



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

Tuesday, June 21, 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. Present and Discuss **Town Council Redistricting**.
 - B. Present and Discuss **Proposed Amendments to Chapter 106 (Zoning Ordinance) to Amend Existing Light Commercial Zoning District**.
2. **Roll Call/Call to Order Regular Town Council Immediately Following Council Workshop.**
 - 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 - C. Items to be Withdrawn from Consent Agenda.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.**
Presentation of monthly updates from department heads: concerning law enforcement activities, municipal court, customer service, emergency medical services, fire department response, fire prevention activities, emergency management, ongoing economic development projects, building permits, code enforcement activities, library activities, human resources updates, information technology report, revenue and expenditure report, street construction status, sanitation services, highway construction status, utility operations, parks and recreation activities, as well as facility and fleet updates.
- G. Town Council to Highlight Items on the Agenda Needing Further Discussion or Comments Prior to the Regular Session.

3. **Presentations.**

4. **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.

5. **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 June 7, 2022, Regular Town Council Meeting.**
- B. Consider Action to Approve **Resolution No. 0621202201 Approving and Authorizing Publication of Notice of Intention to Issue Combination Tax and Revenue Certificates of Obligation, Series 2022 and Authorizing SAMCO Capital Markets, Bond Counsel, and Town Officials to Proceed with the Issuance Process for the Certificates.**
- C. Consider Action to Approve the **First Amendment Ground Lease Purchase and Performance Agreement between Little Elm Hospitality, LLC and Little Elm Economic Development Corporation.**

- D. Consider Action to Approve a **Professional Services Agreement between the Town of Little Elm and Weaver and Tidwell, LLP for Audit Services, RFP 2022-13.**
- E. Consider Action to Approve **Resolution No. 0621202202 Consent for Utility and Road Bonds for Highway US 380 MMD.**
- F. Consider Action to Approve a **Construction Manager at Risk Contract to AUI Partners, LLC for the Lakeside Youth Sports Improvements Project (Contract #2022-12).**
- G. Consider Action to Approve an **Interlocal Agreement (ILA) between the Town of Little Elm and the City of Frisco regarding the King Road Expansion Project.**
- H. Consider Action to Approve the **Purchase of Playground Equipment for The Lawn at The Lakefront Project from Whirlix Design, Inc. in an amount not to exceed \$376,400.**

6. **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.

7. **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.

8. **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 16th day of June 2022 before 5:00 p.m.



Date: 06/21/2022
Agenda Item #: 1. A.
Department: Administrative Services
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Caitlan Biggs, Director of Administrative Services/Town Secretary

AGENDA ITEM:

Present and Discuss **Town Council Redistricting**.

DESCRIPTION:

Per the Town Charter, district boundaries for Town Council Places 2, 3, 4, and 5 must be reviewed and updated by the Town Council every four years to be as equal in population as practical.

The last update took place in October 2019 and was completed by Bickerstaff.

Due to the completion of the 2020 Census, staff wishes to discuss the update with Council to see if we should move forward a year early and update the district boundaries prior to the May 2023 General Election. For this to occur, this process would need to be completed prior to the opening of the filing period in January 2023.

BUDGET IMPACT:

There is no budget impact for this item. Funds for redistricting are proposed to be included in the Fiscal Year 2023 budget.

RECOMMENDED ACTION:

Staff requests direction from Town Council.



Date: 06/21/2022
Agenda Item #: 1. B.
Department: Development Services
Strategic Goal: Promote and expand Little Elm's identity
Staff Contact: Fred Gibbs, Director of Development Services

AGENDA ITEM:

Present and Discuss **Proposed Amendments to Chapter 106 (Zoning Ordinance) to Amend Existing Light Commercial Zoning District.**

DESCRIPTION:

In 2020-21, the Town undertook a vision study for the West Side, ultimately approving the West Side Study Report and Implementation as part of the vision for that area with regard to uses, density, and aesthetic design of the built environment. Based on the results of this initiative, Staff created zoning regulations, based primarily on the Light Commercial District, with a handful of minor changes to enhance site design and additional review of certain uses, such as drive-thrus. The intent is to allow additional flexibility for infill development, provide site criteria for auto-oriented uses, and allow Staff flexibility to make minor waivers to the required standards in order to allow a more streamlined process and avoid the need to rezone if there is a slight discrepancy due to existing site conditions.

Given the recent strategic visioning efforts and the Administration's desire for higher quality development and redevelopment moving forward, Staff believes the zoning regulations that came out of the West Side Study could be applied Town-wide. Such action would allow Staff to ensure enhanced site design and quality development and redevelopment throughout the Town. Therefore, Staff proposes to amend Chapter 106 (Zoning Ordinance) - Light Commercial District in order to incorporate these new standards for lot requirements and site orientation criteria.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff requests direction from Town Council.



Date: 06/21/2022
Agenda Item #: 5. 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 June 7, 2022, Regular Town Council Meeting.**

DESCRIPTION:

The minutes from the June 7, 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 - June 7, 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 JUNE 7, 2022 - 6:00 p.m.

Present: Mayor Curtis J. Cornelious; Council Member Jamell Johnson; Council Member Lisa Norman; Council Member Jeremy Lukas; Council Member Michael McClellan; Managing Director of Marketing & Communications Erin Mudie; Police Chief Rodney Harrison

Absent: Mayor Pro Tem Neil Blais; Council Member Tony Singh

Staff Present: Caitlan Biggs, Director of Administrative Services/Town Secretary; Jennette Espinosa, Executive Director; Joe Florentino, Assistant Town Manager; Matt Mueller, Town Manager; Chad Hyde, Director of Community Services; Fred Gibbs, Director of Development Services; Jason Shroyer, Director of Public Works; Kate Graham, Assistant to the Town Manager; Paul Rust, Fire Chief; Robert Brown, Town Attorney; Rachel Mendoza, Development Services Manager

1. Roll Call/Call to Order Regular Town Council Meeting at 6:00 p.m.

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

A. Invocation.

Council Member Lisa Norman gave the invocation.

B. Pledge to Flags.

C. Items to be Withdrawn from Consent Agenda.

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 Wayfinding Signage program design and locations in the attached presentation.

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

Development Services Manager Rachel Mendoza provided additional background on item 4D on how the Home Improvement Tax Incentive program works.

2. **Presentations.**

- A. Present a **Proclamation Recognizing June 2022 as Pride Month.**

Mayor Cornelious presented the proclamation.

3. **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 Corrdier, PO Box 501, Little Elm, TX 75068, spoke on new valuations of Hilltown lots, the new wayfinding signage, and water enforcement.

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

Vote: 5 - 0 - Unanimously

- A. Consider Action to Approve the **Minutes from the May 17, 2022, Regular Town Council Meeting.**
- B. Consider Action to Approve the **Minutes from the June 1, 2022, Pre-Budget Workshop.**
- C. Consider Action to Approve **Resolution No. 0607202201 Suspending the June 17, 2022, Effective Date of Oncor Electric Delivery Company's Requested Rate Change to Permit the Town Time to Study the Request and to Establish Reasonable Rates; Approving Cooperation with the Steering Committee of Cities Served by Oncor; Hiring Legal and Consulting Services to Negotiate with the Company and Direct any Necessary Litigation and Appeals; Finding that the Meeting at which the Resolution is Passed is Open to the Public as Required by Law; Requiring Notice of this Resolution to the Company and Legal Counsel.**

- D. Consider Action to Approve **Authorization to the Town Manager to Execute the Home Improvement Tax Incentive Program Agreement.**

5. Regular Items.

- A. Present, Discuss, and Consider Action on **Resolution No. 0607202202 Appointing a Mayor Pro Tem for a One-Year Term of Office and Providing an Effective Date.**

Motion by Council Member Michael McClellan, seconded by Council Member Jeremy Lukas ***to appoint Lisa Norman as Mayor Pro Tem.***

Vote: 5 - 0 - Unanimously

- B. Present, Discuss, and Consider Action on **Appointing a Town Council Member as Liaison for the Economic Development Corporation Board.**

Motion by Council Member Jeremy Lukas, seconded by Council Member Michael McClellan ***to appoint Michael McClellan as EDC Liaison.***

Vote: 5 - 0 - Unanimously

- C. Present, Discuss, and Consider Action on **Appointing a Town Council Member as Liaison for the Community Development Corporation Board.**

Motion by Council Member Lisa Norman, seconded by Council Member Jeremy Lukas ***to appoint Jeremy Lukas as CDC Liaison.***

Vote: 5 - 0 - Unanimously

- D. Present, Discuss, and Consider Action on **Appointing a Town Council Member as Liaison for the Planning and Zoning Commission.**

Motion by Council Member Lisa Norman, ***to appoint Neil Blais as P&Z/BOA Liaison.***

Vote: 5 - 0 - Unanimously

- E. Present, Discuss, and Consider Action on **Appointing a Town Council Member as the School Board Liaison.**

Motion by Mayor Curtis J. Cornelious, ***to appoint Tony Singh as School Board Liaison.***

Vote: 5 - 0 - Unanimously

- F. Present, Discuss, and Consider Action on **Appointing a Town Council Member as Liaison for the Veterans Committee.**

Motion by Council Member Jeremy Lukas, seconded by Council Member Jamell Johnson ***to appoint Jamell Johnson as Veterans Committee Liaison.***

Vote: 5 - 0 - Unanimously

6. 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 6:30 p.m.

7. 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 7:05 p.m. No Action.

8. Adjourn.

Meeting was adjourned at 7:05 p.m.

Respectfully,

Caitlan Biggs
Town Secretary

Passed and Approved this 21st day of June 2022.



Date: 06/21/2022
Agenda Item #: 5. B.
Department: Finance
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Kelly Wilson, Chief Financial Officer

AGENDA ITEM:

Consider Action to Approve **Resolution No. 0621202201 Approving and Authorizing Publication of Notice of Intention to Issue Combination Tax and Revenue Certificates of Obligation, Series 2022 and Authorizing SAMCO Capital Markets, Bond Counsel, and Town Officials to Proceed with the Issuance Process for the Certificates.**

DESCRIPTION:

The Town has been working closely with our Financial Advisor, Mark McLiney and Andrew Friedman, with SAMCO Capital Markets, In.c and Bod Dransfield with Norton Rose Fulbright US LLP to issue Certificate of Obligation, Series 2022.

The Notice of Intent provides Council's intention to issue certificates of obligation, in one or more series, in a principal amount not to exceed \$10,000,000 for the purpose of paying contractual obligations to be incurred for (i) construction and equipment of public safety facilities; (ii) constructing street improvements, including drainage, landscaping, curbs, gutters, sidewalks, signage, traffic signalization and street noise abatement incidental thereto and the acquisition of land and rights-of-way therefor and (iii) professional services rendered in connection therewith; such certificates to be payable from ad valorem taxes and a limited pledge of the net revenues of the Town's combined Waterworks and Sewer System. The notice hereby approved and authorized to be published shall read substantially in the form and content of Exhibit A hereto attached and incorporated herein by reference as a part of this resolution for all purposes.

In continuance with the issuance calendar, the Town is scheduled to receive bids on August 16, 2022. The Financial Advisor, SAMCO, will have details concerning the bids at the meeting.

BUDGET IMPACT:

The budget impact will be reflected in the proposed FY 2022-2023 budget related to debt issuance and debt service payments along with the capital improvement projects being funded through this instrument.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

NOI Resolution No. 0621202201

Timetable-2022 COs

TOWN OF LITTLE ELM, TEXAS

RESOLUTION #0621202201

A RESOLUTION approving and authorizing publication of notice of intention to issue Combination Tax and Revenue Certificates of Obligation, Series 2022 and authorizing SAMCO Capital Markets, Bond Counsel and Town Officials to proceed with the issuance process for the Certificates.

WHEREAS, the Town Council of the Town of Little Elm, Texas (the "Town"), has determined that certificates of obligation ("Certificates") should be issued under and pursuant to the provisions of Subchapter C of Chapter 271 of the Texas Local Government Code, as amended (the "Act"), for the purpose of paying contractual obligations to be incurred for (i) construction and equipment of public safety facilities; (ii) constructing street improvements, including drainage, landscaping, curbs, gutters, sidewalks, signage, traffic signalization and street noise abatement incidental thereto and the acquisition of land and rights-of-way therefor and (iii) professional services rendered in connection therewith; and

WHEREAS, prior to the issuance of such certificates, the Town Council is required to publish notice of its intention to issue the same in accordance with the provisions of the Act; now, therefore,

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS:

SECTION 1: The Town Secretary is hereby authorized and directed to cause notice to be published of the Council's intention to issue certificates of obligation, in one or more series, in a principal amount not to exceed \$10,000,000 for the purpose of paying contractual obligations to be incurred for (i) construction and equipment of public safety facilities; (ii) constructing street improvements, including drainage, landscaping, curbs, gutters, sidewalks, signage, traffic signalization and street noise abatement incidental thereto and the acquisition of land and rights-of-way therefor and (iii) professional services rendered in connection therewith; such certificates to be payable from ad valorem taxes and a limited pledge of the net revenues of the Town's combined Waterworks and Sewer System. The notice hereby approved and authorized to be published shall read substantially in the form and content of **Exhibit A** hereto attached and incorporated herein by reference as a part of this resolution for all purposes.

SECTION 2: The Town Secretary shall cause the aforesaid notice to (i) be published in a newspaper of general circulation in the Town, once a week for two consecutive weeks, the date of the first publication to be at least forty-six (46) days prior to the date stated therein for the passage of the ordinance authorizing the issuance of the certificates of obligation and (ii) posted continuously on the Town's website for at least forty-five (45) days before the date stated therein for the passage of the ordinance authorizing the issuance of the certificates of obligation.

SECTION 3: That SAMCO Capital Markets, the Town's financial advisor, Norton Rose Fulbright US LLP, the Town's bond counsel and the Town Manager and the Town's Chief Financial Officer are hereby authorized and directed to proceed with the issuance of the Town's proposed Combination Tax and Revenue Certificates of Obligation, Series 2022.

SECTION 4: It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 5: This Resolution shall be in force and effect from and after its passage on the date shown below.

[remainder of page intentionally left blank]

PASSED AND ADOPTED, this June 21, 2021.

