date/Time: May 22, 2018 01:45 PM
User: Connor B
Station: Station 10

Record and Return To:

COSERV ELECTRTIC
7701 S STEMMONS

CORINTH TX 76210



STATE OF TEXAS
COUNTY OF DENTON

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Juli Luke
County Clerk
Denton County, TX

After Recording, Return to:

Kevin W. Haney
Haney Law, PC
c/o 7701 South Stemmons
Corinth, Texas 76210

For CoServ Use Only:

MAP GRID: _____
WO NO.: 1005413 SO NO.: _____
EASEMENT NO.: _____

ELECTRIC LINE EASEMENT AND RIGHT-OF-WAY

STATE OF TEXAS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON

EFFECTIVE DATE: May 14, 2018.

GRANTOR: UNION PARK PHASE 2, LP, a Texas limited partnership.

GRANTOR'S MAILING ADDRESS (including county):

3000 Turtle Creek Blvd
Dallas, TX 75219
Dallas County

GRANTEE: DENTON COUNTY ELECTRIC COOPERATIVE, INC., d/b/a COSERV ELECTRIC
7701 South Stemmons
Corinth, Denton County, Texas 76210

CONSIDERATION: The provision of electrical service and/or other benefits inuring to GRANTOR and/or Ten and No/100's dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of some consideration deemed valuable to GRANTOR hereby expressly acknowledged and accepted by GRANTOR.

EASEMENT PROPERTY: The EASEMENT PROPERTY is that certain tract or tracts of land more particularly described in the attached Exhibit A, incorporated herein by this reference for all purposes, together with the subsurface below and air space above the tract(s) of land.

PROJECT: The PROJECT(s) means underground-type electric transmission and/or electric distribution line or lines, consisting of a variable number and sizes of wires, cables, and circuits, and all necessary or desirable appurtenances, appliances, facilities and equipment (including but not limited to supporting structures, insulators, above-ground padmounted transformers and equipment, and other facilities whether made of wood, metal or other materials).

GRANT: GRANTOR, for the CONSIDERATION received by GRANTOR, hereby grants, sells, and conveys to GRANTEE an EASEMENT appurtenant and Right-of-Way in, upon, and across the EASEMENT PROPERTY, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to GRANTEE and GRANTEE'S successors and assigns forever.

PURPOSE: The EASEMENT, right-of-way, rights, and privileges herein granted shall be used for the purpose of providing electric utility service, constructing, placing, operating, maintaining, reconstructing, replacing, relocating, reconstituting, changing the size or nature of, rebuilding, upgrading, expanding, removing, inspecting, patrolling, and/or repairing the PROJECT(s) or any part of the PROJECT(s), and making connections to GRANTEE's electric system. The PURPOSE shall also include use of the EASEMENT, right-of-way, rights and privileges granted herein for any use directly related to the PROJECT(s) or financing of the PROJECT(s), including but not limited to performing archeological, historical, environmental, or other studies. GRANTEE shall have the right to place temporary poles, towers, anchorages, guys, and supporting structures for use in erecting or repairing the PROJECT(s). GRANTEE shall have the right to temporarily use such portions of the property along and adjacent to the EASEMENT PROPERTY and right-of-way as may be reasonably necessary in connection with the PURPOSE stated, or any one or more of them relating to the PROJECT(s), or any part thereof, from time to time; provided, however, that no portion of the PROJECT(s) shall be installed outside the EASEMENT PROPERTY.

ACCESS: GRANTEE shall have the right of pedestrian, equipment, and vehicular ingress and egress at all times upon and across the EASEMENT PROPERTY for the above stated PURPOSE. GRANTEE shall also have the right of pedestrian, equipment, and vehicular ingress and egress over existing roads across the adjacent or remainder property of GRANTOR for the purpose of obtaining access. In the event that access is not reasonably available over existing roads, GRANTEE shall have the right of reasonable pedestrian, equipment, and vehicular ingress and egress over the adjacent property of GRANTOR along any route that is reasonable and appropriate under the circumstances then existing in order to obtain access.

TERM: The EASEMENT, right-of-way, rights, other privileges and access rights granted herein, as well as the covenants made herein, shall be perpetual and appurtenant to the land, unless expressly abandoned by GRANTEE and each of GRANTEE's licensees and/or permittees, if any, for a continuous period of 10 years.

TREES: GRANTEE shall have the right to cut, trim, chemically treat with herbicides, and/or remove trees, shrubs, bushes, brush and vegetation within or adjacent to the EASEMENT PROPERTY or otherwise necessary to realize the PURPOSE herein stated.

STRUCTURES: GRANTOR shall not construct or locate on the EASEMENT PROPERTY any structure, obstruction or improvement, except that GRANTOR shall be permitted to place within the EASEMENT PROPERTY paved driveways, paved parking areas, paved sidewalks, paved walkways, concrete curbing, and landscaping that does not unreasonably restrict or prevent GRANTEE from utilizing the EASEMENT PROPERTY for the stated PURPOSE (collectively, the "PERMITTED IMPROVEMENTS"). Upon the request of GRANTEE, GRANTOR promptly shall remove from the EASEMENT PROPERTY any structure, improvement, or obstruction that GRANTEE determines in its reasonable discretion must be removed in connection with its use of the EASEMENT PROPERTY for the stated PURPOSE; provided, however, if such structure, improvement or obstruction requested to be removed by GRANTEE is a PERMITTED IMPROVEMENT, the cost of removal and the cost to restore and/or replace such PERMITTED IMPROVEMENT shall be borne by GRANTEE. In all other events, the cost of removal of any structures, improvements or obstructions shall be borne by GRANTOR. Additionally, if GRANTOR fails to promptly remove the item requested by GRANTEE, GRANTEE shall have the right to remove same from the EASEMENT PROPERTY with the cost of removal and the cost of any subsequent restoration and/or replacement to be borne by the applicable of GRANTOR or GRANTEE as provided above in this paragraph.

DAMAGES: It is understood and agreed that the CONSIDERATION received by GRANTOR includes adequate compensation for the grant of the easement, right-of-way and other rights, privileges and appurtenances contained in this instrument and any damages arising out of GRANTEE's lawful exercise of any PURPOSE. GRANTEE shall not be liable for damages caused by keeping the EASEMENT PROPERTY clear of trees, undergrowth, brush, and obstructions. Notwithstanding the foregoing, GRANTEE shall repair and/or restore the surface of the EASEMENT PROPERTY and the surface of GRANTOR's adjacent property to substantially the same condition as existed immediately prior to any damage thereto that is directly caused by GRANTEE's exercise of its rights hereunder; provided, however, that in no event shall GRANTEE have any obligation or liability to repair and/or restore any structure, obstruction or improvement located on the EASEMENT PROPERTY that is not permitted to be located thereon in this instrument.

MINERALS: GRANTOR expressly reserves all oil, gas, and other minerals owned by GRANTOR in, on, and under the EASEMENT PROPERTY, provided that GRANTOR shall not be permitted to, and shall not allow any party to, drill or excavate for minerals on or from the surface of the EASEMENT PROPERTY, but GRANTOR may extract oil, gas, or other minerals from and under the EASEMENT PROPERTY by directional drilling or other means which do not interfere with or disturb GRANTEE's use of the EASEMENT PROPERTY. GRANTOR agrees to consult with GRANTEE concerning the location of GRANTEE's facilities in the EASEMENT PROPERTY prior to exercising GRANTOR's rights under this paragraph. GRANTOR indemnifies and agrees to hold GRANTEE harmless for and against all losses, costs, expenses, and other claims that may be suffered by, or otherwise claimed against GRANTEE in whole or in part due to GRANTOR's exercise of its rights under this paragraph.

OWNERSHIP: GRANTOR agrees that all poles, wires, cables, circuits, appurtenances, facilities, appliances and equipment installed upon the EASEMENT PROPERTY shall at all times remain the property of the GRANTEE and are removable at the option of the GRANTEE, regardless of the extent to which such items are attached or affiliated to the EASEMENT PROPERTY or any improvements thereon, or the extent to which removal of such items may damage such items or the EASEMENT PROPERTY or improvements located thereon.

AUTHORITY: GRANTOR represents and warrants to GRANTEE that GRANTOR has the full right, power, and authority to execute and deliver this Electric Line Easement and Right-of-Way, that this Electric Line Easement and Right-of-Way does not violate the terms or provisions of any other agreement to which GRANTOR is a party (including from any mortgage) or to which the EASEMENT PROPERTY is subject, that each person signing this Electric Line Easement and Right-of-Way on behalf of GRANTOR is authorized to do so, and that GRANTOR has obtained any and all third party consents (including from any mortgagee) necessary for the execution and delivery of this Electric Line Easement and Right-of-Way.

ASSIGNMENT AND MISCELLANEOUS: This instrument, and the terms and conditions contained herein, shall inure to the benefit of and be binding upon GRANTEE and GRANTOR, and their respective heirs, personal and legal representatives, successors, and assigns, and shall be covenants running with the land for the benefit of GRANTEE. When the context requires, singular nouns and pronouns include the plural. When appropriate, the term "GRANTEE" includes the employees, authorized agents, licensees and permittees of GRANTEE. GRANTEE shall have the right to assign this instrument, and the rights and privileges hereunder in favor of GRANTEE, in whole or in part.

MULTIPLE COUNTERPARTS: This Electric Line Easement and Right-of-Way may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which shall be deemed collectively to be one and the same instrument.

WARRANTY: GRANTOR warrants and shall forever defend the EASEMENT to GRANTEE against anyone lawfully claiming or to claim the EASEMENT or any part thereof.

EXECUTED as of the EFFECTIVE DATE.

GRANTOR:

UNION PARK PHASE 2, LP, a Texas limited Partnership

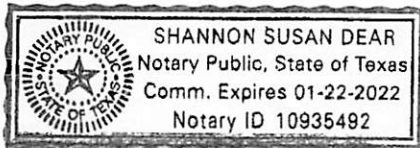
By: BOH Investments GP, LLC, a Delaware limited liability company
its general partner

By: Elaine Ford
Name: Elaine Ford
Title: Senior VP

THE STATE OF Texas §
COUNTY OF Dallas §

This instrument was acknowledged before me on this 14 day of May, 2018,
by Elaine Ford, SRP
of BOH Investments GP, LLC, a Delaware limited liability company, the general partner of Union Park Phase 2, LP, a Texas limited partnership, on behalf of said limited liability company and limited partnership.