TOWN OF LITTLE ELM, TEXAS

Mayor

ATTEST:

Town Secretary

APPROVED AS TO FORM:

Town Attorney

EXHIBIT A

NOTICE OF INTENTION TO ISSUE TOWN OF LITTLE ELM, TEXAS CERTIFICATES OF OBLIGATION

TAKE NOTICE that the Town Council of the Town of Little Elm, Texas, shall convene at 6:00 o'clock P.M. on August 16, 2022, at the Little Elm Town Hall, 100 W. Eldorado Parkway, Little Elm, Texas, and, during such meeting, the Town Council will consider the passage of one or more ordinances authorizing the issuance of certificates of obligation in one or more series in an amount not to exceed \$10,000,000 for the purpose of paying contractual obligations to be incurred for (i) construction and equipment of public safety facilities; (ii) constructing street improvements, including drainage, landscaping, curbs, gutters, sidewalks, signage, traffic signalization and street noise abatement incidental thereto and the acquisition of land and rights-of-way therefor and (iii) professional services rendered in connection therewith; such certificates to be payable from ad valorem taxes and a limited pledge of the net revenues of the Town's combined Waterworks and Sewer System. In accordance with Texas Local Government Code Section 271.049, (i) the current principal amount of all of the Town's outstanding public securities secured by and payable from ad valorem taxes is \$107,760,000; (ii) the current combined principal and interest required to pay all of the Town's outstanding public securities secured by and payable from ad valorem taxes on time and in full is \$133,115,190; (iii) the estimated combined principal and interest required to pay the certificates of obligation to be authorized on time and in full is \$14,839,263; (iv) the maximum interest rate for the certificates may not exceed the maximum legal interest rate; and (v) the maximum maturity date of the certificates to be authorized is September 1, 2047. The certificates are to be issued, and this notice is given, under and pursuant to the provisions of Subchapter C of Chapter 271 of the Texas Local Government Code, as amended.

Caitlan Biggs
Town Secretary
Town of Little Elm, Texas



TOWN OF LITTLE ELM, TEXAS (THE "TOWN")
\$10,000,000*
COMBINATION TAX AND REVENUE
CERTIFICATES OF OBLIGATION, SERIES 2022
(THE "CERTIFICATES")

Proposed Timetable

June							July							August							September						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
			1	2	3	4						1	2		1	2	3	4	5	6					1	2	3
5	6	7	8	9	10	11	3	4	5	6	7	8	9	7	8	9	10	11	12	13	4	5	6	7	8	9	10
12	13	14	15	16	17	18	10	11	12	13	14	15	16	14	15	16	17	18	19	20	11	12	13	14	15	16	17
19	20	21	22	23	24	25	17	18	19	20	21	22	23	21	22	23	24	25	26	27	18	19	20	21	22	23	24
26	27	28	29	30			24	25	26	27	28	29	30	28	29	30	31				25	26	27	28	29	30	
							31																				

Date	Action Required
Tuesday, June 7, 2022	Town Council discusses potential Certificates of Obligation issuance at a Council workshop and authorizes staff and Financial Advisor to proceed
Thursday, June 9, 2022	SAMCO submits Official Statement Request for Information ("RFI") to Town officials
Friday, June 17, 2022	Town returns RFI to SAMCO
Tuesday, June 21, 2022	Town Council authorizes the Notice of Intention Resolution ("NOI") to issue Combination Tax and Revenue Certificates of Obligation, Series 2021
Wednesday, June 22, 2022	Town post NOI to the Town's formal internet website (at least 45 days prior to Ordinance adoption)
Thursday, June 23, 2022	SAMCO submits initial draft of Preliminary Official Statement (POS) and Notice of Sale (NOS) to Bond Counsel
Friday, June 24, 2022	First Publication of Notice of Intention published in the Town's newspaper (at least 46 days prior to Ordinance adoption)
Thursday, June 30, 2022	Comments due on initial draft of POS/NOS
Friday, July 1, 2022	Second Publication of Notice of Intention published in the Town's newspaper
Wednesday, July 6, 2022	SAMCO submits POS/NOS second draft and other financing documents to Bond Counsel, Town officials and S&P Rating Agency ("S&P")
Week of July 18th, 2022	Schedule rating conference call with S&P
Thursday, August 4, 2022	Final POS/NOS comments due to SAMCO
Tuesday, August 9, 2022	Post POS/NOS to website and electronically distribute POS/NOS website link to potential bidders
Wednesday, August 10, 2022	Receive S&P underlying rating
Tuesday, August 16, 2022	<ul style="list-style-type: none"> • Receive electronic bids for the COs (12:00 P.M., (noon) Central Time) via Internet and the "i-Deal LLC Parity" bidding program • Regular Council meeting to review bids for the Certificates and adopt the Ordinance authorizing and selling the Certificates (6:00 pm)
Tuesday, August 23, 2022	Post Official Statement to SAMCO website and distribute hard copies
Thursday, September 8, 2022	SAMCO notifies all parties of closing/delivery instructions
Thursday, September 15, 2022	Payment for and delivery of the Certificates. Funds wired to Town's depository bank.

* Preliminary; subject to change.



Date: 06/21/2022
Agenda Item #: 5. C.
Department: Administrative Services
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 Ground Lease Purchase and Performance Agreement between Little Elm Hospitality, LLC and Little Elm Economic Development Corporation.**

DESCRIPTION:

Materials and construction delays are affecting the timeline of dates provided in the original agreement. This agreement has been revised to provide new benchmark dates for the following terms:

- **Opening Date:** The facility will be open to business by the general public no later than **June 5, 2023.**
- **Title Policy:** Within 30 days of receiving the Certificate of Occupancy, Little Elm EDC will deliver to developer a Title Policy in the amount of at least **One Million Five Hundred Sixty Thousand Eight Hundred Fifty-Five and No/100 Dollars (\$1,560,855.00).**
- **Documentation of Execution and Delivery:** Documentation of the execution and delivery of a Purchase and Sale Agreement is due on or before **July 9, 2023.**
- **Qualified Expenditures:** Documentation of written acceptance and/or approval from the Town on all Qualified Expenditures required to inspected or approved by the Town before **April 3, 2023.**
- **Certificate of Occupancy:** Documentation of final Certificate of Occupancy from the town on or before **April 3, 2023**
- **Job Creation and Retention:** Documentation developer has created, staffed and maintained employment of at least eighteen (18) full time job equivalents on or before **April 3, 2023**

An additional provision was added to the Agreement per new guidelines as provided by the EDC Attorney:

ARTICLE XXI

- **Form 1295 Certificate**
- **Undocumented Workers Provision**
- **Non Boycott of Israel Provision**

- **Prohibition on Contracts with Certain Companies Provision**
- **Verification Against Discrimination of Firearm or Ammunition Industries**
- **Verification Against Discrimination Developer Does Not Boycott Energy Companies**

BUDGET IMPACT:

There is no revision to the incentives dedicated to this project.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

1st Amendment Ground Lease LEEDC and Little Elm Hospitality, LLC

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

This **FIRST AMENDMENT TO GROUND LEASE PURCHASE AGREEMENT** (this "**Amendment**") is made and entered into on the ____ day of June, 2022 (the "**Effective Date**") by and between **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation having its principal address at 100 W. Eldorado Parkway, Little Elm, Texas 75068-5060 ("**Little Elm EDC**"), and **LITTLE ELM HOSPITALITY, LLC**, a Texas Limited Liability Company, or its permitted assigns ("**Developer**"), having its principal address at 2120 Vanco Drive, Irving, Texas 75061.

RECITALS

WHEREAS, on or about September 14, 2020, the Little Elm EDC and the Developer executed the original Ground Lease Purchase Agreement (hereinafter referred to as the "Agreement") concerning the Premises; and

WHEREAS, Little Elm EDC and the Developer now desire to amend the Agreement with this Amendment to address the mutual obligations of the parties.

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

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. AMENDMENTS TO AGREEMENT.

- (a) **Amendment to Agreement.** That Section 1.14 of the Agreement is hereby amended to read as follows:

"1.14 Eligibility Period" shall mean the Facility is open to business by the general public on or June 5, 2023.

- (b) **Amendment to Agreement.** That Section 1.27 of the Agreement is hereby amended to read as follows:

"1.27 **Opening Date**" means the date the Facilities are open for business, which date shall not be later than June 5, 2023, unless such opening date is expressly extended in writing by Little Elm EDC.

- (c) **Amendment to Agreement.** That Section 2.3 of the Agreement is hereby amended to read as follows:

"2.3 **Opening of Facilities: Continuous Operations**" The Facilities shall be open for business by not later than June 5, 2023, unless such opening date is expressly extended in writing by Little Elm EDC. Developer covenants and agrees that, continuously and uninterruptedly from and after its initial opening for business, it will operate and conduct within the Premises the business it is permitted to operate and conduct under the provisions of this Agreement, except while the Premises are untenable by reason of fire or other casualty including, but not limited to, pandemics and health restrictions, windstorms, tornadoes and other destructive weather events. As used herein, "open for business", with respect to the retail and/or office buildings comprising the Facilities, means the completion and final inspection of all shell improvements for such retail and/or office buildings, but not necessarily the issuance of a certificate of occupancy or the opening for business by subtenants. Developer agrees to conduct its business at all times in a first-class manner consistent with reputable business standards and practices.

- (d) **Amendment to Agreement.** That Section 4.2 (b) of the Agreement is hereby amended to read as follows:

"4.2 Deliveries to the Developer"

- (b) Subject to **Section 9.1 of the Agreement**, within thirty (30) days after receiving the Certificate of Occupancy, for the Premises to be obtained by Developer, Little Elm EDC will deliver to Developer, at Developer's cost, for Developer's review and approval (i) a current on-the-ground metes and bounds survey of the Land (the "Survey"), and (ii) a commitment (the "**Title Commitment**") for a leasehold policy of title insurance from Reunion Title Company, 777 East 15th Street, Plano, Texas 75074, Attn: Kathy Ruiz (the "**Title Company**"). At the expense of Developer, Little Elm EDC will cause the Title Company to issue to Developer a leasehold policy in an amount of at least **One Million Five Hundred Sixty Thousand Eight Hundred Fifty-Five and No/100 Dollars (\$1,560,855.00)**. Upon approval of the Survey by Developer and Little Elm EDC, the description of the Land contained in the Survey shall replace the property description and/or depiction currently attached hereto as **Exhibit A**. Notwithstanding anything to the contrary contained herein, Little Elm EDC shall have an affirmative obligation to cure any of the following title matters within ninety (90) days of the Effective Date: (i) monetary obligations such as mortgages, liens, etc., and (ii) any encumbrances placed

upon the Land by (or at the direction of) Little Elm EDC subsequent to the Effective Date of this Agreement.

- (e) **Amendment to Agreement.** That Section 9.2 (a), (g), (m), (n) of the Agreement is hereby amended to read as follows:

“9.2 Performance Requirements for Economic Incentive” Developer will be entitled to the Economic Incentive:

- (a) Documentation of the execution and delivery of a Purchase and Sale Agreement regarding the Premises by and between the Little Elm EDC and the Developer on or before **July 9, 2023**; and
- (g) Documentation of written acceptance or approval (which acceptance or approval shall not be unreasonably delayed or denied from the Town of all portions of the Qualified Infrastructure required to be inspected or approved by the Town on or before **April 3, 2023**; and
- (m) Documentation of receipt of a final Certificate of Occupancy (the “CO”) from the Town for the Facility and is open to business by the general public on or before **April 3, 2023**, (the “Eligibility Period”); and
- (n) Documentation the Developer has created, staffed, and maintained employment of at least eighteen (18) full-time job equivalents at the Facility on or before **April 3, 2023**;

- (f) **Amendment to Agreement.** That Section 20.1 of the Agreement is hereby amended to read as follows:

“20.1 Notice.” Any notice, request, or other communication (hereinafter severally and collectively called “Notice”) in this Agreement provided for or permitted to be given, made or accepted by either party to the other must be in writing, and may, unless otherwise in this Agreement expressly provided, be given or be served by depositing the same in the United States mail, postpaid and certified and addressed to the party to be notified, with return receipt requested. Notice given in any manner as provided in this **Section 20.1** shall (a) as to notice given to or served by depositing the same in the United States mail, as aforesaid, shall be effective three (3) days after depositing the same in a regularly maintained receptacle for pickup and delivery of United States mail and (b) as to Notice given or served by any other method, shall be effective only if and when received by the party to be notified. The following shall be prima facie evidence of the date of actual receipt of Notice by the addressee: (a) if hand delivered, by a delivery receipt signed by the addressee or the addressee’s agent or representative, (b) written evidence by the carrier of such Notice of the date of attempted delivery at the address of the addressee if such delivery is refused, or (c) a return telecopy sent from a fax machine or office of the addressee or other confirmation from the office of the addressee indicating that any telecopied notice has been received.

For purposes of Notice, the addresses of the parties shall, until changed as herein provided, be as follows:

Developer: Little Elm Hospitality, LLC
2120 Vanco Drive
Irving, Texas 75061
Telephone: (614) 893-5274
Attn: Kash Patel

- (g) **Amendment to Agreement.** That Section 21.1, 21.2, 21.3, 21.4, 21.5, and 21.6 of the Agreement is hereby amended to read as follows:

The following miscellaneous provisions are a part of this Agreement:

“21.1 **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.

“21.2 **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.

“21.3 **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.

“21.4 **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.

“21.5 Verification Against Discrimination of Firearm or Ammunition Industries.” Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87th Tex. 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.

“21.6 Verification Against Discrimination Developer Does Not Boycott Energy Companies.” Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 13, 87th Tex. 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 boycott energy companies; and (2) the Developer will not boycott energy companies during the Term of this Agreement.

SECTION 3. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Amendment:

- (a) **Agreement and Amendment.** All of the terms, conditions, and obligations of the Agreement, and any amendments remain in full force and effect except where specifically modified by this Amendment.
- (b) **Amendments.** This Amendment constitutes the entire understanding and agreement of the parties as to the matters set forth in this Amendment. No alteration of or amendment to this Amendment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (c) **Applicable Law and Venue.** This 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.
- (d) **Assignment.** This Amendment may not be assigned without the express written consent of the other party, which shall not be unreasonably withheld.
- (e) **Binding Obligation.** This Amendment shall become a binding obligation on the signatories upon execution by all signatories hereto. Little Elm EDC warrants and represents that the individual executing this Amendment on behalf of the Little Elm EDC has full authority to execute this Amendment and bind the Little Elm EDC to the same. The Developer warrants and represents that the individual executing this Amendment on the Developer's behalf has full authority to execute this Amendment and binds the Developer to the same.