Shannon Dear
NOTARY PUBLIC



BEING a tract of land situated in the W. Lumpkin Survey, Abstract No. 730, Denton County, Texas, and being a portion of a called 21.000-acre tract of land described in a deed to Union Park Phase 2, LP, as recorded in Instrument No. 2016-75316 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for a corner on the westerly line of said 21.000-acre tract, being the easterly, northeast corner of a called 91.884-acre tract of land described in a deed to Union Park Phase 2BCD, LP, as recorded in Instrument No. 2018-9436 of the Real Property Records of Denton County, Texas and being on the southerly line of a "Tract 1" (called 21.018-acres) described in a deed to Union Park Phase 3A, LP, as recorded in Instrument No. 2017-153475 of the Real Property Records of Denton County, Texas, same being the beginning of a non-tangent curve to the right having a central angle of 13°31'12", a radius of 3950.00 feet, a chord bearing and distance of South 70°25'16" East, 929.92 feet;

THENCE in a southeasterly direction departing the westerly line of said 21.000-acre tract and the easterly line of said 91.884-acre tract, along the southerly line of said "Tract 1", and with said curve to the right, an arc distance of 932.08 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the end of said curve;

THENCE South 18°32'44" East, continuing along the southerly, becoming westerly line of said "Tract 1", a distance of 21.19 feet to a point for corner;

THENCE, departing the westerly line of said "Tract 1" and crossing said 21.000-acre tract, the following courses:

North 63°36'38" West, a distance of 11.49 feet to the beginning of a tangent curve to the left having a central angle of 01°28'15", a radius of 3935.00 feet, a chord bearing and distance of North 64°20'46" West, 101.02 feet;

In a northwesterly direction, with said curve to the left, an arc distance of 101.02 feet to a point for corner;

South 24°55'06" West, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 00°34'57", a radius of 3930.00 feet, a chord bearing and distance of North 65°22'22" West, 39.95 feet;

In a northwesterly direction, with said curve to the left, an arc distance of 39.95 feet to a point for corner;

North 24°20'10" East, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 08°53'05", a radius of 3935.00 feet, a chord bearing and distance of North 70°06'23" West, 609.58 feet;

In a northwesterly direction, with said curve to the left, an arc distance of 610.19 feet to a point for corner;

South 15°27'05" West, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 00°34'59", a radius of 3930.00 feet, a chord bearing and distance of North 74°50'25" West, 40.00 feet;

In a northwesterly direction, with said curve to the left, an arc distance of 40.00 feet to a point for corner;


North 14°52'05" East, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 02°00'18", a radius of 3935.00 feet, a chord bearing and distance of North 76°08'03" West, 137.69 feet;

In a northwesterly direction, with said curve to the left, an arc distance of 137.69 feet to a point for corner on the westerly line of said 21.000-acre tract, the easterly line of said 91.884-acre tract:

THENCE North 01°18'37" East, along the westerly line of said 21.000-acre tract and the easterly line of said 91.884-acre tract, a distance of 15.31 feet to the POINT OF BEGINNING and containing 0.332 of an acre (14,444 square feet) of land, more or less.

NOTE

Bearing system for this survey is based upon NAD
83 - Texas North Central Zone, Horizontal
Adjustment to NAD 83 (1993).


SYLVIANA GUNAWAN
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6461
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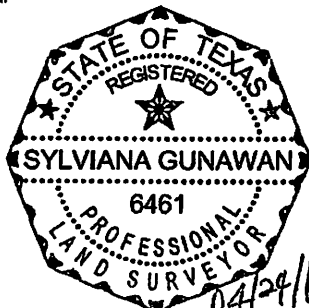


EXHIBIT "A"
15' UTILITY EASEMENT
W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

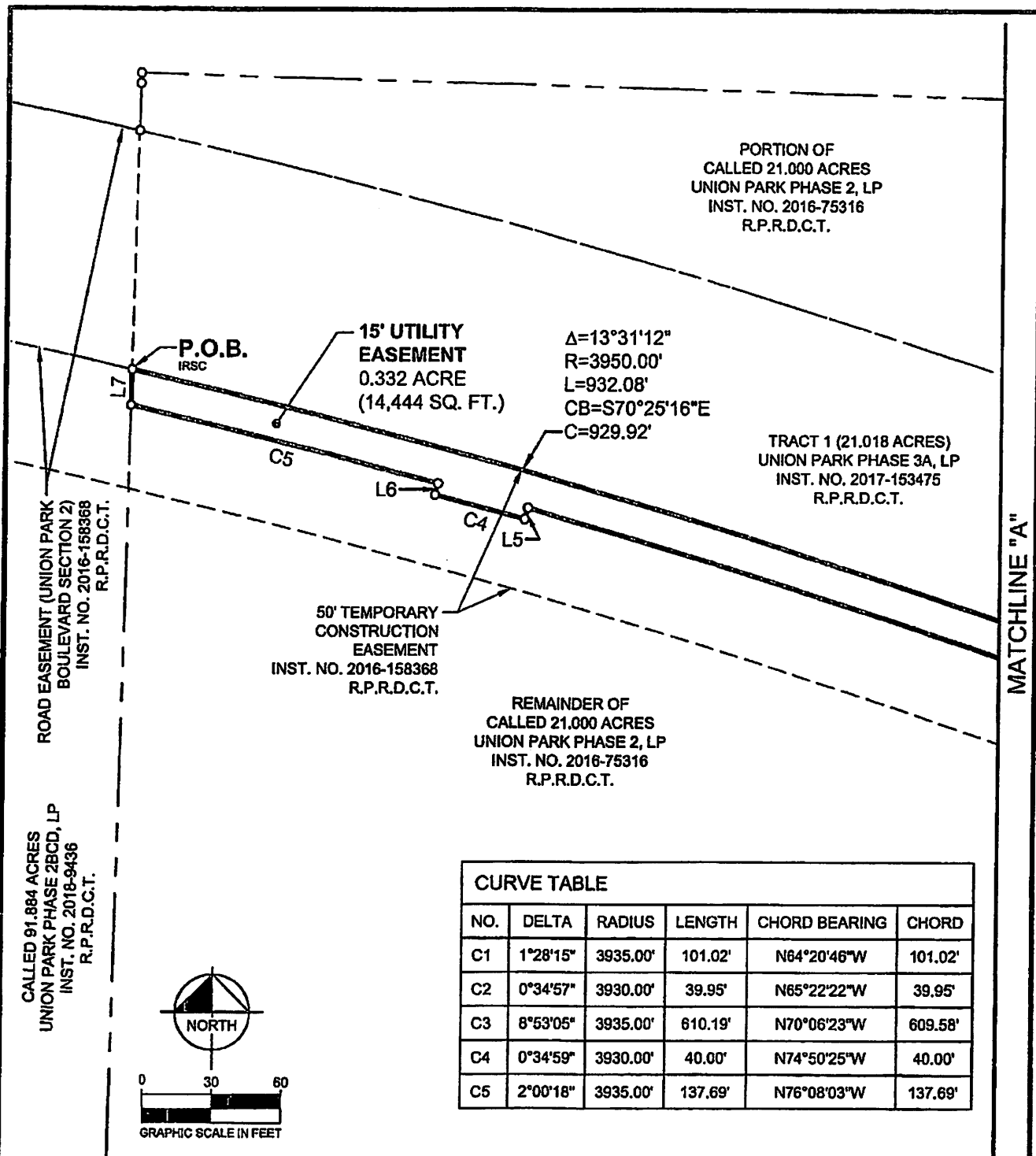
Kimley»Horn

5750 Genesis Court, Suite 200
Frisco, Texas 75034

FIRM # 10193822

Tel. No. (972) 335-3580
Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	SG	KHA	04/09/2018	063230000	1 OF 4



CURVE TABLE

NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	1°28'15"	3935.00'	101.02'	N64°20'46"W	101.02'
C2	0°34'57"	3930.00'	39.95'	N65°22'22"W	39.95'
C3	8°53'05"	3935.00'	610.19'	N70°06'23"W	609.58'
C4	0°34'59"	3930.00'	40.00'	N74°50'25"W	40.00'
C5	2°00'18"	3935.00'	137.69'	N76°08'03"W	137.69'

NOTES:

Bearing system for this survey is based upon NAD 83 - Texas North Central Zone, Horizontal Adjustment to NAD 83 (1993). To convert the Surface distances to Grid Values, multiply the distances by a Combined Scale Factor of 0.999853696.

LEGEND

Δ = CENTRAL ANGLE
P.O.C. = POINT OF COMMENCING
P.O.B. = POINT OF BEGINNING
IRFC = IRON ROD WITH PLASTIC CAP FOUND
IRF = IRON ROD FOUND
R.P.R.D.C.T. = REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS

EXHIBIT "A"

15' UTILITY EASEMENT

W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200
Frisco, Texas 75034 FIRM # 10193822

Tel. No. (972) 335-3580
Fax No. (972) 335-3778

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 50'	SG	KHA	04/09/2018	063230000	2 OF 4

PORTION OF
CALLED 21.000 ACRES
UNION PARK PHASE 2, LP
INST. NO. 2016-75316
R.P.R.D.C.T.

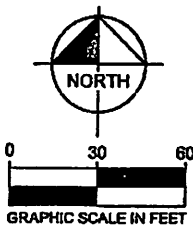
ROAD EASEMENT (UNION
PARK BOULEVARD SECTION 3)
INST. NO. 2016-158368
R.P.R.D.C.T.

$\Delta=13^{\circ}31'12''$
 $R=3950.00'$
 $L=932.08'$
 $CB=S70^{\circ}25'16''E$
 $C=929.92'$

15' UTILITY
EASEMENT
0.332 ACRE
(14,444 SQ. FT.)

TRACT 1 (21.018 ACRES)
UNION PARK PHASE 3A, LP
INST. NO. 2017-153475
R.P.R.D.C.T.