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

The Remainder of this Page Intentionally Left Blank

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

LITTLE ELM EDC:

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

By: _____

Ken Eaken, President

Date Executed: _____

ATTEST:

Taylor Girardi, Secretary

STATE OF TEXAS

§

§

COUNTY OF DENTON

§

This instrument was acknowledged before me on the _____ day of June, 2022, by Ken Eaken, President of the Little Elm Economic Development Corporation, a Texas non-profit corporation, on behalf of said non-profit corporation.

Notary Public, State of Texas

DEVELOPER:

LITTLE ELM HOSPITALITY, LLC

A Texas limited liability company

By: _____

Kash R. Patel, Managing Member

Date Executed: _____

STATE OF TEXAS

§
§

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of June 2022, by _____
_____, _____ of Little Elm Hospitality, LLC, a Texas limited liability company, on
behalf of said limited liability company.

Notary Public, State of Texas



Date: 06/21/2022
Agenda Item #: 5. D.
Department: Finance
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Kelly Wilson, Chief Financial Officer

AGENDA ITEM:

Consider Action to Approve a **Professional Services Agreement between the Town of Little Elm and Weaver and Tidwell, LLP for Audit Services, RFP 2022-13.**

DESCRIPTION:

On April 4, 2022 the Town issued a request for proposal (RFP) 2022-13 for audit services for fiscal years 2022 and 2023 with the option to complete future audits for fiscal years 2024, 2025, and 2026. The RFP was advertised in the local paper, posted on the Town's eProcurement system. The Town received five responses from highly qualified CPA firms.

Initial evaluations were completed by Finance staff. Evaluators reviewed submittals for:

- Quality and cost of auditing service offered
- Respondents demonstrated experience and strength to provide the services
- Respondents methodology, work plan, and timeline
- Respondents previous experience and references
- Thoroughness and clarity of response to RFP

A tabulation sheet is attached for reference to the evaluation scores based on the criteria established in the RFP.

Included in the proposals from each respondent also includes PID audit services. The costs associated with the audit services for each PID will be paid by the Districts.

BUDGET IMPACT:

The Town's budget reflects audit services each year. Funding is available in the current budget to begin the 2022 audit. A purchase order will be issued each year with the signing of the engagement letter.

The 2021 audit for the Town and all component units (EDC and CDC) was \$73,700. The agreement for the 2022 audit services reflects a 0.71% increase to the Town.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

2022-13 Audit Services Agreement

2022-13 Evaluation Tab-Audit Services

Town of Little Elm, Texas
Professional Services Agreement
Audit Services

This Agreement is made by and between the Town of Little Elm, Texas, a Texas home-rule municipality (hereinafter referred to as the "Owner") and [Weaver and Tidwell, LLP](#), (hereinafter referred to as the "Consultant") for [Audit Services, RFP 2022-13](#), (hereinafter referred to as the "Project"). In consideration of the premises, covenants and mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Consultant hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

1.1 THE CONTRACT

The Contract between the Owner and the Consultant, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last Party to execute it.

1.2. THE CONTRACT DOCUMENTS

The Contract Documents include this agreement, request for proposal, instructions to bidders, specifications, terms and conditions, attachments, change orders issued hereafter, engagement letters issued each fiscal year, and any other amendments hereto executed by the parties hereafter, together with the following (if any):

ARTICLE 2: RECITALS

- 2.1 The Town desires to have the Consultant provide audit services for fiscal years ending September 30, 2022 and September 30, 2023, with option to renew annually for three (3) additional one-year terms; and
- 2.2 The Consultant has the knowledge, ability and expertise to provide such services; and
- 2.3 The Town desires to engage the services of Consultant, as an independent Consultant and not as an employee, to provide services as set forth herein and in **EXHIBIT A: Specifications**.

ARTICLE 3: TERM / TERMINATION

3.1 TERM

The term of this Agreement shall begin on the date of its execution by all Parties. This Agreement shall continue until Consultant completes the services required herein to the satisfaction of the Town, unless sooner terminated as provided herein.

3.2 TERMINATION

This Agreement may be suspended or terminated by either Party with or without cause at any time by giving written notice to the other Party. In the event suspension or termination is without cause, payment to the Consultant, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by Town to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to Town.

In the event that the Town requires a modification of this Agreement with Consultant, and in the event the Parties fail to agree upon a modification of this Agreement, the Parties shall have the option of terminating this Agreement. Payment to Consultant shall be made by the Town in accordance with the terms of this Agreement, for the services mutually agreed upon by the Parties to be properly performed by the Consultant prior to such termination date.

ARTICLE 4: SCOPE OF SERVICES

4.1 SCOPE

The following services, when authorized in writing by a Notice to Proceed from the Town, shall be performed by Consultant in accordance with the Town's requirements and as set forth in the attached **EXHIBIT A**, Specifications:

Audit Services for Fiscal Years 2022-2023

4.2 AUTHORIZED AGENT

All work performed by the Consultant will be performed under this Agreement, signed by a duly authorized agent of the Town as approved by Town Council of the Town of Little Elm, Texas, and the designated authorized agent for the Consultant.

ARTICLE 5: COMPENSATION / PAYMENT TERMS AND CONDITIONS

5.1 Compensation for the performance of Professional Services described herein shall be paid to Consultant by the Town at the rates set forth in **EXHIBIT B**.

5.3 Payment for work under this Agreement shall be made as progress payments as services are rendered. Billing shall not be more frequently than once each month. If the Town fails to make any payment due the Consultant within thirty (30) days after receipt of Consultant's invoice, the amounts due the Consultant will be increased at the rate of 1.5% per month from said thirtieth day, unless there is a good faith refusal by the Town to pay. Payment shall be remitted to Consultant by Town as instructed on invoices.

ARTICLE 6: TIME FOR COMPLETION

6.1 The Consultant's services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Assigned Project(s) through completion of the project(s). Specific periods of time for rendering services are set forth in **EXHIBIT A** and the Engagement letter for each Fiscal Year to this Agreement, by which times defined services are to be completed.

6.2 If the Town fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation, but in no event shall such compensation exceed the scope of services schedule of maximum payment unless a written amendment to this Agreement is executed between the Parties.

ARTICLE 7: INDEMNIFICATION

7.1 **THE CONSULTANT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS THE TOWN, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "INDEMNITEES") FROM AND AGAINST SUITS, ACTIONS, CLAIMS, LOSSES, ANY DAMAGE, LIABILITY, AND FROM AND AGAINST ANY COSTS AND EXPENSES, INCLUDING, IN PART, ATTORNEY'S FEES INCIDENTAL TO THE DEFENSE OF SUCH SUITS, ACTIONS CLAIMS, LOSSES, DAMAGES OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON OR DAMAGE TO PROPERTY INCLUDING, IN PART, THE LOSS OF USE RESULTING THEREFROM, ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF THE CONSULTANT, ITS OFFICERS, EMPLOYEES, SERVANTS, AGENTS OR SUBCONTRACTORS, OR ANYONE ELSE UNDER THE CONSULTANT'S DIRECTION AND CONTROL, AND ARISING OUT OF, RESULTING FROM, OR CAUSED BY THE PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY WORK OR SERVICES UNDER THIS AGREEMENT, OR FROM CONDITIONS CREATED BY THE PERFORMANCE OR NON-PERFORMANCE OF SAID WORK OR SERVICES. IN THE EVENT ONE OR MORE OF THE INDEMNITEES IS DETERMINED BY A COURT OF LAW TO BE JOINTLY OR DERIVATIVELY NEGLIGENT OR LIABLE FOR SUCH DAMAGE OR INJURY, THE CONSULTANT SHALL BE OBLIGATED**

TO INDEMNIFY INDEMNITEES AS PROVIDED HEREIN ON A PROPORTIONATE BASIS IN ACCORDANCE WITH THE FINAL JUDGMENT, AFTER ALL APPEALS ARE EXHAUSTED, DETERMINING SUCH JOINT OR DERIVATIVE NEGLIGENCE OR LIABILITY. THIS INDEMNIFICATION IS SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE, § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002(B), AS SAME MAY BE APPLICABLE TO CONSULTANT AS A MATTER OF LAW.

7.02 NOTHING CONTAINED HEREIN SHALL CONSTITUTE A WAIVER OF GOVERNMENTAL IMMUNITY IN FAVOR OF ANY PARTY.

7.03 CONSULTANT AGREES THAT IT IS AN INDEPENDENT CONTRACTOR AND NOT AN AGENT OF THE TOWN, AND THAT CONSULTANT IS SUBJECT, AS AN EMPLOYER, TO ALL APPLICABLE UNEMPLOYMENT COMPENSATION STATUTES, SO FAR AS TO RELIEVE THE TOWN OF ANY RESPONSIBILITY OR LIABILITY FROM TREATING CONSULTANT'S EMPLOYEES AS EMPLOYEES OF TOWN FOR THE PURPOSE OF KEEPING RECORDS, MAKING REPORTS OR PAYMENTS OF UNEMPLOYMENT COMPENSATION TAXES OR CONTRIBUTIONS. CONSULTANT FURTHER AGREES TO INDEMNIFY AND HOLD THE TOWN HARMLESS AND REIMBURSE IT FOR ANY EXPENSES OR LIABILITY INCURRED UNDER SAID STATUTES IN CONNECTION WITH EMPLOYEES OF CONSULTANT.

7.04 CONSULTANT SHALL DEFEND AND INDEMNIFY AND HOLD THE TOWN HARMLESS FROM ANY AND ALL CLAIMS, SUITS OR LIENS BASED UPON OR ALLEGED TO BE BASED UPON THE NON-PAYMENT OF LABOR, TOOLS, MATERIALS, EQUIPMENT, SUPPLIES, TRANSPORTATION AND MANAGEMENT COSTS INCURRED BY CONSULTANT IN PERFORMING THIS AGREEMENT.

ARTICLE 8: INSURANCE

8.1 Insurance

The Consultant shall provide and maintain insurance as listed in the insurance requirements document.

ARTICLE 9: DEFAULT

In the event Consultant fails to comply or becomes disabled and unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within thirty (30) days after written notice by Town to Consultant, Town may, at its sole discretion without prejudice to any other right or remedy.

- (a) Terminate this Agreement and be relieved of the payment of any further consideration to Consultant except for all work determined by the Town to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of Consultant to and from meetings called by the Town at which Consultant is required to attend, but shall not include any loss of profit of Consultant. In the event of such termination, the Town may proceed to complete the services in any manner deemed proper by the Town, either by the use of its own forces or by resubmitting to others. Consultant agrees that any costs incurred to complete the services herein provided for may be deducted and paid by the Town out of such monies as may be due or that may thereafter become due to Consultant under and by virtue of this Agreement.
- (b) The Town may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of Consultant.

ARTICLE 10: MISCELLANEOUS

10.1 Entire Agreement.

This Agreement constitutes the sole and only Agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties with respect to this subject matter.

10.2 Assignment.

Neither this Agreement nor any duties or obligations under it shall be assignable by Consultant without the prior written consent of the Town. In the event of an assignment by Consultant to which the Town has consented, the assignee or the assignee's legal representative shall agree in writing with the Town to personally assume, perform, and be bound by all the covenants, obligations, and agreements contained in this Agreement.

10.3 Adjustments in Services/Amendment.

This Agreement may be amended by the mutual written agreement of the Parties. Consultant shall not make any claims for extra services, additional services or changes in the services without a written agreement with the Town prior to the performance of such services.

10.4 Governing law.

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in Denton County, Texas.

10.5 Notices.

All notices required by this Agreement shall be in writing and addressed to the following, or such other Party or address as either Party designates in writing, by certified mail, postage prepaid or by hand delivery:

Town of Little Elm

Purchasing
100 W. Eldorado Pkwy.
Little Elm, TX 75068
214-975-0411
purchasing@littleelm.org

Weaver & Tidwell, LLP

10.7 Legal construction.

In the event any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

10.8 Successors and Assigns.

- (a) The Town and Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of Town and Consultant are hereby bound to the other Party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other Party in respect of all covenants and obligations of this Agreement.
- (b) Neither the Town nor the Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other Party, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- (c) Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Consultant, subcontractor, supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than the Town and the Consultant.

10.9 Conflict.

If a conflict exists between this Agreement, and an Exhibit, the Request for Proposal ("RFP"), and/or the Response, then such conflicts shall be resolved as follows:

- (a) If a conflict exists between this Agreement and an Exhibit, the RFP, or the Response, then this Agreement shall control.
- (b) If a conflict exists between the Response and an Exhibit, the Exhibit shall control.
- (c) If a conflict exists between the Response and the RFP, the RFP shall control.

10.10 Severability

Any provision or part of this Agreement that is held to be void or unenforceable under any law or regulation or by a court of competent jurisdiction shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the Town and the Consultant, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.11 Captions

The captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretations of the provisions set forth herein.

10.12 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on this date

_____.

TOWN OF LITTLE ELM

CONSULTANT

Matt Mueller, Town Manager

Exhibit A: Specification
Exhibit B: Pricing Detail

EXHIBIT A

2022-13 Audit Services Specifications

1. **SCOPE OF WORK:** The Respondent shall provide the following auditing services, and in accordance with generally accepted auditing standards as set for by the American Institute of Certified Public accountants (AICPA), U.S. GAO *Government Auditing Standards*, latest revision, the provisions of the federal Single Audit Act of 1984 (as amended) and U.S. OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*:
 - a) Express an opinion on the fair presentation of the Town's basic financial statements in conformity with generally accepted accounting principles.
 - b) Express an opinion on the fair presentation of its combining and individual fund financial statements and schedules in conformity with generally accepted accounting principles. The Respondent is not required to audit the supporting schedules contained in the annual financial report (ACFR). However, the Respondent shall provide an "in-relation-to" opinion on the supporting schedules based on the auditing procedures applied during the audit of the basic financial statements and the combining and individual fund financial statements and schedules. The Respondent is not required to audit the introductory section of the report or the statistical section of the ACFR.
 - c) Perform certain limited procedures involving required supplementary information required by the Governmental Accounting Standards Board as mandated by generally accepted auditing standards.
 - d) The Respondent shall audit the schedule of expenditures of federal awards to Town.
 - e) The Respondent shall provide a single audit when required.
 - f) From time to time, the Town may request the auditor to perform other audits and reviews not specifically provided under this section. If such a request is made, the auditor shall submit at the Town's request, a separate proposal for completing the engagement, along with a proposed fee schedule. The Town reserves the right to contract additional audits or reviews with whomever they choose.
 - g) The Town's Economic Development Corporation (EDC) uses a third party bookkeeping service. They are responsible for managing the day to day financial operations of the Little Elm EDC. Therefore since a separation of duties exists, between the Town and EDC; the auditor will coordinate all inquiries and documents related with the third party bookkeeping service.
 - h) Respondent will be required to present their audit opinion and report to the governing body (Council) in March every year.
 - i) Public Improvement Districts (PID): Auditor is to audit and issue separate Annual Financial Reports for each district, which will be presented to each individual PID Board. The Town contracts with a third party administrator to prepare Public Improvement District (PID) data. The administrator provides the following services annually. This is in addition to previous years annual reports.
 - Account Statements.
 - Journal Entries with all supporting documentation.
 - Workpapers.
 - Accruals and AJE's.
 - Financial Statements.
 - Audit Report including the Notes and MD&A.
 - Any documentation on unusual events that occurred in the year.