LINE TABLE		
NO.	BEARING	LENGTH
L1	S18°32'44"E	21.19'
L2	N63°36'38"W	11.49'
L3	S24°55'06"W	5.00'
L4	N24°20'10"E	5.00'
L5	S15°27'05"W	5.00'
L6	N14°52'05"E	5.00'
L7	N01°18'37"E	15.31'



REMAINDER OF
CALLED 21.000 ACRES
UNION PARK PHASE 2, LP
INST. NO. 2016-75316
R.P.R.D.C.T.

NOTES:

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Δ = CENTRAL ANGLE
P.O.C. = POINT OF COMMENCING
P.O.B. = POINT OF BEGINNING
IRFC = IRON ROD WITH PLASTIC CAP FOUND
IRF = IRON ROD FOUND
R.P.R.D.C.T. = REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS

EXHIBIT "A"

15' UTILITY EASEMENT

W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

Kimley»Horn

5750 Gensels Court, Suite 200
Frisco, Texas 75034

FIRM # 10193822

Tel. No. (972) 335-3580
Fax No. (972) 335-3778

Scale
1" = 60'

Drawn by
SG

Checked by
KHA

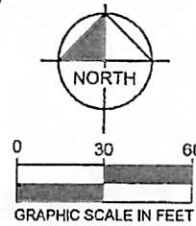
Date
04/09/2018

Project No.
063230000

Sheet No.
3 OF 4

LEGEND

Δ = CENTRAL ANGLE
P.O.C. = POINT OF COMMENCING
P.O.B. = POINT OF BEGINNING
IRFC = IRON ROD WITH PLASTIC CAP FOUND
IRF = IRON ROD FOUND
R.P.R.D.C.T. = REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS



50' TEMPORARY CONSTRUCTION EASEMENT
INST. NO. 2016-158368
R.P.R.D.C.T.

ROAD EASEMENT (BRYAN ROAD SECTION)
INST. NO. 2016-158368
R.P.R.D.C.T.

Δ=13°31'12"
R=3950.00'
L=932.08'
CB=S70°25'16"E
C=929.92'

ROAD EASEMENT (UNION PARK BOULEVARD SECTION 3)
INST. NO. 2016-158368
R.P.R.D.C.T.

30' UTILITY EASEMENT
INST. NO. 2005-29192
O.R.D.C.T.

15' UTILITY EASEMENT
0.332 ACRE
(14,444 SQ. FT.)

TRACT 1 (21.018 ACRES)
UNION PARK PHASE 3A, LP
INST. NO. 2017-153475
R.P.R.D.C.T.

NOTES:

Bearing system for this survey is based upon NAD 83 - Texas North Central Zone, Horizontal Adjustment to NAD 83 (1993). To convert the Surface distances to Grid Values, multiply the distances by a Combined Scale Factor of 0.999853696.

DRAINAGE EASEMENT
INST. NO. 2016-158368
R.P.R.D.C.T.

50' TEMPORARY CONSTRUCTION EASEMENT
INST. NO. 2016-158368
R.P.R.D.C.T.

EXHIBIT "A"

15' UTILITY EASEMENT
W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS



SYLVIANA GUNAWAN
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6461
5750 GENESIS COURT, SUITE 200
FRISCO, TEXAS 75034
PH. 972-335-3580
sylviana.gunawan@kimley-horn.com

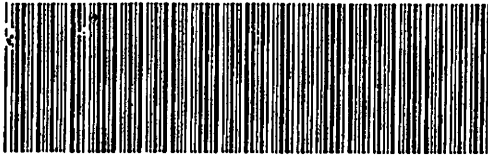
Kimley»Horn

5750 Genesis Court, Suite 200
Frisco, Texas 75034

FIRM # 10193822

Tel. No. (972) 335-3580
Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	SG	KH-A	04/09/2018	063230000	4 OF 4



VG-226-2018-58251

Denton County
Juli Luke
County Clerk

Instrument Number: 58251

Real Property Recordings

EASEMENT

Recorded On: May 22, 2018 01:45 PM

Number of Pages: 14

" Examined and Charged as Follows: "

Total Recording: \$78.00

***** THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 58251
Receipt Number: 20180522000401
Recorded Date/Time: May 22, 2018 01:45 PM
User: Connor B
Station: Station 10

Record and Return To:

COSERV ELECTRTIC
7701 S STEMMONS

CORINTH TX 76210



STATE OF TEXAS
COUNTY OF DENTON

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Juli Luke
County Clerk
Denton County, TX

After Recording, Return to:

Kevin W. Haney
Haney Law, PC
c/o 7701 South Stemmons
Corinth, Texas 76210

For CoServ Use Only:

MAP GRID: _____
WO NO.: 1005413 SO NO.: _____
EASEMENT NO.: _____

ELECTRIC LINE EASEMENT AND RIGHT-OF-WAY

STATE OF TEXAS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DENTON

EFFECTIVE DATE: May 14, 2018.

GRANTOR: UNION PARK PHASE 2BCD, LP, a Texas limited partnership.

GRANTOR'S MAILING ADDRESS (including county):

300 Turtle Creek Blvd
Dallas TX 75219
Dallas County

GRANTEE: DENTON COUNTY ELECTRIC COOPERATIVE, INC., d/b/a COSERV ELECTRIC
7701 South Stemmons
Corinth, Denton County, Texas 76210

CONSIDERATION: The provision of electrical service and/or other benefits inuring to GRANTOR and/or Ten and No/100's dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of some consideration deemed valuable to GRANTOR being hereby expressly acknowledged and accepted by GRANTOR.

EASEMENT PROPERTY: The EASEMENT PROPERTY is that certain tract or tracts of land more particularly described in the attached Exhibit A, incorporated herein by this reference for all purposes, together with the subsurface below and air space above the tract(s) of land.

PROJECT: The PROJECT(s) means underground-type electric transmission and/or electric distribution line or lines, consisting of a variable number and sizes of wires, cables, and circuits, and all necessary or desirable appurtenances, appliances, facilities and equipment (including but not limited to supporting structures, insulators, above-ground padmounted transformers and equipment, and other facilities whether made of wood, metal or other materials).

GRANT: GRANTOR, for the CONSIDERATION received by GRANTOR, hereby grants, sells, and conveys to GRANTEE an EASEMENT appurtenant and Right-of-Way in, upon, and across the EASEMENT PROPERTY, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to GRANTEE and GRANTEE'S successors and assigns forever.

PURPOSE: The EASEMENT, right-of-way, rights, and privileges herein granted shall be used for the purpose of providing electric utility service, constructing, placing, operating, maintaining, reconstructing, replacing, relocating, reconstituting, changing the size or nature of, rebuilding, upgrading, expanding, removing, inspecting, patrolling, and/or repairing the PROJECT(s) or any part of the PROJECT(s), and making connections to GRANTEE's electric system. The PURPOSE shall also include use of the EASEMENT, right-of-way, rights and privileges granted herein for any use directly related to the PROJECT(s) or financing of the PROJECT(s), including but not limited to performing archeological, historical, environmental, or other studies. GRANTEE shall have the right to place temporary poles, towers, anchorages, guys, and supporting structures for use in erecting or repairing the PROJECT(s). GRANTEE shall have the right to temporarily use such portions of the property along and adjacent to the EASEMENT PROPERTY and right-of-way as may be reasonably necessary in connection with the PURPOSE stated, or any one or more of them relating to the PROJECT(s), or any part thereof, from time to time; provided, however, that no portion of the PROJECT(s) shall be installed outside the EASEMENT PROPERTY.

ACCESS: GRANTEE shall have the right of pedestrian, equipment, and vehicular ingress and egress at all times upon and across the EASEMENT PROPERTY for the above stated PURPOSE. GRANTEE shall also have the right of pedestrian, equipment, and vehicular ingress and egress over existing roads across the adjacent or remainder property of GRANTOR for the purpose of obtaining access. In the event that access is not reasonably available over existing roads, GRANTEE shall have the right of reasonable pedestrian, equipment, and vehicular ingress and egress over the adjacent property of GRANTOR along any route that is reasonable and appropriate under the circumstances then existing in order to obtain access.

TERM: The EASEMENT, right-of-way, rights, other privileges and access rights granted herein, as well as the covenants made herein, shall be perpetual and appurtenant to the land, unless expressly abandoned by GRANTEE and each of GRANTEE's licensees and/or permittees, if any, for a continuous period of 10 years.

TREES: GRANTEE shall have the right to cut, trim, chemically treat with herbicides, and/or remove trees, shrubs, bushes, brush and vegetation within or adjacent to the EASEMENT PROPERTY or otherwise necessary to realize the PURPOSE herein stated.

STRUCTURES: GRANTOR shall not construct or locate on the EASEMENT PROPERTY any structure, obstruction or improvement, except that GRANTOR shall be permitted to place within the EASEMENT PROPERTY paved driveways, paved parking areas, paved sidewalks, paved walkways, concrete curbing, and landscaping that does not unreasonably restrict or prevent GRANTEE from utilizing the EASEMENT PROPERTY for the stated PURPOSE (collectively, the "PERMITTED IMPROVEMENTS"). Upon the request of GRANTEE, GRANTOR promptly shall remove from the EASEMENT PROPERTY any structure, improvement, or obstruction that GRANTEE determines in its reasonable discretion must be removed in connection with its use of the EASEMENT PROPERTY for the stated PURPOSE; provided, however, if such structure, improvement or obstruction requested to be removed by GRANTEE is a PERMITTED IMPROVEMENT, the cost of removal and the cost to restore and/or replace such PERMITTED IMPROVEMENT shall be borne by GRANTEE. In all other events, the cost of removal of any structures, improvements or obstructions shall be borne by GRANTOR. Additionally, if GRANTOR fails to promptly remove the item requested by GRANTEE, GRANTEE shall have the right to remove same from the EASEMENT PROPERTY with the cost of removal and the cost of any subsequent restoration and/or replacement to be borne by the applicable of GRANTOR or GRANTEE as provided above in this paragraph.

DAMAGES: It is understood and agreed that the CONSIDERATION received by GRANTOR includes adequate compensation for the grant of the easement, right-of-way and other rights, privileges and appurtenances contained in this instrument and any damages arising out of GRANTEE's lawful exercise of any PURPOSE. GRANTEE shall not be liable for damages caused by keeping the EASEMENT PROPERTY clear of trees, undergrowth, brush, and obstructions. Notwithstanding the foregoing, GRANTEE shall repair and/or restore the surface of the EASEMENT PROPERTY and the surface of GRANTOR's adjacent property to substantially the same condition as existed immediately prior to any damage thereto that is directly caused by GRANTEE's exercise of its rights hereunder; provided, however, that in no event shall GRANTEE have any obligation or liability to repair and/or restore any structure, obstruction or improvement located on the EASEMENT PROPERTY that is not permitted to be located thereon in this instrument.