***Separate pricing is requested for the audit and annual reports related to PIDs.**

EXHIBIT A

2. **BACKGROUND:** Little Elm, part of the Dallas/Fort Worth Metroplex, maintains a very strong economy and is ranked as one of the fastest growing cities in the state. Little Elm's population exceeds the state average in education and income, and is increasingly trending younger and technologically proficient. The Town's footprint is just over 21 square miles and boasts some 66 linear miles of Lake Shoreline within its boundaries. Little Elm is located approximately 10 miles east of the City of Denton and 33 miles north of downtown Dallas on the northeast shore of Lewisville Lake and is the sixth largest municipality in Denton County.

The Town has experienced rapid population growth over the last twenty years, increasing as follows:

2000 U.S. Census population: 3,646

2010 U.S. Census population: 25,898

2020 U.S. Census population: 46,453

This is an approximate 80% increase from 2010-2020. Including active subdivisions in the ETJ, this figure exceeds 55,000. Little Elm's build-out population is anticipated to be over 90,000.

- a) The services provided by the Town under general governmental functions include police and fire protection, street maintenance, storm drainage, public improvements, planning and zoning, parks operation and maintenance, library services, and administrative services necessary to serve the citizens of Little Elm. In addition, water, wastewater, and solid waste services are operated under an Enterprise Fund concept, with user charges set to ensure adequate coverage of operating expenses and payments on outstanding debt. The Town has one custodial Fund, two Internal Service Funds, and two discretely presented component units.
- b) The Town has a total biweekly payroll of approximately \$1.3 M covering 400 employees.
- c) The Town is organized into 40 major departments/divisions. The accounting and financial reporting functions of the Town are centralized.
- d) More detailed information on the government and its finances can be found in the following documents:
 - i) 2021-2022 Budget
 - ii) Annual Financial Report for the Year Ended September 30, 2021.
- e) All documents can be found on-line on the Town's website, www.littleelm.org/finance.

3. **FUND STRUCTURE:** The Town uses the following fund types and account groups in its financial reporting:

	Number of Individual Funds	Number of Reporting Level Funds
General Fund	2	1
Special Revenue	15	15
Debt Service	1	1
Capital Projects	6	2
Enterprise	5	2
Discretely Presented Component Units	2	2
Agency Funds	6	1
Internal Service Funds	2	1

4. **BUDGETARY BASIS OF ACCOUNTING:** The Town prepares its governmental fund type budgets on a basis consistent with generally accepted accounting principles.
5. **FEDERAL AND STATE FINANCIAL ASSISTANCE AWARDS:** For the FY 2021 audit the Town received funds from the following Federal funding.
- a) United States Fish and Wildlife Service

EXHIBIT A

- b) US Department of Homeland Security
- c) COVID-19 Coronavirus Relief Funds
- d) State & Local Fiscal Relief Funds
- e) US Department of Transportation
- f) Federal Emergency Management Agency

6. **PENSION PLANS:** The Town provides pension benefits for all of its full time employees through a non-traditional, joint contributory, hybrid benefit plan in the state-wide Texas Municipal Retirement System (TMRS), an agent multiple-employer public employee retirement system.
7. **COMPONENT UNITS:** In addition to the primary government, the Town includes two discretely presented component units. The Town's sales tax corporations are the Little Elm Economic Development Corporation (LEEDC) and Little Elm Community Development Corporation (LECDC). Although legally separate, these component units operate under the criteria of board appointment and removal by the Town Council. Approval and oversight of capital projects as well as budget appropriations and approval is under the authorization of Town Council.

The component units are to be audited as part of the audit of the Town of Little Elm's financial statements.

8. **TAX INCREMENT REINVESTMENT ZONES & PUBLIC IMPROVEMENT DISTRICT**

Town Council has created six (6) Public Improvement Districts ("PID"), and participates in four (4) Tax Increment Reinvestment Zones ("TIRZ") (#3, #4, #5, and #6).

See **Exhibit A** - Annual Comprehensive Financial Report.

9. **MAGNITUDE OF FINANCE OPERATIONS:** The Finance Department is headed by the Chief Financial Officer and consists of seventeen (17) employees. The principal functions performed and the numbers of employees assigned to each are as follows:

Function	Number of Full Time Employees
Accounts Payable	1.00
Senior Accountant	1.00
Accountant	1.00
Buyer	1.00
Municipal Court	4.00
Purchasing Manager	1.00
Budget Specialist	1.00
Controller	1.00
Utility Supervisor	1.00
Customer Service Representatives	3.00
Assistant Director	1.00
Chief Financial Officer	1.00

10. **COMPUTER SYSTEMS:** The Town utilizes the following systems for transactions:
- a) STW for the financial functions, payroll function, and utility billing. *The Town is in the process of a financial ERP conversion to Tyler Munis, expecting to go live in FY 2023.
 - b) Tyler Incode for Municipal Court.
 - c) The Town outsources EMS billing/collections, Alarm Permitting and Photo Enforcement.
11. **INTERNAL AUDIT FUNCTION:** The Town does not have an internal audit staff.
12. **PRIOR AUDIT REPORTS:** All prior years' audit reports can be found on-line on the Town's

EXHIBIT A

website, www.littleelm.org/finance.

14. **TIME SCHEDULE:** The Respondent shall submit a timeline schedule for the 2021-2022 Fiscal Year Audit.
- a) The Respondent shall submit for review and approval by the Chief Financial Officer, Assistant Finance Director, and Controller, a schedule of audit functions as follows:
 - i) Interim work start and completion dates. Interim work is to be performed preferably in August and no later than September 15.
 - ii) A detailed audit plan provided to the Town by September 15 of the year audited. The plan will include detailed expectations of the Town staff including a list of all schedules and analytical reports to be provided for the audit with due dates for completion.
 - iii) The Respondent shall use their best efforts to complete all fieldwork no later than January 31, 2023, and each subsequent year.
 - iv) The Respondent and Town staff shall meet weekly during the onsite fieldwork for discussion and progress reports.
 - v) The Respondent shall use their best efforts to have drafts of the audit reports, the ACFR, and recommendations to management for review by the Chief Financial Officer no later than thirty days from the last day of onsite field work and each subsequent year.
 - vi) Entrance conferences, progress reporting, and exit conferences shall be developed for audits of current and future fiscal years, provided, the Town exercises its option for additional audits. Successful Respondent shall schedule them with the Chief Financial Officer.
15. **WORKING PAPER RETENTION AND ACCESS TO WORKING PAPERS:** All working papers and reports shall be retained, at the successful Respondent's expense, for a minimum of three (3) years, from completion of the audit, unless the firm is notified, in writing by the Town, to extend the retention period. The successful Respondent shall make working papers accessible, upon request, to the following parties or their designees:
- a) Town of Little Elm
 - b) State or Federal Grant Agencies
 - c) U.S. General Accounting Office
 - d) Parties designated by the federal or state governments or by the Town as part of an audit quality review process
 - e) Auditors of entities of which the Town is a sub recipient of grant funds.
 - f) In addition, the Respondent shall respond to inquiries of successor auditors and allow successor auditors to review working papers related to matters of continuing accounting significance.
16. **TOWN RESPONSIBILITIES:** The Town will provide the following to the successful Respondent:
- a) The Finance Department staff and responsible management personnel will be available during the audit to assist the successful respondent by providing information, documentation, and explanations. The preparation of confirmations will be the responsibility of the Town and the respondent. In addition, hours of clerical support, a total of which will be agreed upon by the Chief Financial Officer and Respondent, will be available to the Respondent for document preparation.
 - b) Prepared by Client (PBC): Town staff will prepare and provide schedules and reports as requested from the auditors.
 - c) The Town will provide workspace, desks, and chairs.
 - d) The successful Respondent will have access to telephone lines, photocopying facilities and FAX machines.

EXHIBIT A

- e) VPN access to financial ERP system.
17. **EDC RESPONSIBILITIES:** The EDC will provide the following to the successful Respondent:
- a) The EDC staff and responsible management personnel will be available during the audit to assist the successful respondent by providing information, documentation, and explanations. The preparation of confirmations will be the responsibility of the EDC and the respondent.
 - b) Prepared by Client (PBC) - EDC staff will prepare and provide schedules and reports, as requested from the auditors.
18. **DELIVERABLES:** The successful Respondent shall provide, but not be limited, to the Town the following reports:
- a) A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles.
 - b) A report on internal control over financial reporting and on compliance and other matters based on an audit of the financial statements.
 - c) A report on compliance with requirements that could have a direct and material effect on each major program and on internal control over compliance.
 - d) In addition to the financial statements, Respondent shall prepare the Town's Annual Comprehensive Financial Report (ACFR) with the assistance of the Chief Financial Officer, Assistant Finance Director, and Controller. Respondent shall provide clerical assistance to the Town regarding revision. The final ACFR document shall be in a format ready for printing and duplication.
19. **REPORT COMPLIANCE:** In the required report(s) on compliance and internal controls, the Auditor shall communicate any reportable conditions found during the audit.
- a) Reportable conditions that are also material weaknesses shall be identified as such in the report(s). Non-reportable conditions discovered by the auditors shall be reported in a separate letter to management, which shall be referred to in the report(s) on compliance and internal controls.
 - b) The report on compliance and internal controls shall include all material instances of noncompliance. All nonmaterial instances of noncompliance shall be reported in a separate management letter, which shall be referred to in the report on compliance and internal controls.
 - c) Report(s) regarding irregularities and illegal acts shall be immediately sent, as they become evident, to the following parties: Town Manager and Chief Financial Officer.
20. **SPECIAL CONSIDERATIONS:** The Town will send its annual comprehensive financial report to the Government Finance Officers Association of the United States and Canada for review in their Certificate of Achievement for Excellence in Financial Reporting program. It is anticipated that the auditor will be required to provide special assistance to the Town to meet the requirements of that program.
- a) The Town possibly could prepare an official statement in connection with the sale of debt securities, which will contain the auditor's report, the basic financial statements, the notes to the financial statements and the required supplementary information. The Auditor shall be required, if requested by the fiscal advisor and/or the underwriter, to issue a "consent and citation of expertise" as the Auditor and any necessary "comfort letters."
 - b) The Schedule of Expenditures of Federal Awards and related auditor's report, as well as the reports on compliance and internal controls are not to be included in the comprehensive annual financial report, but are to be issued separately.
21. **FINAL REPORT:** The successful Respondent shall prepare the final draft financial statements, notes and all required supplementary schedules and statistical data no later than March and each subsequent year. The Town will provide all recommendations, revisions, and suggestions for improvement to the Respondent.

EXHIBIT A

The Chief Financial Officer will complete a review of the draft report as expeditiously as possible. It is not expected that this process will exceed two (2) weeks. During that period, the Respondent shall be available for meetings that may be needed to discuss the reports. Once all issues for discussion are resolved, the final signed report shall be delivered to the Chief Financial Officer.

EXHIBIT B

RFP 2022-13 -Audit Services

		Weaver and Tidwell, LLP	
Fiscal Year	QTY	Unit Price	Extended
Year 1 - FY 2022	1		\$ 74,225.00
PIDs - year 1	6	\$ 7,250.00	\$ 43,500.00
Year 2 - FY 2023	1		\$ 76,000.00
PIDs - year 2	6	\$ 7,250.00	\$ 43,500.00
Year 3 - FY 2024 1st Option to Renew	1		\$ 77,500.00
PIDs - year 3	6	\$ 7,250.00	\$ 43,500.00
Year 4 - FY 2025 2nd Option to Renew	1		\$ 79,000.00
PIDs - year 4	6	\$ 7,250.00	\$ 43,500.00
Year 5 - FY 2026 3rd Option to Renew	1		\$ 81,000.00
PIDs - year 5	6	\$ 7,250.00	\$ 43,500.00

RFP 2022-13 Audit Services Evaluation

		BKD, LLP	McConnell and Jones, LLP	Pattillo, Brown, & Hill, LLP	Weaver & Tidwell, LLP	Whitley Penn, LLP
5 Year Cost:		\$ 500,950.00	\$ 528,430.00	\$ 490,000.00	\$ 561,725.00	\$ 571,390.00
Evaluation Criteria	Value					
Quality and cost of auditing service offered	30	29	28	30	26	26
Respondents demonstrated experience and strength to provide the services	25	25	10	18	23	19
Respondents methodology, work plan, and time line	25	18	18	18	25	15
Respondents previous experience and references	15	15	5	12	15	15
Thoroughness and clarity of response to RFP	5	5	3	3	5	5
Total:		100	92	64	81	94
						80



Date: 06/21/2022
Agenda Item #: 5. E.
Department: Administrative Services
Strategic Goal: Ensure strong relationship within the community and region
Staff Contact: Doug Peach, Deputy Town Manager

AGENDA ITEM:

Consider Action to Approve **Resolution No. 0621202202 Consent for Utility and Road Bonds for Highway US 380 MMD.**

DESCRIPTION:

The Highway 380 MMD No. 1 is the district that overlays the Union Park development. The MMD intends to issue \$9,000,000 in Unlimited Tax Road Bonds, Series 2022 and \$13,000,000 Unlimited Tax Utility Bonds. These bonds are to pay for infrastructure improvements of the district. This consent resolution is in accordance with section 375.207 of the Texas Local Government Code and the development agreement between the Town of Little Elm and the Highway 380 MMD No. 1.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Resolution Consent Utility and Road Bonds

RESOLUTION NO. 0621202202

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS GIVING CONSENT TO THE ISSUANCE OF UNLIMITED TAX ROAD BONDS AND UNLIMITED TAX UTILITY BONDS BY HIGHWAY 380 MUNICIPAL MANAGEMENT DISTRICT NO. 1, A CONSERVATION AND RECLAMATION DISTRICT LOCATED WITHIN THE CORPORATE BOUNDARIES OF THE TOWN.