MINERALS: GRANTOR expressly reserves all oil, gas, and other minerals owned by GRANTOR in, on, and under the EASEMENT PROPERTY, provided that GRANTOR shall not be permitted to, and shall not allow any party to, drill or excavate for minerals on or from the surface of the EASEMENT PROPERTY, but GRANTOR may extract oil, gas, or other minerals from and under the EASEMENT PROPERTY by directional drilling or other means which do not interfere with or disturb GRANTEE's use of the EASEMENT PROPERTY. GRANTOR agrees to consult with GRANTEE concerning the location of GRANTEE's facilities in the EASEMENT PROPERTY prior to exercising GRANTOR's rights under this paragraph. GRANTOR indemnifies and agrees to hold GRANTEE harmless for and against all losses, costs, expenses, and other claims that may be suffered by, or otherwise claimed against GRANTEE in whole or in part due to GRANTOR's exercise of its rights under this paragraph.

OWNERSHIP: GRANTOR agrees that all poles, wires, cables, circuits, appurtenances, facilities, appliances and equipment installed upon the EASEMENT PROPERTY shall at all times remain the property of the GRANTEE and are removable at the option of the GRANTEE, regardless of the extent to which such items are attached or affiliated to the EASEMENT PROPERTY or any improvements thereon, or the extent to which removal of such items may damage such items or the EASEMENT PROPERTY or improvements located thereon.

AUTHORITY: GRANTOR represents and warrants to GRANTEE that GRANTOR has the full right, power, and authority to execute and deliver this Electric Line Easement and Right-of-Way, that this Electric Line Easement and Right-of-Way does not violate the terms or provisions of any other agreement to which GRANTOR is a party (including from any mortgage) or to which the EASEMENT PROPERTY is subject, that each person signing this Electric Line Easement and Right-of-Way on behalf of GRANTOR is authorized to do so, and that GRANTOR has obtained any and all third party consents (including from any mortgagee) necessary for the execution and delivery of this Electric Line Easement and Right-of-Way.

ASSIGNMENT AND MISCELLANEOUS: This instrument, and the terms and conditions contained herein, shall inure to the benefit of and be binding upon GRANTEE and GRANTOR, and their respective heirs, personal and legal representatives, successors, and assigns, and shall be covenants running with the land for the benefit of GRANTEE. When the context requires, singular nouns and pronouns include the plural. When appropriate, the term "GRANTEE" includes the employees, authorized agents, licensees and permittees of GRANTEE. GRANTEE shall have the right to assign this instrument, and the rights and privileges hereunder in favor of GRANTEE, in whole or in part.

MULTIPLE COUNTERPARTS: This Electric Line Easement and Right-of-Way may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which shall be deemed collectively to be one and the same instrument.

WARRANTY: GRANTOR warrants and shall forever defend the EASEMENT to GRANTEE against anyone lawfully claiming or to claim the EASEMENT or any part thereof.

EXECUTED as of the EFFECTIVE DATE.

GRANTOR:

UNION PARK PHASE 2BCD, LP, a Texas limited Partnership

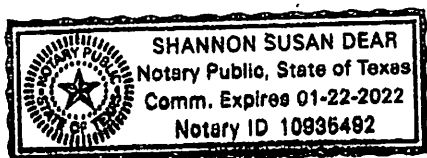
By: BOH Investments GP, LLC, a Delaware limited liability company
its general partner

By: Elaine Ford
Name: Elaine Ford
Title: Senior VP

THE STATE OF Texas §
COUNTY OF Dallas §

This instrument was acknowledged before me on this 14 day of May, 2018,
by Elaine Ford, SVP
of BOH Investments GP, LLC, a Delaware limited liability company, the general partner of Union Park Phase 2BCD, LP, a Texas limited
partnership, on behalf of said limited liability company and limited partnership.

Shannon Susan Dear
NOTARY PUBLIC



BEING a tract of land situated in the W. Lumpkin Survey, Abstract No. 730, Denton County, Texas, and being a portion of a called 91.884-acre tract of land conveyed to Union Park Phase 2BCD, LP, as evidenced in Correction Special Warranty Deed recorded in Instrument No. 2018-9436, Real Property Records, Denton County, Texas, and being more particularly described as follows:

TRACT 1

BEGINNING at a 5/8-inch iron rod with plastic cap stamped "KHA" set for the easterly northeast corner of said 91.844-acre tract, being on the southerly line of a called 21.018-acre tract of land described as Tract 1 and conveyed to Union Park Phase 3A, LP, as evidenced in Special Warranty Deed recorded in Instrument No. 2017-153475, said Real Property Records, also on the westerly line of a called 21.000-acre tract of land conveyed to Union Park Phase 2, LP, as evidenced in a deed recorded in Instrument No. 2016-75316, said Real Property Records;

THENCE South 01°18'37" West, along an easterly line of said 91.884-acre tract and the westerly line of said 21.000-acre tract, a distance of 15.31 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 05°17'29", a radius of 3935.00 feet, a chord bearing and distance of North 79°46'57" West, 363.28 feet;

THENCE departing said easterly line of 91.884-acre tract of land and the westerly line of said 21.000-acre tract, and crossing said 91.844-acre tract, the following courses and distances:

In a northwesterly direction, with said curve to the left, an arc distance of 363.41 feet to a point for corner;

South 07°34'18" West, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 00°17'28", a radius of 3930.00 feet, a chord bearing and distance of North 82°34'26" West, 19.97 feet;

In a northwesterly direction, with said curve to the left, an arc distance of 19.97 feet to a point for corner;

North 07°16'50" East, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 00°36'07", a radius of 3935.00 feet, a chord bearing and distance of North 83°01'13" West, 41.34 feet;

In a northwesterly direction, with said curve to the left, an arc distance of 41.34 feet to a point for corner;

South 06°40'43" West, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 00°17'28", a radius of 3930.00 feet, a chord bearing and distance of North 83°28'01" West, 19.97 feet;

In a northwesterly direction, with said curve to the left, an arc distance of 19.97 feet to a point for corner;

North 06°23'15" East, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 00°27'59", a radius of 3935.00 feet, a chord bearing and distance of North 83°50'45" West, 32.04 feet;

In a northwesterly direction, with said curve to the left, an arc distance of 32.04 feet to a point for corner;

North 05°16'48" East, a distance of 5.00 feet to a point for corner;

North 50°38'10" East, a distance of 14.06 feet to a point at the beginning of a non-tangent curve to the right having a central angle of 06°45'18", a radius of 3950.00 feet, a chord bearing and distance of South 80°33'32" East, 465.43 feet;

In a southeasterly direction with said curve to the right, an arc distance of 465.70 feet to the **POINT OF BEGINNING** and containing 0.167 of an acre (7,294 square feet) of land, more or less.

NOTES:

Bearing system for this survey is based upon NAD 83 - Texas North Central Zone, Horizontal Adjustment to NAD 83 (1993). To convert the Surface distances to Grid Values, multiply the distances by a Combined Scale Factor of 0.998853696.

SYLVIANA GUNAWAN
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6461
5750 GENESIS COURT, SUITE 200
FRISCO, TEXAS 75034
PH. 972-335-3580
sylviana.gunawan@kimley-horn.com

EXHIBIT "A"
15' UTILITY EASEMENT
W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

Kimley»Horn					
5750 Genesis Court, Suite 200 Frisco, Texas 75034			FIRM # 10193822		
			Tel. No. (972) 335-3580 Fax No. (972) 335-3778		
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JMH/SG	KHA	04/09/2018	067705500	1 OF 10

TRACT 2

COMMENCING at a 5/8-inch iron rod with plastic cap stamped "KHA" set for the easterly northeast corner of said 91.844-acre tract, being on the southerly line of a called 21.018-acre tract of land, described as Tract 1, conveyed to Union Park Phase 3A, LP, as evidenced in Special Warranty Deed recorded in Instrument No. 2017-153475, said Real Property Records, also on the westerly line of a called 21.000-acre tract of land conveyed to Union Park Phase 2, LP, as evidenced in a deed recorded in Instrument No. 2016-75316, said Real Property Records, also being at the beginning of a curve to the left having a central angle of 08°25'24", a radius of 3950.00 feet, a chord bearing and distance of North 81°23'34" West, 580.18 feet;

THENCE in a northwesterly direction departing the westerly line of said 21.000-acre tract, along a northerly line of said 91.884-acre tract, a southerly line of 21.018-acre tract, passing en route, an ell corner of said 91.884-acre tract, common to the westernmost southwest corner of said 21.018-acre tract, and continuing along the same course and crossing said 91.884-acre tract, for a total arc distance of 580.70 feet to the **POINT OF BEGINNING** of the herein described easement tract;

THENCE continuing across said 91.884-acre tract, the following courses and distances:

South 40°07'35" East, a distance of 14.04 feet to a point for corner;

South 05°16'48" West, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 03°30'26", a radius of 3935.00 feet, a chord bearing and distance of North 87°12'57" West, 240.84 feet;

In a northwesterly direction, with said curve to the left, an arc distance of 240.88 feet to a point for corner;

North 88°58'10" West, a distance of 203.00 feet to a point for corner;

South 01°01'50" West, a distance of 5.00 feet to a point for corner;

North 88°58'10" West, a distance of 40.00 feet to a point for corner;

North 01°01'50" East, a distance of 5.00 feet to a point for corner;

North 88°58'10" West, a distance of 246.26 feet to a point at the beginning of a tangent curve to the left having a central angle of 09°04'59", a radius of 835.00 feet, a chord bearing and distance of South 86°29'20" West, 132.23 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 132.37 feet to a point for corner;

South 8°03'09" East, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 01°22'50", a radius of 830.00 feet, a chord bearing and distance of South 81°15'26" West, 20.00 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 20.00 feet to a point for corner;

North 09°25'59" West, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 03°57'05", a radius of 835.00 feet, a chord bearing and distance of South 78°35'28" West, 57.57 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 57.58 feet to a point for corner;

North 15°14'15" West, a distance of 5.01 feet to a point for corner;

NOTES:

Bearing system for this survey is based upon NAD 83 - Texas North Central Zone, Horizontal Adjustment to NAD 83 (1993). To convert the Surface distances to Grid Values, multiply the distances by a Combined Scale Factor of 0.999853696.