WHEREAS, the Town of Little Elm, Texas (the "Town") is a Texas municipal corporation as defined by the Texas Local Government Code; and

WHEREAS, Highway 380 Municipal Management District No. 1 (the "District") is a conservation and reclamation district operating pursuant to Chapter 49 of the Texas Water Code and Chapter 375 of the Texas Local Government Code, and is located within the corporate boundaries of the Town; and

WHEREAS, pursuant to Section 375.207 of the Texas Local Government Code, the District is required to obtain the Town's approval of the issuance of bonds prior to the issuance thereof; and

WHEREAS, the District desires to proceed with the issuance of Highway 380 Municipal Management District No. 1, Unlimited Tax Road Bonds, Series 2022, in an amount not to exceed \$9,000,000, and Unlimited Tax Utility Bonds, Series 2022, in an amount not to exceed \$13,000,000 (collectively, the "Bonds"); and

WHEREAS, the District desires that the Town consent to the issuance of the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS:

SECTION 1. That the findings contained in the preamble of this Resolution are determined to be true and correct and are hereby adopted as part of this Resolution.

SECTION 2. That the City Council of the Town hereby specifically gives its written consent to the issuance of the Bonds.

PASSED AND APPROVED by the City Council of the Town of Little Elm, Texas on this _____ day of _____, 2022.

Curtis J. Cornelious, Mayor
Town of Little Elm, Texas

ATTEST:

Caitlan Biggs, Town Secretary
Town of Little Elm, Texas

(SEAL)



Date: 06/21/2022
Agenda Item #: 5. F.
Department: Development Services
Strategic Goal: Maximize community recreation and leisure activities
Staff Contact: Wesley Brandon, Town Engineer

AGENDA ITEM:

Consider Action to Approve a **Construction Manager at Risk Contract to AUI Partners, LLC for the Lakeside Youth Sports Improvements Project (Contract #2022-12).**

DESCRIPTION:

In April 2022, town staff issued a request for qualifications (RFQ) seeking contractors experienced in completing youth sports facilities. Three firms responded to the RFQ, and after the responses were evaluated by staff, AUI Partners was selected as the most qualified firm to complete the project. The design plans are complete, and the contractor is preparing final pricing for the project.

The contractor has received bids from suppliers and subcontractors interested in participating in the project. Staff is currently working to identify cost effective alternatives to several site furnishings and other items that exceeded their anticipated cost. In order to begin scheduling the initial construction work and material orders, staff is requesting approval to award the contraction contract based on the current funding identified in the project budget. This will help ensure the contractor is able to complete the project in time for the 2023 youth softball season. Any increases to this initial contract amount will require additional approval from Town Council.

The Lakeside Youth Sports Improvements Project includes the construction of new ballfield improvements at the existing Lakeside Middle School property located on Lobo Lane. The key project improvements include:

- Three lighted softball fields
- Artificial turf playing surfaces (under separate contract)
- Restroom and concession area
- Site utilities
- Landscape and irrigation improvements
- One practice field (natural turf, unlighted)

Other additive items that were programmed into the design but will likely require additional funding include resurfaced tennis and pickleball courts, concrete loop trail, and covered basketball court.

Construction Manager at Risk (CMAR) is a construction delivery method that requires a commitment by the construction manager to deliver the project within a Guaranteed Maximum Price (GMP). The construction manager acts as a consultant to the Town in the design development phases (preconstruction), and as the general contractor during the construction phase.

BUDGET IMPACT:

Funding for the project is allocated within the capital improvement program budget.

Proposed Contract Amount: \$4,200,000

RECOMMENDED ACTION:

Staff recommends approval.

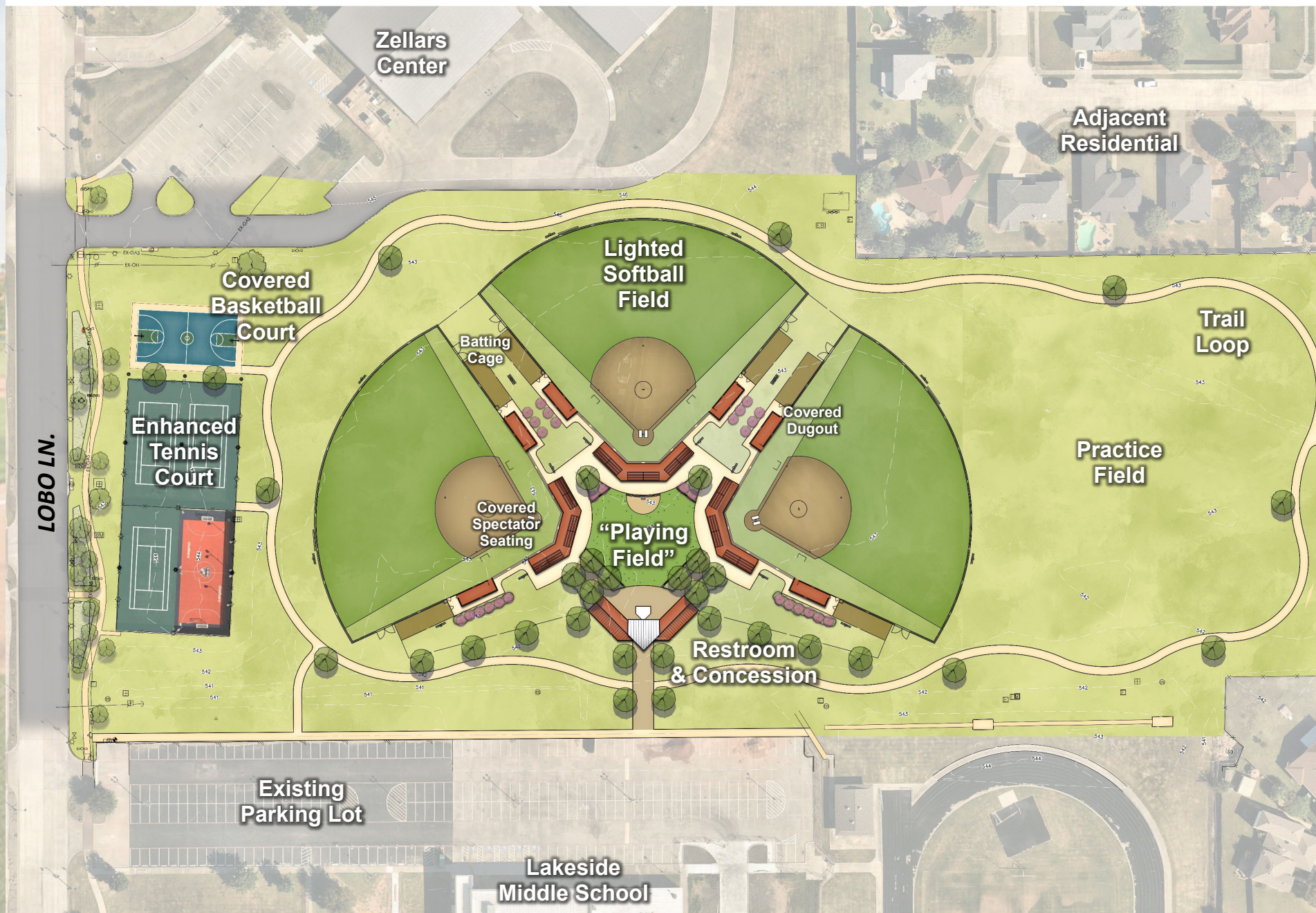
Attachments

Project Concept Plan

Draft Contract

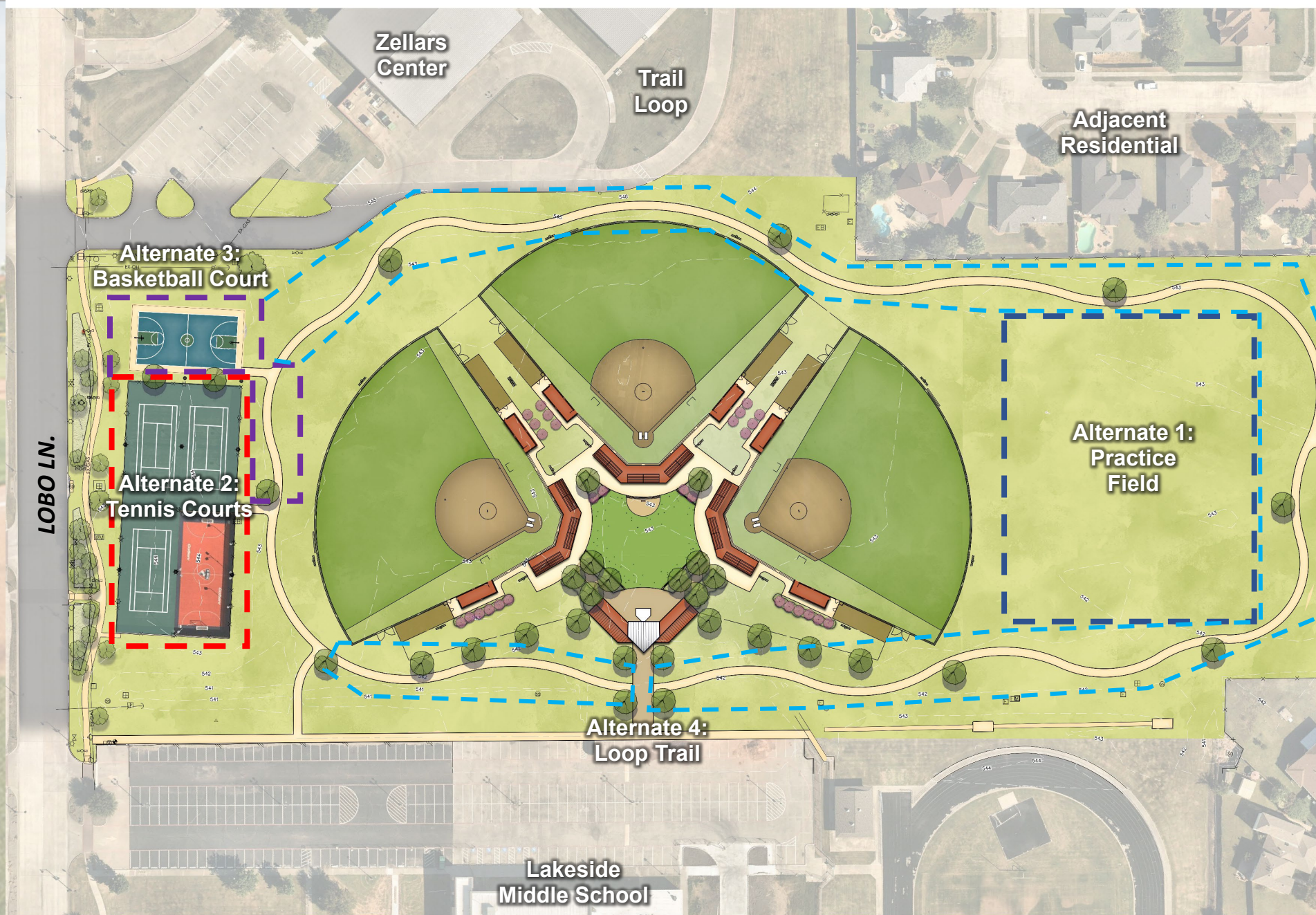
Site Plan

- Lighted Softball Fields
- Practice Field
- Restroom & Concession Bldg.
- “Playing Field”
- Enhanced Tennis Court
- Concrete Trail Connection
- Landscape Improvements
- Irrigation Improvements



Site Plan - Alternates

- Alternate 1: Practice Field
- Alternate 2: Tennis Courts
- Alternate 3: Basketball Court
- Alternate 4: Loop Trail



TOWN OF LITTLE ELM, TEXAS
CONSTRUCTION MANAGER AT RISK AGREEMENT

For the consideration hereinafter set forth, _____ (“Contractor” or “Construction Manager”), a _____ corporation with an office in _____, agrees to provide construction services to the TOWN OF LITTLE ELM, TEXAS (“Town” or “Owner”), for the project and work identified in this Construction Manager at Risk Agreement (“Agreement”). This Agreement is effective as of _____, 20____, and unless earlier terminated pursuant to the provisions hereof, shall continue through the completion of performance of the Work specified hereunder.

WHEREAS, Owner desires to obtain professional construction and construction manager services from Contractor for the _____ project (“Project”); and

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

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

ARTICLE 1. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

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

1. This Agreement;
2. Standard Form of Agreement Between Owner and Construction Manager as Constructor, AIA Document A133-2019
3. Guaranteed Maximum Price Amendment, AIA Document A133-2019, Exhibit A;
4. Supplementary Conditions to AIA Documents A133-2019 and A201-2017;
5. (a) The General Conditions of the Contract for Construction, AIA Document A201-2017, as amended by the Supplementary Conditions;
(b) Whenever the term “AIA Document A201-2017, General Conditions of the Contract for Construction” or similar reference is used in the Contract Documents, including but not limited to the Standard Form of Agreement Between Owner and Construction Manager as Constructor, AIA Document A133-2019, and the Guaranteed Maximum Price Amendment attached to A133-2019, then such reference shall mean the AIA Document A201-2017 referenced in this section, as amended in this Agreement by the Supplementary Conditions.
6. Any Addenda adopted and agreed to by Owner and Contractor applicable to the Project;
7. The Specifications contained in the Project Manual adopted and agreed to by Owner and Contractor applicable to the Project;
8. The Drawings adopted and agreed to by Owner and Contractor applicable to the Project;
9. Other documents that form part of the Contract Documents:
 - a. Contractor’s Qualification Statement;
 - b. Advertisement for Bids;
 - c. Instruction to Bidders;
 - d. Bid form;

- e. Certified Sealed Proposal submitted by Contractor; and
10. Other amendments and/or modifications to the above documents as are mutually agreed upon by Contractor and Owner.