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EXHIBIT "A"

15' UTILITY EASEMENT

W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

Kimley»Horn

5750 Genesis Court, Suite 200
Frisco, Texas 75034

FIRM # 10193822

Tel. No. (972) 335-3580
Fax No. (972) 335-3770

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JMH/SG	KHA	04/09/2018	067705500	2 OF 10

North 30°50'28" East, a distance of 13.87 feet to a point at the beginning of a non-tangent curve to the right having a central angle of 13°46'25", a radius of 850.00 feet, a chord bearing and distance of North 84°08'37" East, 203.84 feet;

In a northeasterly direction, with said curve to the right, an arc distance of 204.33 feet to a point for corner;

South 88°58'10" East, a distance of 489.26 feet to a point at the beginning of a tangent curve to the right having a central angle of 03°21'54", a radius of 3950.00 feet, a chord bearing and distance of South 87°17'13" East, 231.95 feet;

In a southeasterly direction with said curve to the right, an arc distance of 231.99 feet to the POINT OF BEGINNING and containing 0.329 of an acre (14,344 square feet) of land, more or less.

TRACT 3

COMMENCING at a 5/8-inch iron rod with plastic cap stamped "KHA" set for the southerly southwest corner of a called 113.840-acre tract of land conveyed to Pulte Home of Texas, L.P., as evidenced in Correction Special Warranty Deed recorded in Instrument No. 2017-112802, said Real Property Records, common to an ell corner of said 91.884-acre tract, being on the westerly line of a Road Easement (Union Park Boulevard Section 1B), recorded in Instrument No. 2016-158368, said Real Property Records, and at the beginning of curve to the left having a central angle of 23°58'06", a radius of 950.00 feet, a chord bearing and distance of South 21°30'43" West, 394.52 feet, from which, a 5/8-inch iron rod with plastic cap stamped "KHA" set for corner along the westerly line of said 113.840-acre tract bears North 61°47'48" West, 156.70 feet;

THENCE in a southwesterly direction crossing said 91.884-acre tract, along the westerly line of said Road Easement (Section 1B), and with said curve to the left, an arc distance of 397.41 feet to the west common corner of said Road Easement (Section 1B) and a Road Easement (Union Park Boulevard Section 1A), recorded in Instrument No. 2016-158368, said Real Property Records, same being on the southerly line of said 91.884-acre tract;

THENCE South 88°41'50" East, along the southerly line of said 91.884-acre tract, a distance of 101.16 feet to the east common corner of said Road Easement (Union Park Boulevard Section 1B) and said Road Easement (Union Park Boulevard Section 1A), and at the beginning of a curve to the right having a central angle of 61°45'54", a radius of 850.00 feet, a chord bearing and distance of North 41°23'09" East, 872.57 feet, and for the POINT OF BEGINNING of the herein described easement tract;

THENCE departing the southerly line of said 91.884-acre tract and crossing said 91.884-acre tract the following courses and distances:

In a northeasterly direction, along the easterly line of said Road Easement (Section 1B) and the easterly line of a Road Easement (Union Park Boulevard Section 2), recorded in Instrument No. 2016-158368, said Real Property Records, and with said curve to the right, an arc distance of 916.30 feet to a point for corner the end of said curve to the right;

South 61°18'58" East, departing the easterly line of said Road Easement (Union Park Boulevard Section 2), a distance of 13.87 feet to a point for corner;

South 15°14'15" East, a distance of 5.01 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 2°47'56", a radius of 835.00 feet, a chord bearing and distance of South 71°30'36" West, 40.79 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 40.79 feet to a point for corner;

South 19°53'22" East, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 2°44'41", a radius of 830.00 feet, a chord bearing and distance of South 68°44'18" West, 39.76 feet;

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5750 Genesis Court, Suite 200 FIRM # 10193822 Tel. No. (972) 335-3580
Frisco, Texas 75034 Fax No. (972) 335-3778

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JMH/SG	KHA	04/08/2018	067705500	3 OF 10

In a southwesterly direction, with said curve to the left, an arc distance of 39.76 feet to a point for corner;

North 22°38'03" West, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 30°22'01", a radius of 835.00 feet, a chord bearing and distance of South 52°10'56" West, 437.39 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 442.55 feet to a point for corner;

South 53°00'04" East, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 2°44'41", a radius of 830.00 feet, a chord bearing and distance of South 35°37'35" West, 39.76 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 39.76 feet to a point for corner;

North 55°44'46" West, a distance of 5.00 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 23°35'02", a radius of 835.00 feet, a chord bearing and distance of South 22°27'43" West, 341.28 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 343.70 feet to a point for the end of said curve to the left on the southerly line of said 91.884-acre tract;

THENCE North 88°41'50" West, along the southerly line of said 91.884-acre tract, a distance of 15.20 feet to the **POINT OF BEGINNING** and containing 0.324 of an acre (14,099 sq. ft.) of land, more or less.

NOTES:

Bearing system for this survey is based upon NAD 83 - Texas North Central Zone, Horizontal Adjustment to NAD 83 (1993). To convert the Surface distances to Grid Values, multiply the distances by a Combined Scale Factor of 0.999853698.


SYLVIANA GUNAWAN
REGISTERED PROFESSIONAL
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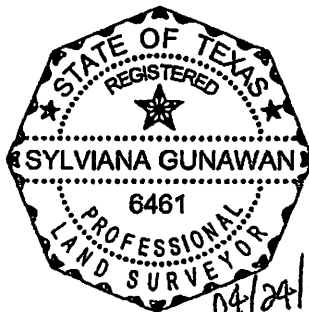


EXHIBIT "A"
15' UTILITY EASEMENT
W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

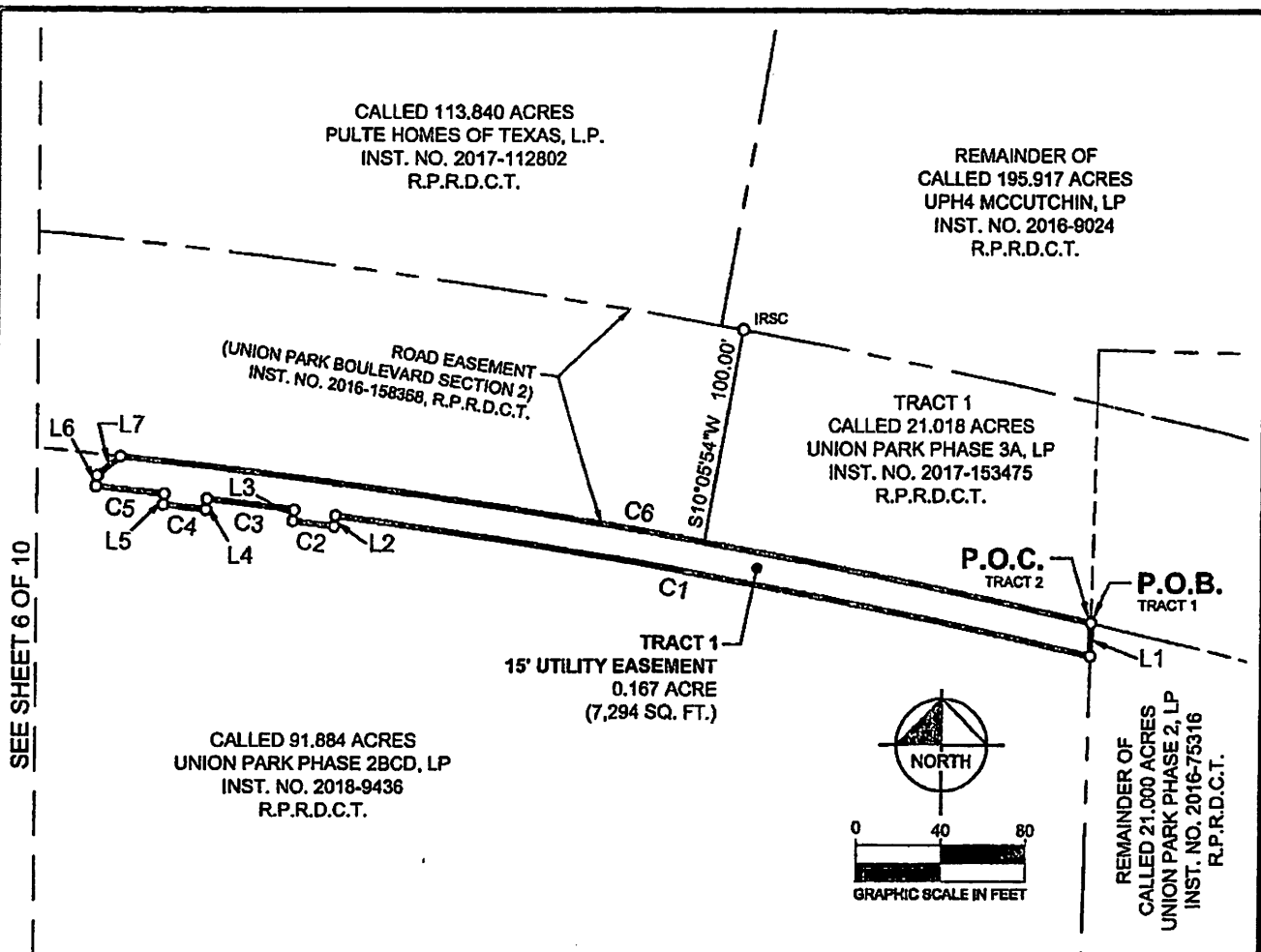
Kimley»Horn

5750 Genesis Court, Suite 200
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FIRM # 10183822

Tel. No. (972) 335-3580
Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JMH/SG	KVA	04/09/2018	067705500	4 OF 10



NOTES:

Bearing system for this survey is based upon NAD 83 - Texas North Central Zone, Horizontal Adjustment to NAD 83 (1993). To convert the Surface distances to Grid Values, multiply the distances by a Combined Scale Factor of 0.999853696.