These Contract Documents are incorporated by reference into this Agreement as if set out herein in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed above. In the case of inconsistency between the documents that is not resolved by the order in which they are listed above, the better quality or greater quantity of Work shall be provided in accordance with the Owner's interpretation. Should Drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by the Architect in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small scale drawings.

ARTICLE 2. EMPLOYMENT OF CONTRACTOR

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

B. The Contractor's and Owner's representatives on the Project(s) are listed as follows:

1. Contractor's Representative:

2. Owner's Representative:

Wesley Brandon, P.E.
Town Engineer
100 West Eldorado Parkway
Little Elm, Texas 75068

Neither the Owner's nor the Contractor's representative shall be changed without ten (10) days' prior written notice to the other party. Additionally, the roles and responsibilities of the following individuals shall not be materially changed during the Project duration, provided that their employment with the Contractor continues, and any such proposed change in the following personnel must have prior written approval by the Owner:

- _____ Project Executive providing a minimum of ____% time commitment to the Project(s).
- _____ Project Manager providing a minimum of ____% time commitment to the Project(s).
- _____ Project Superintendent providing a minimum of ____% time commitment to the Project(s).

ARTICLE 3. SCOPE OF SERVICES

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

ARTICLE 4. CONTRACTOR'S LIABILITY

A. Acceptance of the Work by Owner shall not constitute nor be deemed a release of the responsibility and liability of Contractor, its employees, associates, agents or subcontractors for the accuracy and competency of their performance of the Work; nor shall such acceptance be deemed an assumption of responsibility by Owner for any defect in the performance of the Work by said Contractor, its employees, associates, agents or subcontractors.

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

C. Owner may deduct from any amounts due or to become due to Contractor any sum or sums owing by Contractor to Owner. In the event of any breach by Contractor of any provision of this Agreement or in the event of any claim against Owner arising out of Contractor's performance under this Agreement, Owner shall have the right to retain out of any payment due or to become due to Contractor an amount determined by Owner to be sufficient to protect Owner from any and all loss, damage or expense therefrom, until the breach or claim has been satisfactorily remedied or adjusted by Contractor. Owner may use these funds to pay replacement or substitute contractors to complete unfinished or defective Work. Owner may withhold payment of some or all of any progress or final payment that would otherwise be due if the Owner determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Owner is entitled to indemnification from Contractor under this Agreement. Amounts withheld under this Article shall be in addition to any retainage.

D. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten (10) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services, if any, made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 5. CONFIDENTIAL INFORMATION

Contractor hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Agreement, which is of a confidential, non-public or proprietary nature. Contractor shall treat any such information received in full confidence and will not disclose or appropriate such confidential information for its own use or the use of any third party at any time during or subsequent to this Agreement. As used herein, "confidential information" means all oral and written information concerning Owner, its affiliates and subsidiaries, and all oral and written information concerning Owner, or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies, or other

documents, whether prepared by Contractor or others, which contain or otherwise reflect such information. The term “confidential information” shall not include such materials that are or become generally available to the public other than as a result of disclosure by Contractor, or are required to be disclosed by a governmental authority under applicable law.

ARTICLE 6. INDEMNITY

NOTWITHSTANDING ANY OTHER PROVISION IN THE CONTRACT DOCUMENTS TO THE CONTRARY:

A. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER, ITS TOWN COUNCIL, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OF THE WORK OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE “INDEMNIFIED ITEMS”). BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY. INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEY’S FEES AND COSTS OF COURT, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEY’S FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

B. IN ITS SOLE DISCRETION, THE TOWN SHALL HAVE THE RIGHT TO APPROVE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION TO DEFEND AND INDEMNIFY THE TOWN. CONTRACTOR SHALL RETAIN APPROVED COUNSEL FOR THE TOWN WITHIN SEVEN (7) BUSINESS DAYS AFTER RECEIVING WRITTEN NOTICE FROM THE TOWN THAT IT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR DOES NOT RETAIN COUNSEL FOR THE TOWN WITHIN THE REQUIRED TIME, THEN THE TOWN SHALL HAVE THE RIGHT TO RETAIN COUNSEL AND THE CONTRACTOR SHALL PAY THESE ATTORNEY’S FEES AND EXPENSES. THE TOWN RETAINS THE RIGHT TO PROVIDE AND PAY FOR ANY AND ALL COSTS OF DEFENDING INDEMNIFIED ITEMS, BUT IT SHALL NOT BE REQUIRED TO DO SO.

C. THE OBLIGATIONS SET FORTH IN THIS ARTICLE SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

D. Contractor shall cause all contracts for subcontracted services to include a like indemnity that shall cover both the Owner and Contractor. Nothing herein shall limit the insurance requirements or applicability of same set forth in this Agreement and the Contract Documents.

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

ARTICLE 7. TERMINATION OR SUSPENSION

A. If the Owner fails to make payments to the Contractor in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Contractor’s option, cause for suspension of performance of Work under this Agreement. If the Contractor elects to suspend performance of the Work, the Contractor shall give ten (10) days’ written notice to the Owner

before suspending performance of the Work. In the event of a suspension of performance of the Work, the Contractor shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of performance of the Work. Before resuming Work, the Contractor shall be paid all sums due prior to suspension and any reasonable expenses incurred in the interruption and resumption of the Contractor's Work.

B. If the Owner suspends the Project, the Contractor shall be compensated for Work performed satisfactorily prior to notice of such suspension. When the Project is resumed, the Contractor may be compensated for expenses incurred in the interruption and resumption of the Contractor's performance of the Work. The Contractor's fee for the remaining Work and the time schedules may be equitably adjusted. If the Owner suspends the Project for more than ninety (90) cumulative days for reasons other than the fault of the Contractor, the Contractor may terminate this Agreement by giving not less than thirty (30) days' written notice.

C. Either party may terminate this Agreement upon not less than thirty (30) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

D. The Owner may terminate this Agreement upon not less than thirty (30) days' written notice to the Contractor for the Owner's convenience and without cause. In the event of termination not the fault of the Contractor, the Contractor shall be compensated for services performed prior to termination.

E. Notwithstanding any other provision in the Contract Documents to the contrary, it is agreed by the parties that: (1) if an order for relief is entered on behalf of Contractor pursuant to Title 11 of the United States Code, (2) if any other similar order is entered under any other debtor relief laws, (3) if Contractor makes a general assignment for the benefit of its creditors, (4) if a receiver is appointed for the benefit of Contractor's creditors, or (5) if a receiver is appointed on account of Contractor's insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any of the above-listed events, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate this Agreement. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be back-charged against the Guaranteed Maximum Price.

ARTICLE 8. CLAIMS AND DISPUTES

A. The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other party arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution set forth in this Agreement within the period specified by applicable law. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Article. To the extent damages are covered by property insurance, the Owner and Contractor waive all rights against each other and against the contractors, employees, agents, and subcontractors of the other party for damages, except such rights as they may have to the proceeds of such insurance as set forth in the Contract Documents. The Owner or the Contractor, as appropriate, shall require of the contractors, employees, agents, and subcontractors of any of them similar waivers in favor of the other parties enumerated herein.

B. Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. The Owner and Contractor shall endeavor to resolve claims, disputes, and other matters in question between them first, informally and, second, by mediation. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request

may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall have fifteen (15) days after receipt of a request for mediation to agree on a mediator. If the parties are unable to agree on a mediator within fifteen (15) days, each party shall have an additional five (5) days to designate a mediator. The two mediators so designated shall then designate a third unbiased mediator who shall be the mediator to conduct the mediation. The decision of the mediator shall be nonbinding. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

C. If the parties do not resolve a claim, dispute or other matter in question through mediation pursuant to this Article, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

ARTICLE 9. INSURANCE AND BONDS

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

1. General Liability: Commercial General Liability insurance, including, but not limited to Premises/Operations (including X, C and U coverage as applicable), Personal & Advertising Injury (with Employment Exclusion deleted), Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$2,000,000.00 per occurrence, \$4,000,000.00 Products/Completed Operations Aggregate, and \$4,000,000.00 General Aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.

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

3. Workers' Compensation: Workers' Compensation insurance with statutory limits; and Employer's Liability coverage with minimum limits for bodily injury: (a) by accident, \$1,000,000.00 each accident, and (b) by disease, \$1,000,000.00 per employee, with a per policy aggregate of \$1,000,000.00.

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

Contractor shall not commence work at the project site(s) under this Agreement until all required insurance has been obtained and appropriate certificates have been submitted to Owner. If Owner is damaged by the failure of Contractor to maintain such insurance as required by the Contract Documents, then Contractor shall bear all reasonable costs properly attributed to such failure.

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

C. With reference to the foregoing required insurance, the Contractor shall endorse applicable insurance policies as follows: (1) a waiver of subrogation in favor of Owner, its officials, employees and

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

D. Pursuant to Texas Administrative Code, Title 28, Section 110.110(c), the following language is hereby included in this Agreement:

REQUIRED WORKERS' COMPENSATION COVERAGE

The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee.

Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage.

By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the division. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

The Contractor agrees to comply with all applicable provisions of Texas Administrative Code, Title 28, Section 110.110, entitled "Reporting Requirements for Building or Construction Projects for Governmental Entities." Under Section 110.110: (1) certain language must be included in this Agreement and in the Contractor's contracts with subcontractors and others relating to the Work, (2) the Contractor is required to submit to the City certificates of coverage for its employees and for all others providing services relating to the Work until all project Work is completed, and (3) the Contractor is required to post certain notices at job sites.

E. The Contractor shall procure and pay for performance and payment bonds applicable to the Work, in accordance with Texas Government Code, Chapter 2253. The performance and payment bonds shall be issued in forms acceptable to Owner. Among other things, these bonds shall apply to any Work performed during Contractor's performance under this Agreement, and to any Work performed during the warranty period after acceptance. The performance and payment bonds shall be issued by a corporate surety that is authorized to issue performance and payment bonds in Texas. Further, the Contractor shall supply to the Owner all capital and surplus information concerning the surety and all reinsurance information concerning the performance and payment bonds upon Owner request.

ARTICLE 10. MISCELLANEOUS

§10.1 Choice of Law

This Agreement shall be governed by the law of the State of Texas, and exclusive venue for any dispute shall be in any court of competent jurisdiction in Denton County, Texas.

§10.2 Severability

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

§10.3 Notice

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

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

If to Contractor:

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

§10.4 Unsatisfactory Work

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

§10.5 Retainage

As is set forth in the Contract Documents, retainage shall be withheld and may be paid to: (a) ensure proper completion of the Work, and the Owner may use retained funds to pay replacement or substitute contractors to complete unfinished or defective Work; (b) ensure timely completion of the Work, and the Owner may use retained funds to pay liquidated damages; and (c) provide an additional source of funds to pay claims for which the Owner is entitled to indemnification from Contractor under the Contract Documents. Retained funds shall be held by the Owner in accounts that shall not bear interest. Retainage not otherwise withheld in accordance with the Contract Documents shall be returned to the Contractor as part of the final payment.

§10.6 No Respondeat Superior

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

§10.7 Conflict of Interest

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

§10.8 Non-Waiver

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

§10.9 Assignment

The Owner and Contractor, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Contractor shall assign this Agreement without the prior written consent of the other party.

§10.10 No Third-Party Beneficiary Created

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

§10.11 Signatures

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

IN WITNESS WHEREOF, the parties execute below:

TOWN OF LITTLE ELM, TEXAS

CONTRACTOR.

Matt Mueller, Town Manager

Signature

Date: _____

Printed Name & Title

Date: _____



Date: 06/21/2022
Agenda Item #: 5. 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 **Interlocal Agreement (ILA) between the Town of Little Elm and the City of Frisco regarding the King Road Expansion Project.**

DESCRIPTION:

In 2013, a development agreement was executed between the Town of Little Elm, the City of Frisco, and CTMGT Frisco I22, LLC. The agreement created an obligation of the town to design and construct a four-lane divided roadway expansion of King Road from Witt Road to the western boundary of the Kings Crossing Subdivision, located approximately 1,700 feet west of Witt Road (Segment "A").

In 2022, the town was awarded \$4,500,000 in funding from Denton County to extend the improvements from its originally-planned location to the intersection of Rose Lane (Segment "B"). The proposed roadway widths and cross-section may vary within this segment to accommodate existing right-of-way constraints.

Town staff has negotiated a proposed interlocal agreement (ILA) with the City of Frisco regarding the funding, design, construction, and continued maintenance of King Road. The ILA includes the following key deal points:

- The Town of Little Elm is responsible for completing the project design, continued maintenance of approximately fifty percent (50%) of the project length, and providing funding to cover seventy-five percent (75%) of the remaining project costs after the Denton County funding is utilized.
- The City of Frisco is responsible for the construction of the project (including procurement), continued maintenance of approximately fifty percent (50%) of the project length, and providing funding to cover twenty-five percent (25%) of the remaining project costs after the Denton County funding is utilized.

BUDGET IMPACT:

Funding for the town's portion of the project cost is allocated within the South Roadway Impact Fee Fund.

\$	6,651,862	Estimated Total Project Cost
\$	4,500,000	Denton County Contribution
\$	537,966	Estimated Frisco Contribution
\$	1,613,897	Estimated Town of Little Elm Contribution

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Draft Interlocal Agreement

TOWN OF LITTLE ELM AND CITY OF FRISCO INTERLOCAL AGREEMENT

This INTERLOCAL AGREEMENT (“Agreement”) is entered into between the TOWN OF LITTLE ELM, TEXAS, a home-rule municipality (“Little Elm”), and the CITY OF FRISCO, TEXAS, a home-rule municipality (“Frisco”). Little Elm and Frisco are sometimes referred to collectively as the “Parties” or individually as a “Party.”

WHEREAS, Little Elm and Frisco have the authority to contract with each other in accordance with the terms of this Agreement pursuant to the provisions of the Interlocal Cooperation Act (the “Act”), Chapter 791, Texas Government Code, which authorizes any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, the Parties have determined that certain road improvements are needed to a portion of King Road that is located approximately 280 feet west of Witt Road to Rose Lane, located in the Town of Little Elm, City of Frisco, City of Hackberry, and Denton County (“King Road”), as shown on the project map attached hereto as Exhibit A and incorporated herein, consisting of a four lane divided roadway from approximately 280 feet west of Witt Road to Anthem Drive and a three lane roadway from Anthem Drive to Rose Lane and all necessary appurtenances related thereto (collectively, the “King Road Project”); and

WHEREAS, the Parties have determined that the agreements, pledges and obligations created by this Agreement are in the best interests of the Parties and that the implementation of the terms of this Agreement will promote the efficient and effective provision of governmental services; and

WHEREAS, the functions and services contemplated to be performed by the Parties under this Agreement are governmental functions and/or services contemplated by the terms of the Act and are functions and/or services that each of the Parties hereto has independent authority to pursue, notwithstanding this Agreement; and

WHEREAS, each Party paying for the performance of governmental functions or services is making those payments from current revenues available to the paying party and all payments are in an amount that fairly compensates the performing party for the services or functions performed under this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged and agreed, the Parties agree as follows:

Section 1: *Construction of King Road*

- A. Little Elm, using the funding sources described in Section 3 of this Agreement, shall be responsible for the design and engineering of the King Road Project using the design criteria set forth in Subsection B and for acquisition of all right-of-way and easements located within Little Elm that are needed for the King Road Project. All design and engineering plans for the King Road Project and any amendments or modifications thereto must be reviewed by and receive written approval from Frisco. In the event that Frisco requests changes to the design standards or criteria set forth in Subsection B, then Frisco shall be responsible for the reasonable and necessary costs directly related to such Frisco-requested changes if approved in writing by Little Elm. It is understood that Little Elm does not control all events needed for the construction of King Road (*i.e.*, right-of-way acquisition within Frisco, utility relocation, development plan approval and other regulatory matters). Nevertheless, Little Elm will take all reasonable and necessary actions within the scope of its responsibility under this Agreement to ensure that the design on the King Road Project shall commence within thirty (30) days after the Effective Date (hereinafter defined) of this Agreement. Little Elm shall ensure compliance with all applicable federal and state laws pertaining to the design and engineering of the King Road Project, including the procurement of such services.
- B. The engineering design of the King Road Project shall include the following requirements and criteria:
1. The King Road Project shall be designed, engineered, and constructed to Frisco Engineering Standards.
 2. From approximately 280 feet west of the intersection of King Road and Witt Road to the intersection of King Road and Anthem Drive, the King Road Project will be designed and constructed to be a four-lane divided roadway. From the intersection of King Road and Anthem Drive to the intersection of King Road and Rose Lane, the King Road Project will be designed and constructed to be a three-lane roadway. The four-lane divided section shall include left turn lanes at the intersections of Anthem Drive, future Rambling Rose Drive at the Washington Tract, and future Drake Lane at the Villages of Creekwood Tract, and a right turn lane at the intersection of future Drake Lane at the Villages of Creekwood Tract. The three-lane section shall include a two-way, continuous center left turn lane.
 3. The design and engineering of the King Road Project shall provide for drainage structures and facilities sized to accept drainage from the City of Frisco properties located on the south side of King Road to allow surface water to drain to Cottonwood Branch on the north side of King Road. Such drainage structures and facilities shall not require additional approval by Little Elm. This

includes the drainage areas from Frisco Lakes by Del Webb, the Washington Tract (The Rose Place), and Villages of Creekwood as depicted in Exhibit D drainage area maps.

- C. Frisco, using the funding sources described in Section 3 of this Agreement, shall be responsible for the procurement, construction, inspection and final acceptance of the King Road Project and for acquisition of all right-of-way and easements located within Frisco that are needed for the King Road Project. In the event that Little Elm requests changes to the design standards or criteria set forth in Subsection B or any element of the construction of the King Road Project, then Little Elm shall be responsible for the reasonable and necessary costs directly related to such Little Elm-requested changes, if approved in writing by Frisco. It is understood that Frisco does not control all events needed for the construction of King Road (*i.e.*, right-of-way acquisition within Little Elm, utility relocation, development plan approval and other regulatory matters). Nevertheless, Frisco will take all reasonable and necessary actions within the scope of its responsibility under this Agreement to ensure that the construction on the King Road Project shall commence within one hundred and eighty (180) days after design completion and acquisition of all necessary right-of-way and easements located in both Frisco and Little Elm, subject to events of force majeure. Frisco shall ensure compliance with all applicable federal and state laws pertaining to the construction of the King Road Project, including the procurement of such services.
- D. Frisco shall have sole discretion to add street lighting and/or enhanced landscaping to the design scope of the King Road Project in accordance with standards established by Frisco, if Frisco so desires, provided that Frisco is responsible for all of the incremental cost increases directly resulting from the same as well as the reasonable and necessary costs to maintain the same. Maintenance responsibility described in Section 4 of this Agreement.
- E. The Parties agree that the obligations set forth in Section 4(b)(B) of that certain Impact Fee and Development Agreement among CTMGT Frisco 122, LLC, Little Elm and Frisco dated May 24, 2013, and filed under Instrument No. 2013-63214 in the Real Property Records of Denton County, Texas (the “2013 Agreement”), are hereby superseded by the provisions of this Agreement. To the extent there is a conflict between the provisions of Section 4(b)(B) of the 2013 Agreement and the provisions of this Agreement, the Parties agree that the provisions of this Agreement shall govern and control.

Section 2: *Sidewalks*

- A. The scope of the King Road Project shall include the installation of, at a minimum, 6-foot wide concrete sidewalk running parallel to the north and south side of the King Road Project designed, engineered, and constructed to Frisco Engineering

Standards. The sidewalks shall connect to existing sidewalks at the intersection of King Road and Witt Road. The sidewalk shall be included in the cost and scope of the King Road Project.

Section 3: *Funding for King Road Project*

- A. Pursuant to the terms of that certain Interlocal Cooperation Agreement between Denton County, Texas, and the Town of Little Elm, Texas, dated September 21, 2021 (“Denton County Agreement”), Little Elm will receive funding from Denton County in an estimated amount not to exceed FOUR MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$4,500,000.00) (the “Denton County Contribution”), intended by Denton County and Little Elm to be used solely to fund the costs of the King Road Project, including costs that are incurred by and the responsibility of Frisco under this Agreement. Little Elm shall provide to Frisco a copy of the fully executed Denton County Agreement on the Effective Date (hereinafter defined) of this Agreement and shall immediately deliver to Frisco any and all amendments or modifications to the Denton County Agreement. Little Elm shall promptly take all actions necessary to apply the Denton County Contribution, regardless of the final amount of the Denton County Contribution, to pay the costs of the King Road Project in accordance with this Agreement. Notwithstanding any statement to the contrary in this Agreement, neither Frisco nor Little Elm shall have any obligations whatsoever under this Agreement, including any obligations with respect to the design or construction of the King Road Project, in the event that the Denton County Contribution, or any portion thereof, is not received by Little Elm.
- B. Frisco shall contribute an amount equal to one-quarter (1/4) of the product of the actual costs of the King Road Project minus the amount of the Denton County Contribution (“Frisco’s Total Contribution”), as reflected in Exhibit C, attached hereto and incorporated herein. No portion of Frisco’s Total Contribution shall be due or payable by Frisco until the total amount of the Denton County Contribution has been used to pay the actual costs of the King Road Project.
- C. In addition to the Denton County Contribution, Little Elm shall contribute an amount equal to three-quarters (3/4) of the product of the actual costs of the King Road Project minus the amount of the Denton County Contribution (“Little Elm’s Total Contribution”) as reflected in Exhibit C, attached hereto and incorporated herein. No portion of Little Elm’s Total Contribution shall be due or payable by Little Elm until the total amount of the Denton County Contribution has been used to pay the actual costs of the King Road Project. Notwithstanding any statement to the contrary in this Agreement, Frisco shall have no obligations of any kind under this Agreement, including any obligations with respect to the design or construction of the King Road Project, in the event that Little Elm’s Total Contribution, or any portion thereof, is not received by Frisco as required under

this Agreement.

- D. As Frisco proceeds with the construction of the King Road Project, Frisco shall periodically submit invoices to Little Elm for reimbursement of the construction and testing costs incurred by Frisco. The invoices shall be submitted on a monthly basis and Little Elm shall reimburse Frisco on a pro rata basis (the balance of each invoice after applying the Denton County Contribution and Frisco's Total Contribution), for all approved expenses related to the King Road Project as provided in this Agreement, provided that all expenditures are made in a manner which are consistent with the terms of this Agreement.
- E. Little Elm shall provide Frisco with copies of reimbursement invoices sent to Denton County and proof of receipt of payment on a monthly basis.

Section 4: *Maintenance of King Road*

- A. The contractor shall be responsible for maintaining the portion of King Road within the King Road Project limits through the construction of the project. Following Final Acceptance of the King Road Project, Little Elm and Frisco shall be responsible for jointly maintaining King Road within the limits of the King Road Project, as shown on the maintenance responsibility map attached hereto as Exhibit B. Little Elm shall maintain King Road from the intersection of King Road and Witt Road to the west to property line separating Villages of Creekwood and the Washington Tract. Frisco shall maintain King Road from the property line separating Villages of Creekwood and the Washington Tract to the City of Frisco city limits along the westside of the Frisco Lakes by Del Webb.
- B. Frisco shall maintain any street lighting and/or enhanced landscaping added to the design scope of the King Road Project as described in Section 1.D. of this Agreement.

Section 5: *Miscellaneous Provisions*

- A. **Termination.** This Agreement may be terminated on the occurrence of either of the following, but only so long as neither Party has awarded a contract for the construction of the King Road Project:
1. Either Party may terminate the Agreement by providing the other Party written notice of termination at least thirty (30) days prior to the anticipated date of termination; or
 2. Mutual agreement of termination of the Agreement, executed in writing by both Parties, without the requisite thirty (30) days prior written notice.

In the event of a termination, a Party performing services hereunder shall be compensated on a pro-rata basis for all services performed to the termination date. Receipt of payment and/or reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.

- B. **Availability of Funds.** The Parties agree that the Party paying for the performance of governmental functions or services under this Agreement shall make those payments only from current revenues legally available to the paying Party. The Parties further agree that funds for the King Road Project are not presently budgeted for Parties' respective performance under this Agreement beyond the end of each Party's 2021-2022 fiscal year. If funds for a Party's performance under this Agreement are not budgeted to continue beyond the 2021-2022 fiscal year, then that Party will give the other Party sixty (60) days' written notice thereof. The Parties shall have no liability for payment of any money for the project after the end of their 2021-2022 fiscal years unless and until such funds are budgeted.
- C. **Agreement.** Little Elm and Frisco shall take all necessary and appropriate actions to effectuate the terms of this Agreement. Nothing in this Agreement creates, or shall be deemed or construed to create: (1) a partnership or joint venture, (2) the relationship of employee-employer or principal-agent, or (3) any liability for one Party with respect to liabilities, obligations, or acts of the other or its employees or contractors, and neither Party nor its employees or contractors will represent that any of them is employed by or has authority to bind the other Party.
- D. **Notice.** Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "**Notice**") herein provided or permitted to be given, made or accepted by any Party to any other Party must be in writing and may be given or served by depositing the same in the United States mail postpaid and registered or certified to the Party to be notified, with return receipt requested, or by delivering the same to an officer of such Party, or by prepaid telegram when appropriate, addressed to the Party to be

notified. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the Parties shall, until changed as hereinafter provided, be as follows:

If to Little Elm:

Town of Little Elm
Attention: Matt Mueller, Town Manager
100 West Eldorado Parkway
Little Elm, Texas 75068
Telephone: (214) 975-0405

With copy to:

Brown & Hofmeister, L.L.P.
Attention: Robert F. Brown
740 East Campbell Road, Suite 800
Richardson, Texas 75081
Telephone: (214) 747-6130

If to Frisco:

City of Frisco
Attention: George Purefoy, City Manager
6101 Frisco Square Boulevard, 5th Floor
Frisco, Texas 75034
Telephone: (972) 292-5105

With copy to:

Abernathy, Roeder, Boyd & Hullett, P.C.
Attention: Ryan D. Pittman
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000

- E. **Incorporation of Recitals.** The recitals set forth above are integral components of this Agreement and will be referred to in interpreting the Parties' intentions, rights, and obligations hereunder.
- F. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to

create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third party beneficiaries by entering into this Agreement.

- G. **Waiver.** Waiver by either Party of any breach of this Agreement, or the failure of either Party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such Party's right thereafter to enforce and compel strict compliance.
- H. **Governmental Immunity.** It is expressly understood and agreed that, in the execution of this Agreement, no Party waives, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.
- I. **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.
- J. **Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Denton County, Texas.
- K. **Assignment.** Neither Party may assign either its rights or its obligations, in whole or in part, under this Agreement without the written consent of the other Party. Any permitted assignment shall not be effective until the assignee shall have assumed all obligations of the assignor under this Agreement.
- L. **Savings/Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- M. **Entire Agreement.** This Agreement embodies the entire agreement between the Parties and may only be modified in a writing executed by all Parties.
- N. **Termination for Convenience.** Either party is entitled to terminate this Agreement for any reason or no reason provided that such termination is effective before the date the construction contract is awarded on the King Road Project. The

party seeking to terminate under this section shall exercise its option to terminate by sending written notice to the other party.

- O. **Force and Effect.** This Agreement shall be effective upon execution by all Parties, and shall continue in full force and effect unless modified in writing by mutual agreement by all Parties. This Agreement may be executed in two or more counterparts, and each counterpart shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. A digital version of any signature hereto shall be deemed an original for all purposes. Each Party represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder.

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement and caused this Agreement to be effective when all the Parties have signed it. The date this Agreement is signed by the last Party to sign it (as indicated by the date associated with that Party's signature below) will be deemed the effective date of this Agreement ("Effective Date").

TOWN OF LITTLE ELM, TEXAS

By: _____

Name: _____

Title: Town Manager

ATTEST:

Name: _____

Title: Town Secretary

APPROVED AS TO FORM:

Name: _____

Title: Town Attorney

STATE OF TEXAS

§

§

COUNTY OF DENTON

§

This instrument was acknowledged before me on the __ day of _____, 2022, by the Town Manager of the Town of Little Elm, Texas, on behalf of said Town.

Notary Public, State of Texas

CITY OF FRISCO, TEXAS

By: _____
Name: GEORGE PUREFOY
Title: City Manager

ATTEST:

Name: KRISTI MORROW
Title: City Secretary

APPROVED AS TO FORM:



Abernathy, Roeder, Boyd & Hullett, P.C.
Ryan D. Pittman, City Attorneys

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2022, by the City Manager of the City of Frisco, Texas on behalf of said City.