LEGEND

Δ = CENTRAL ANGLE
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IRSC = IRON ROD WITH PLASTIC CAP SET
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EXHIBIT "A"

15' UTILITY EASEMENT

W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

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Scale
1" = 80'

Drawn by
JMH/SG

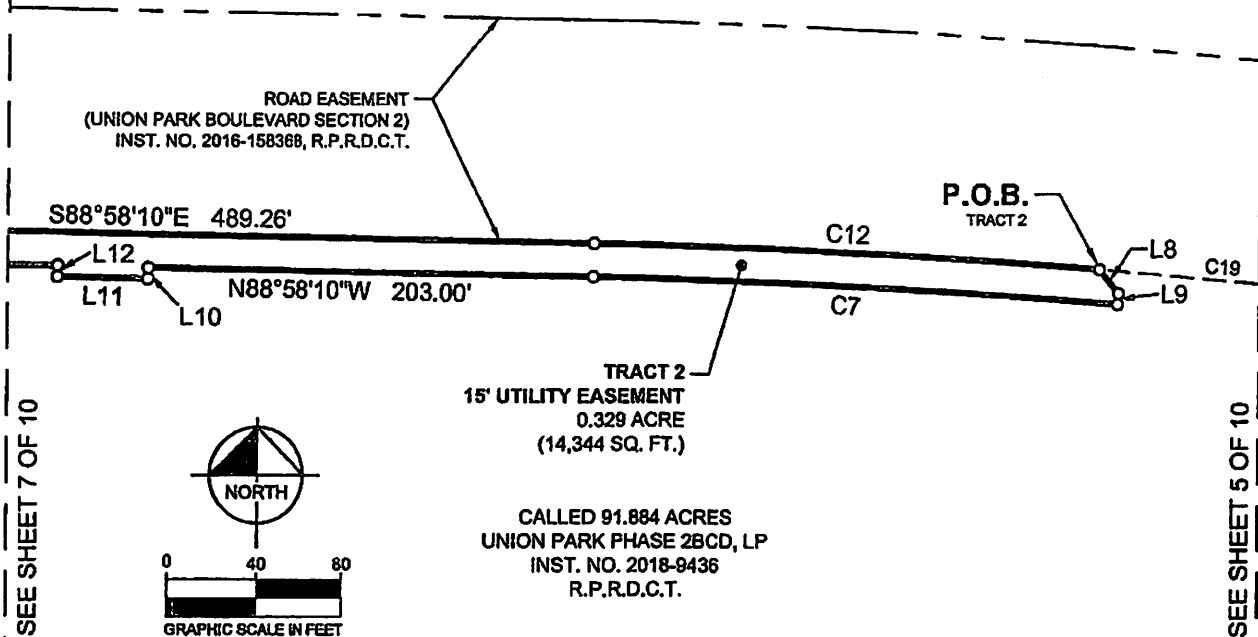
Checked by
KHA

Date
04/09/2018

Project No.
067705500

Sheet No.
5 OF 10

CALLED 113.840 ACRES
PULTE HOMES OF TEXAS, L.P.
INST. NO. 2017-112802
R.P.R.D.C.T.



NOTES:

Bearing system for this survey is based upon NAD 83 - Texas North Central Zone, Horizontal Adjustment to NAD 83 (1993). To convert the Surface distances to Grid Values, multiply the distances by a Combined Scale Factor of 0.999853696.

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EXHIBIT "A"
15' UTILITY EASEMENT
W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

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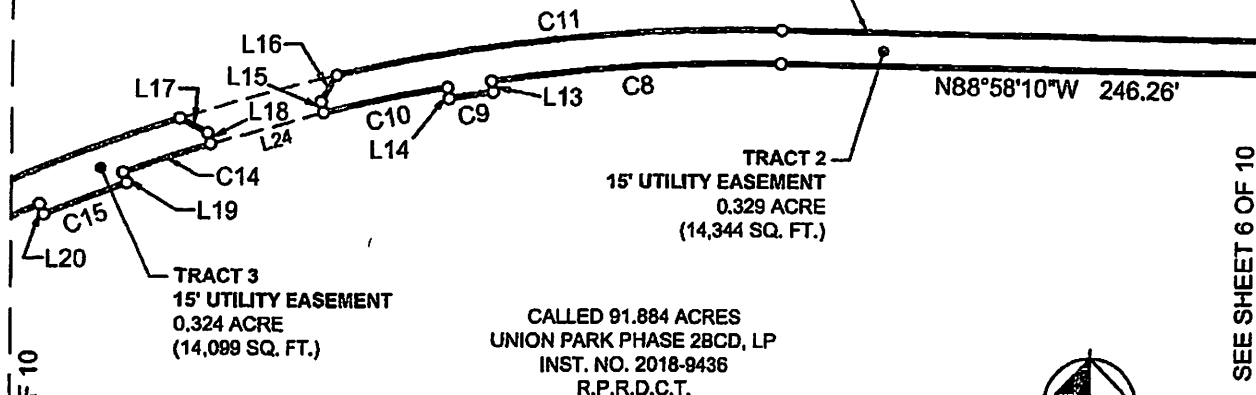
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 80'	JMH/SG	KHA	04/09/2018	057705500	5 OF 10

CALLED 113.840 ACRES
PULTE HOMES OF TEXAS, L.P.
INST. NO. 2017-112802
R.P.R.D.C.T.

ROAD EASEMENT
(UNION PARK BOULEVARD SECTION 2)
INST. NO. 2016-158368, R.P.R.D.C.T.



SEE SHEET 8 OF 10

SEE SHEET 6 OF 10

NOTES:

Bearing system for this survey is based upon NAD 83 - Texas North Central Zone, Horizontal Adjustment to NAD 83 (1993). To convert the Surface distances to Grid Values, multiply the distances by a Combined Scale Factor of 0.999853696.

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EXHIBIT "A" 15' UTILITY EASEMENT W. LUMPKIN SURVEY, ABSTRACT NO. 730 DENTON COUNTY, TEXAS

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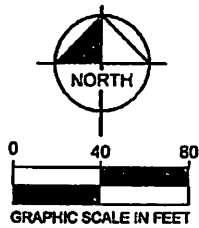
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FIRM # 10193822

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Fax No. (972) 335-3779

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 80'	JMH/SG	KHA	04/09/2018	067705500	7 OF 10



CALLED 113.840 ACRES
PULTE HOMES OF TEXAS, L.P.
INST. NO. 2017-112802
R.P.R.D.C.T.

ROAD EASEMENT
(UNION PARK BOULEVARD SECTION 2)
INST. NO. 2016-158368, R.P.R.D.C.T.

TRACT 3
15' UTILITY EASEMENT
0.324 ACRE
(14,099 SQ. FT.)

CALLED 91.884 ACRES
UNION PARK PHASE 2BCD, LP
INST. NO. 2018-9436
R.P.R.D.C.T.

SEE SHEET 7 OF 10

P.O.C.
TRACT 3

IRSC

ROAD EASEMENT
(UNION PARK BOULEVARD SECTION 1B)
INST. NO. 2016-158368, R.P.R.D.C.T.

C13

C16

L21

C17

SEE SHEET 9 OF 10

NOTES:

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EXHIBIT "A"

15' UTILITY EASEMENT

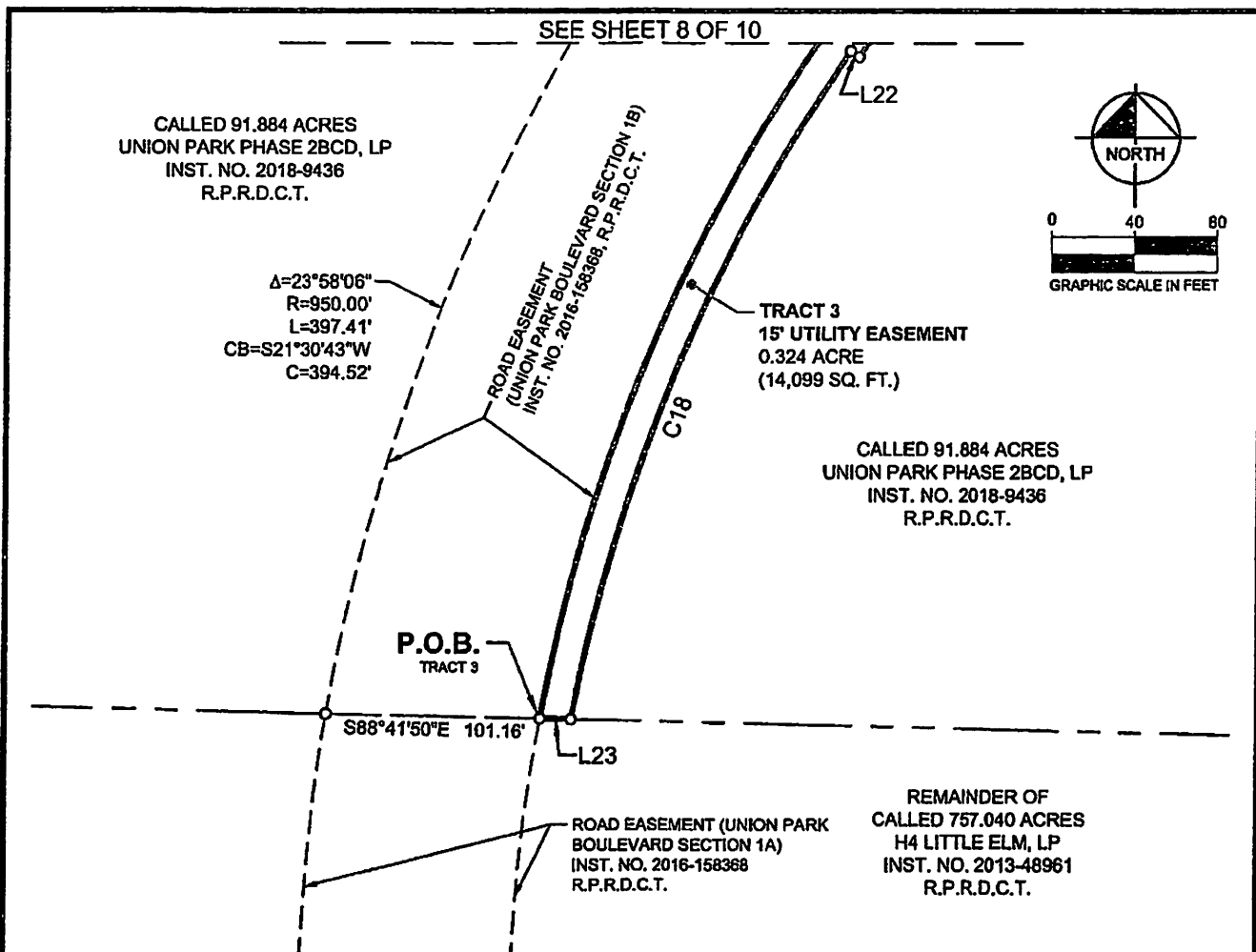
W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	JMH/SG	KHA	04/09/2018	067705500	8 OF 10



NOTES:

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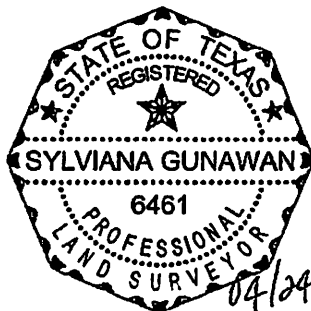


EXHIBIT "A"
15' UTILITY EASEMENT
W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

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Tel. No. (972) 335-3580
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Scale
1" = 80'

Drawn by
JMH/SG

Checked by
KHA

Date
04/09/2018

Project No.
087705500

Sheet No.
8 OF 10

LINE TABLE			LINE TABLE			LINE TABLE			LINE TABLE		
NO.	BEARING	LENGTH	NO.	BEARING	LENGTH	NO.	BEARING	LENGTH	NO.	BEARING	LENGTH
L1	S01°18'37"W	15.31'	L7	N50°38'10"E	14.06'	L13	S08°03'09"E	5.00'	L19	S19°53'22"E	5.00'
L2	S07°34'18"W	5.00'	L8	S40°07'35"E	14.04'	L14	N09°25'59"W	5.00'	L20	N22°38'03"W	5.00'
L3	N07°16'50"E	5.00'	L9	S05°16'48"W	5.00'	L15	N15°14'15"W	5.01'	L21	S53°00'04"E	5.00'
L4	S06°40'43"W	5.00'	L10	S01°01'50"W	5.00'	L16	N30°50'28"E	13.87'	L22	N55°44'46"W	5.00'
L5	N06°23'15"E	5.00'	L11	N88°58'10"W	40.00'	L17	S61°18'58"E	13.87'	L23	N88°41'50"W	15.20'
L6	N05°16'48"E	5.00'	L12	N01°01'50"E	5.00'	L18	S15°14'15"E	5.01'	L24	S74°45'45"W	54.00'

CURVE TABLE					
NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	5°17'29"	3935.00'	363.41'	N79°46'57"W	363.28'
C2	0°17'28"	3930.00'	19.97'	N82°34'26"W	19.97'
C3	0°36'07"	3935.00'	41.34'	N83°01'13"W	41.34'
C4	0°17'28"	3930.00'	19.97'	N83°28'01"W	19.97'
C5	0°27'59"	3935.00'	32.04'	N83°50'45"W	32.04'
C6	6°45'18"	3950.00'	465.70'	S80°33'32"E	465.43'
C7	3°30'26"	3935.00'	240.88'	N87°12'57"W	240.84'
C8	9°04'59"	835.00'	132.37'	S86°29'20"W	132.23'
C9	1°22'50"	830.00'	20.00'	S81°15'26"W	20.00'
C10	3°57'05"	835.00'	57.58'	S78°35'28"W	57.57'
C11	13°46'25"	850.00'	204.33'	N84°08'37"E	203.84'
C12	3°21'54"	3950.00'	231.99'	S87°17'13"E	231.95'
C13	61°45'54"	850.00'	916.30'	N41°23'09"E	872.57'
C14	2°47'56"	835.00'	40.79'	S71°30'36"W	40.79'
C15	2°44'41"	830.00'	39.76'	S68°44'18"W	39.76'
C16	30°22'01"	835.00'	442.55'	S52°10'56"W	437.39'
C17	2°44'41"	830.00'	39.76'	S35°37'35"W	39.76'
C18	23°35'02"	835.00'	343.70'	S22°27'43"W	341.28'
C19	1°40'05"	3950.00'	115.00'	N84°46'13"W	115.00'

EXHIBIT "A"
15' UTILITY EASEMENT
W. LUMPKIN SURVEY, ABSTRACT NO. 730
DENTON COUNTY, TEXAS

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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
-	JMH/SG	KHA	04/09/2018	057705500	10 OF 10



Date: 04/05/2022
Agenda Item #: 6. H.
Department: Development Services
Strategic Goal: Promote and expand Little Elm's identity
Staff Contact: Fred Gibbs, Director of Development Services

AGENDA ITEM:

Consider Action to Approve a **Developers Agreement between the Town of Little Elm, Little Elm Economic Development Corporation and Palladium Little Elm Phase 2, LTD for the Construction of a Masonry Screening Wall located within Lot 1 Block A of the Palladium II Addition.**

DESCRIPTION:

In 2021, development in the Lakefront District which includes Palladium Phase 2, TinMan Social and La Quinta started construction on the site. Within the Lakefront District, as well as other parts of town, staff wants to ensure that our high-quality standards are executed throughout this development and others. One of those development features is the 8-foot masonry screening wall along the property line. With all developments, the Town requires the installation of an 8-foot masonry screening wall along the property lines that back up to residential zoning districts.

The Economic Development Corporation, through their negotiations with La Quinta, was able to construct a high-quality stone screening wall on the northeast side of the property. However, Palladium planned their wall prior to the La Quinta project, as those standards and negotiations weren't in place and a different wall was proposed. The proposed wall wasn't as attractive, consistent, and didn't capture the high-quality design elements as the one that is currently in place on the northeast side of the property.

The development agreement that is being proposed assists with the costs for the Palladium Wall on the northwest side to be upgraded to the same high quality and consistent standards as the northeast side that is currently behind La Quinta. This is a three-way agreement that allows the partnership between Palladium, EDC, and the Town to construct a higher quality wall that will enhance the development and give the adjacent residents a solid, structural sound wall. The wall construction will start soon after action on the agreement and will be in place before the completion of the entire development.

Below are the financial details of the wall:

Contributions:

Palladium: \$73,437.50

EDC: \$28,437.50
TOLE: \$87,651.00
Total: \$189,526.00

BUDGET IMPACT:

Funding for this project has been identified from the escrow fund that allows projects like this to be paid from.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Palladium Screening Wall DA

**TOWN OF LITTLE ELM, TEXAS,
LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION
AND
PALLADIUM LITTLE ELM PHASE II, LTD.**

DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into by and between the **TOWN OF LITTLE ELM, TEXAS**, a Texas home-rule municipality, 100 W. Eldorado Parkway, Little Elm, Texas 75068, (hereinafter referred to as the "Town"), the **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation, 100 W. Eldorado Parkway, Little Elm, Texas 75068 (hereinafter referred to as the "LEEDC"), and **PALLADIUM LITTLE ELM PHASE II, LTD.**, a Texas limited partnership, 13455 Noel Road, Suite 400, Dallas, Texas 75240 (hereinafter referred to as the "Developer"), for the purposes and considerations stated below:

WHEREAS, the Developer is the owner of approximately 4.096-acre tract of land consisting of Lot 1, Block A of the Palladium II Addition, an addition to the Town of Little Elm, Denton County, Texas, as more particularly described and or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes (hereinafter referred to as the "Property"); and

WHEREAS, Developer has undertaken the construction of that certain 324-unit multifamily development with one 4-story wrapped building and one 4-story surface parking building and approximately 12,000 square feet of retail including the necessary infrastructure improvements to support the development, and required parking spaces in Little Elm, Denton County, Texas (the "Project") located on the Property; and

WHEREAS, the Town had previously approved the Developer's construction plans which included a retaining wall, but not of the specific length and materials the Town wishes to have on the Property, and the Town now requires the Developer construct an eight foot (8') tall screening wall along the north property line of the Property as depicted in *Exhibit B* of this Agreement, which is attached hereto and incorporated herein for all purposes (hereinafter referred to as the "Screening Wall"), with such construction to be in compliance with the Town's ordinance, rules and regulations.

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 Town, LEEDC and Developer agree as follows:

Initial for Identification:

Town of Little Elm

LEEDC

Palladium

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 of this Agreement, and shall continue thereafter until **March 31, 2023**, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

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

- (a) **Agreement.** The word "Agreement" means this Development Agreement, together with all exhibits and schedules attached to this Agreement from time to time and may be updated, if necessary.
- (b) **Developer.** The word "Developer" means Palladium Little Elm Phase II, Ltd., a Texas limited partnership, its successors and assigns. For the purposes of this Agreement, Palladium's address is 13455 Noel Road, Suite 400, Dallas, Texas 75240.
- (c) **Effective Date.** The words "Effective Date" mean the date of the latter to execute this Agreement by and between the Town, LEEDC, and Developer.
- (d) **Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth in the section entitled "Events of Default" in this Agreement.
- (e) **LEEDC.** The term "LEEDC" means the Little Elm Economic Development Corporation, a Texas non-profit corporation. For purposes of this Agreement, LEEDC's address is 100 W Eldorado Parkway, Little Elm, Texas 75068.
- (f) **Property.** The word "Property" means the approximately 4.096 acre tract of land consisting of Lot 1, Block A of the Palladium II Addition, an addition to the Town of Little Elm, Denton County, Texas, as more particularly described and or depicted in ***Exhibit A*** of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (g) **Screening Wall.** The eight foot (8') tall screening wall along the northern property line of the Property being (as that term is defined in the Second and Amended and Restated Chapter 380 Economic Development Program and Agreement), for a distance of approximately 493 linear feet, and with the construction materials and architectural design required to meet the Town's ordinance, rules and regulations as set forth more specifically on ***Exhibit B*** of this Agreement, which is attached hereto and incorporated herein for all purposes.

Initial for Identification:

Town of Little Elm

LEEDC

Palladium

- (h) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.
- (i) **Town.** The word "Town" means the Town of Little Elm, Denton County, Texas, a Texas home-rule municipality. For the purposes of this Agreement, Town's address is 100 W. Eldorado Parkway, Little Elm, Texas 75068.

SECTION 4. AFFIRMATIVE OBLIGATIONS OF THE DEVELOPER.

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

- (a) **Construction of the Screening Wall.** Developer covenants and agrees to have its general contractor commence construction of the Screening Wall within sixty (60) days of the Effective Date of this Agreement. The construction will be in accordance with, and per the Ratliff Hardscape proposal attached hereto as *Exhibit C* and made a part hereof as if set forth in full. Further, Developer covenants and agrees to submit to the Town paid invoices, paid receipts, or other documentation for the Screening Wall in a form acceptable to the Town, and in an amount of **One Hundred Eighty-Nine Thousand Five Hundred Twenty-Five and 50/100 Dollars (\$189,525.50)** within thirteen (13) months of the Effective Date of this Agreement (of which Developer's contribution towards the Screening Wall shall be a minimum amount of an amount not less than **Seventy-Three Thousand Four Hundred Thirty-Seven and No/100 Dollars (\$73,437.00)**). The Town and LEEDC have reviewed the proposal and approve same as the basis for the construction and the payment for the costs of construction of the Screening Wall.
- (b) **Completion of Construction of Screening Wall.** The parties agree that the construction of the Screening Wall will be completed within twelve (12) months from the Effective Date of this Agreement. Completion will be upon acceptance by the Town.
- (c) **Maintenance.** Upon completion of construction of the Screening Wall, the future maintenance and cost thereof shall be the responsibility of the Developer, or any subsequent owner of the Property, subject to any future tie in of any adjoining homeowner to the north of the Screening Wall.

SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE TOWN AND LEEDC.

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

- (a) **Payment for the Screening Wall by Town.** The Town covenants and agrees to contribute the sum of **Eighty-Seven Thousand Six Hundred Fifty-One and No/100 Dollars (\$87,651.00)** to the Developer towards the construction of the Screening Wall within thirty

Initial for Identification:

Town of Little Elm

LEEDC

Palladium

(30) days of receipt of paid invoices, paid receipts, or other documentation for the Screening Wall in a form acceptable to the Town, and in an amount of **One Hundred Eighty-Nine Thousand Five Hundred Twenty-Five and 50/100 Dollars (\$189,525.50)** consistent with Section 4(a) of this Agreement.

- (b) **Payment for the Screening Wall by LEEDC.** The LEEDC covenants and agrees to contribute the sum of **Twenty-Eight Thousand Four Hundred Thirty-Seven and 50/100 Dollars (\$28,437.50)** to the Developer towards the construction of the Screening within thirty (30) days of receipt of paid invoices, paid receipts, or other documentation for the Screening Wall in a form acceptable to the Town, and in an amount of **One Hundred Eighty-Nine Thousand Five Hundred Twenty-Five and 50/100 Dollars (\$189,525.50)** consistent with Section 4(a) of this Agreement.

SECTION 6. EVENTS OF DEFAULT.

Each of the following events shall constitute an Event of Default under this Agreement after compliance with the notice and opportunity to cure provisions set forth in Section 7.

- (a) **General Event of Default.** Failure of Developer, LEEDC, or Town to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement.
- (b) **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.
- (c) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the Town to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes.

SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

Upon the occurrence of an event under Section 6 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have ten (10) days to cure said default. Should said default remain uncured after the applicable notice period, the non-defaulting party shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default.

SECTION 8. 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

Initial for Identification:

Town of Little Elm

LEEDC

Palladium

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 which consent shall not be unreasonably withheld, conditioned or delayed.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Town warrants and represents that the individual executing this Agreement on behalf of Town has full authority to execute this Agreement and bind Town to the same. LEEDC and Developer each warrant and represent 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) **Entire Agreement.** This Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.
- (h) **Exactions/Infrastructure Costs.** Developer has been represented by legal counsel in the negotiation of this Agreement and been advised or has had the opportunity to have legal counsel review this Agreement and advise Developer, regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Developer specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with Section 212.904 of the Texas Local Government Code; however, notwithstanding the foregoing, Developer hereby releases the Town from any and all liability under Section 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure requirements imposed by this Agreement.
- (i) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil

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commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed. There shall be no Force Majeure event for the failure to timely pay sums due and owing hereunder.

- (j) **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 the Town: Town of Little Elm, Texas
100 W. Eldorado Parkway
Little Elm, Texas 75068
Attn: Matt Mueller, Town Manager
Telephone: (214) 975-0405
Email: mmueller@littleelm.org

if to Developer: Palladium Little Elm Phase II, Ltd.
13455 Noel Road, Suite 400
Dallas, Texas 75240
Attn: Thomas E. Huth
Telephone: (972) 774-4450
Email: thuth@palladiumusa.com

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
Email: jke@littleelm.org

- (k) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement 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 Agreement shall be enforced as if the invalid provision had never been included.
- (l) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- (m) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

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- (n) **Form 1295 Certificate.** The Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the Town, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.
- (o) **Undocumented Workers Provision.** The Developer certifies that 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 any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120th day after the date the Town notifies Developer of the violation.
- (p) **Non-Boycott of Israel Provision.** In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Developer is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Developer verifies that Developer does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (q) **Iran, Sudan and Foreign Terrorist Organizations.** If § 2252.153 of the Texas Government Code is applicable to this Agreement, by signing below Developer hereby represent, verify and warrant that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under § 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a "foreign terrorist organization" as defined in § 2252.151 of the Texas Government Code.
- (r) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
- (s) **Verification Against Discrimination of Firearm or Ammunition Industries.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87th Tex.

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Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the Town, the Developer represents that: (1) the Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Developer will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.

- (t) **Waiver of Texas Government Code § 3000.001 et seq.** With respect to any and all structures to be constructed on the Property pursuant to this Agreement, Developer hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, as amended.

SECTION 9. REPRESENTATIONS AND WARRANTIES OF TOWN AND LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION.

Town and LEEDC (the "Contributors") hereby represent and warrant to Developer, as follows:

- (a) **Power and Authority.** Contributors have the full right, authority and power to enter into this Agreement and to consummate the transactions provided for herein. This Agreement and all other related documents executed and delivered or to be executed and delivered by LEEDC or Town constitute legal, valid, and binding obligations of LEEDC or Town, respectively, enforceable in accordance with their terms, and there are no claims or defenses, personal or otherwise, or offsets whatsoever to the enforceability or validity of this Agreement and all other related documents executed and delivered or to be executed and delivered by LEEDC or the Town. All requisite action necessary to authorize LEEDC and/or the Town to enter into this Agreement and to carry out the respective obligation of the Contributors hereunder or thereunder have been, or will have been taken by the Effective Date. No permission, approval or consent by third parties or governmental authorities is required in order for Contributors to consummate this Agreement all other related documents executed and delivered or to be executed and delivered by either of the Contributors in connection with this Agreement and the transactions contemplated herein and there.
- (b) **No Violations.** The execution, delivery and performance by Contributors of their respective obligations under this Agreement will not conflict with or result in a breach of any law, governmental rule, regulations, judgment, decree or order by which Contributors is bound, or by any of the provisions of any contract to which either of the Contributors is a party or by which either of the Contributors is bound.
- (d) **No Litigation.** There is no litigation, action, suit, proceeding or investigation pending, or threatened, before any agency, court or other governmental authority affecting the Contributors which relates to the Property or the use thereof or which would prevent or inhibit the construction of the Screening Wall.

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Development Agreement

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

TOWN:

TOWN OF LITTLE ELM, TEXAS,
A Texas home-rule municipality

By: _____
Curtis J. Cornelious, Mayor

Date: _____

ATTEST:

Caitlan Biggs, Town Secretary

APPROVED AS TO FORM:

Robert F. Brown, Town Attorney

STATE OF TEXAS

§
§
§

COUNTY OF DENTON

This instrument was acknowledged before me on the ____ day of _____, 2022, by Curtis J. Cornelious, Mayor of the Town of Little Elm, Texas, a Texas home-rule municipality, on behalf of said municipality.

Notary Public, State of Texas

Initial for Identification: _____

Town of Little Elm

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By: Ken Eaken, President
Date: _____

Notary Public, State of Texas

Palladium

DEVELOPER:

PALLADIUM LITTLE ELM PHASE II, LTD.
a Texas limited partnership

Palladium Little Elm Phase II GP, LLC
a Texas limited liability company
Its general partner

By: Thomas E. Huth
President and Chief Executive Officer
Date: 3-25-2022

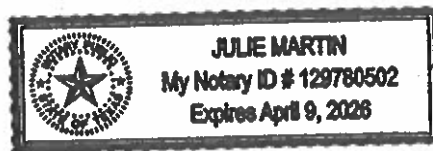
STATE OF TEXAS

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COUNTY OF DALLAS

This instrument was acknowledged before me on the 25 day of March, 2022, by Thomas E. Huth, President and Chief Executive Officer of Palladium Little Elm Phase II GP, LLC, a Texas limited liability company, the general partner of Palladium Little Elm Phase II, Ltd., a Texas limited partnership, on behalf of said limited partnership.

Julie Martin
Notary Public, State of Texas



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Exhibit A

[Legal Description and/or Depiction
of the Property]

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Development Agreement

Exhibit B

[Depiction of the Screening Wall]



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Exhibit C

Estimate and Financing Costs of Construction and materials for Screening Wall

**Developer Screening Wall Financing Details:
Palladium Little Elm Phase II, Ltd. Contribution**

Total Cost of Wall including contingency	Developer Section = \$101,875.00 TOLE = \$87,651.00 <u>Total \$189,526.00</u>
Developer credit from their wall design	(\$101,875.00 – \$45,000) <u>Total \$56,875.00</u>
Split value of additional costs with TOLE and Developer	(\$56,875.00/2) <u>Total \$28,437.50</u>
Developer's total contribution	\$45,000 + \$28,437.50 <u>Total \$73,437.50</u>

EDC Contribution

Total Cost of Wall remaining after Developer Contribution	\$116,088.50
EDC Contribution of the Developer only portion	<u>\$101,875.00 - \$73,437.50</u> <u>Total \$28,437.50</u>

TOLE Contribution

Total Cost of wall remaining after Developer and EDC Contribution for the Town to pay
\$87,651.00

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