Notary Public, State of Texas

Exhibit A Depiction of King Road Project

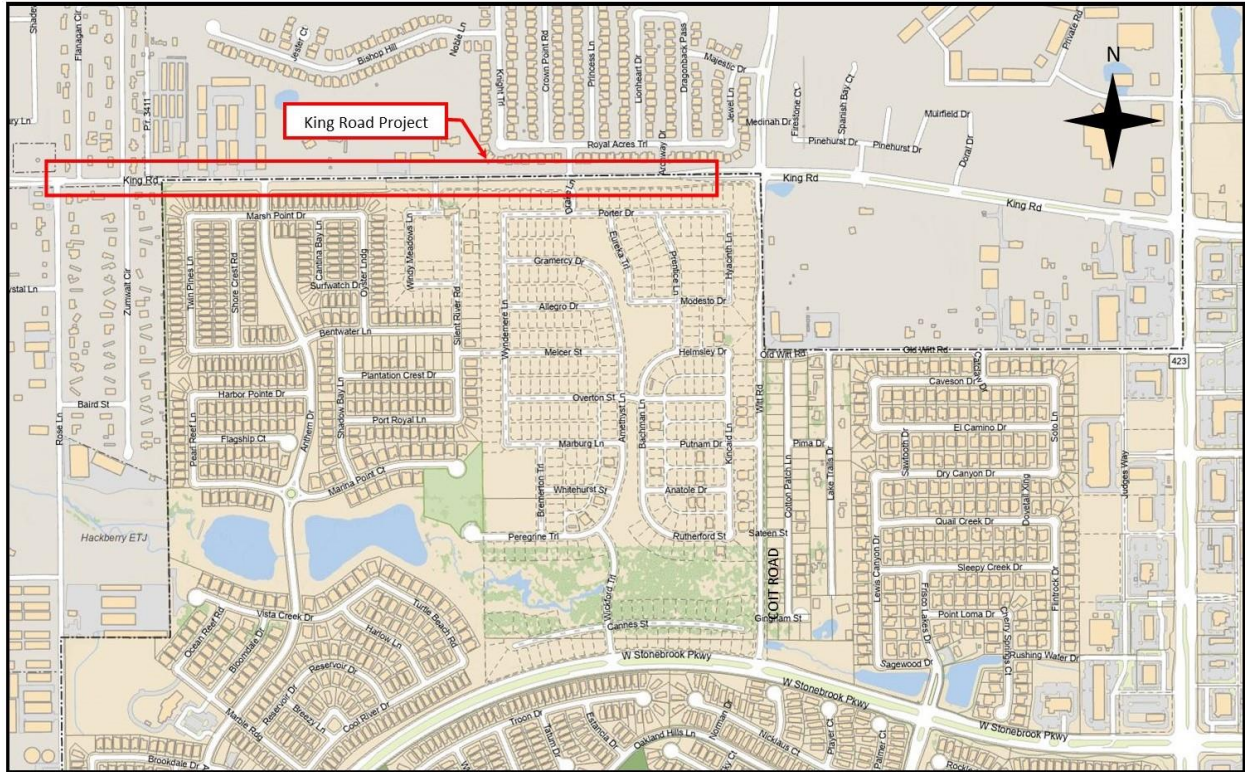


Exhibit B Maintenance Responsibility

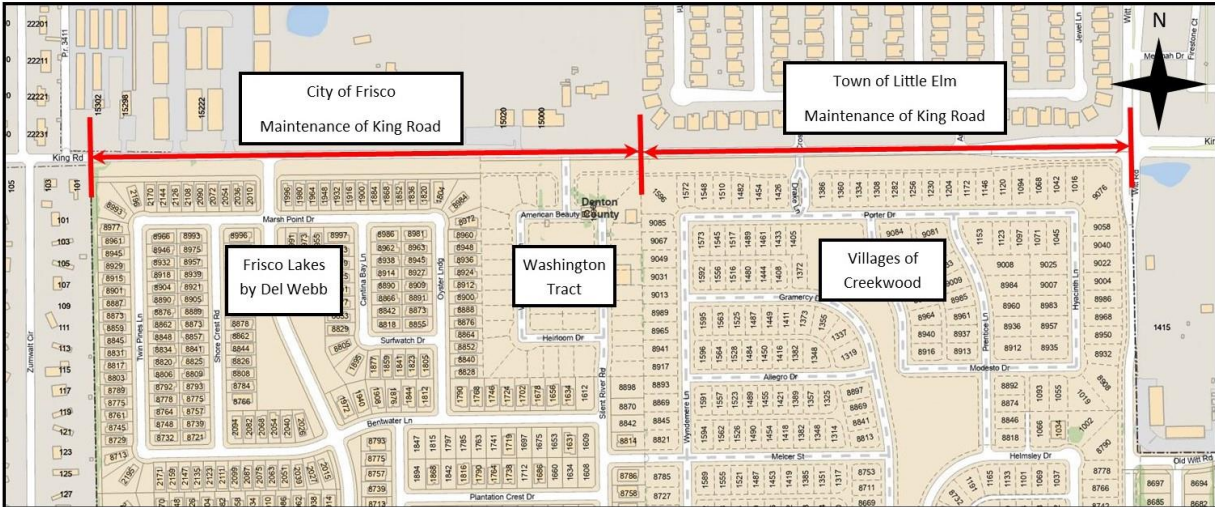
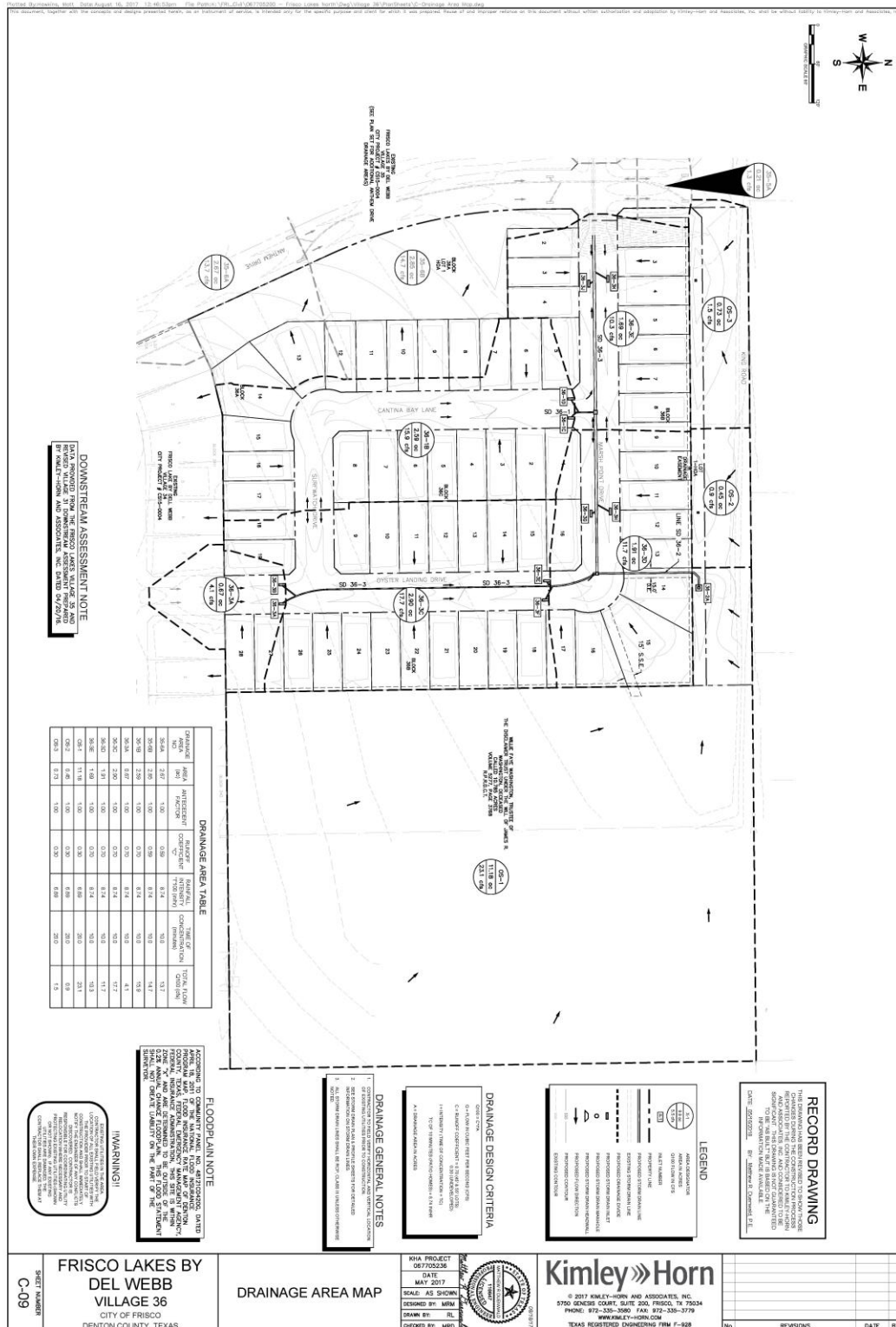
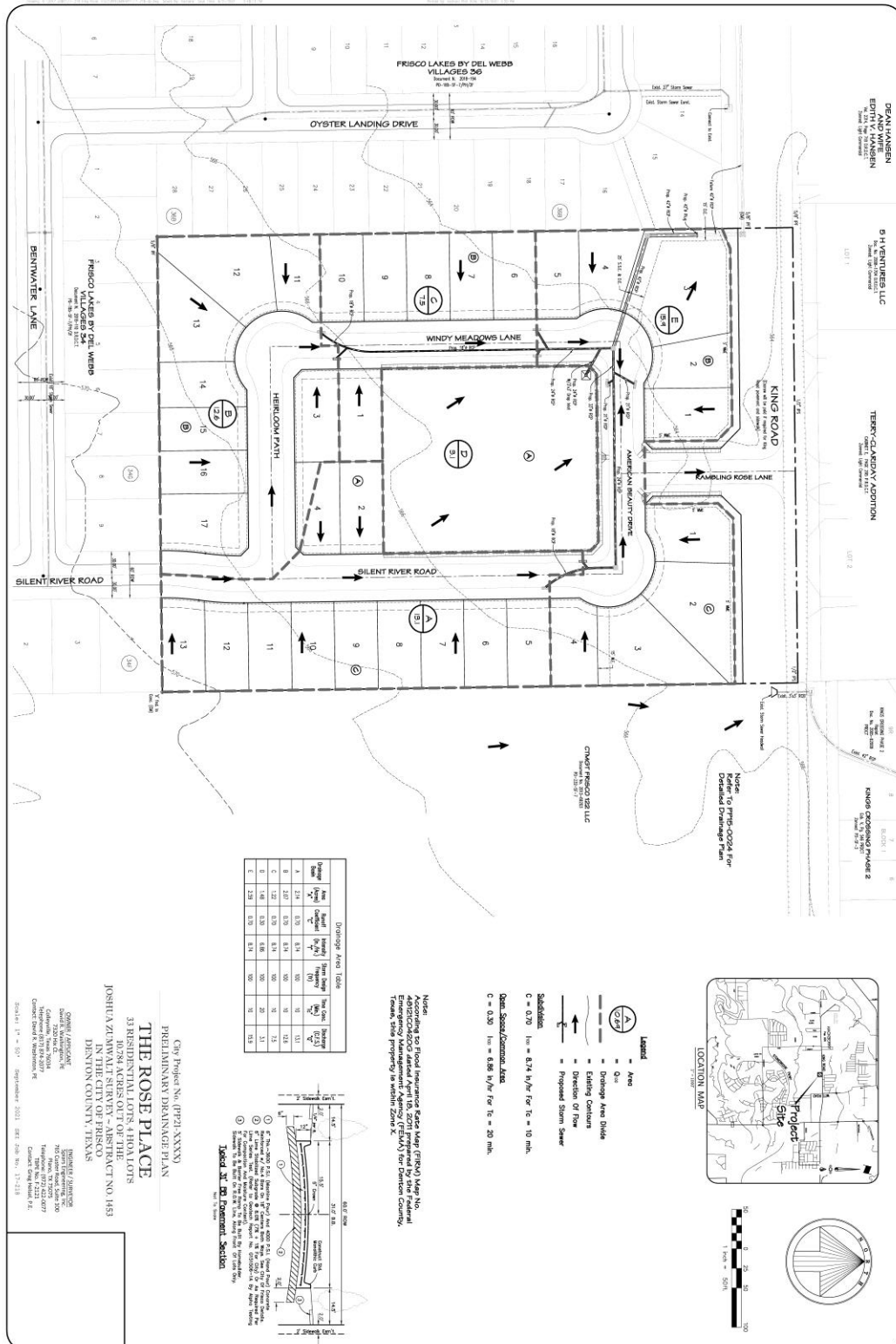


Exhibit C **Cost Estimate**

King Road Reconstruction				
Summary of Design and Construction Cost Share Estimate				
	Total Estimated Costs	Denton County Contribution	Town of Little Elm Contribution	City of Frisco Contribution
Total (includes Estimated Construction Costs, Engineering, Testing, and Right-of-way & Drainage Easements)	\$ 6,651,862	\$ 4,500,000	\$ 1,613,897	\$ 537,966

Page 15 of 18







Date: 06/21/2022
Agenda Item #: 5. H.
Department: Development Services
Strategic Goal: Maximize community recreation and leisure activities
Staff Contact: Wesley Brandon, Town Engineer

AGENDA ITEM:

Consider Action to Approve the **Purchase of Playground Equipment for The Lawn at The Lakefront Project from Whirlix Design, Inc. in an amount not to exceed \$376,400.**

DESCRIPTION:

In 2021, the town completed the design of improvements related to the Lawn at The Lakefront Project, located on Main Street near Eldorado Parkway. Town staff are currently working to complete the pre-construction process with the contractor prior to awarding the contract and beginning construction.

In general, the proposed design includes the following elements:

- Open Space/Lawn Games Area
- Sidewalk and Paving connections to adjacent developments and neighborhood
- Playground
- Interactive Fountain
- Outdoor Seating
- Performance Plaza
- Site Lighting and Utilities
- Landscaping and Irrigation

In order to avoid potential material scheduling and cost issues, staff have received a quote for the proposed playground equipment from Whirlix Design, Inc. The company is listed on BuyBoard (Contract #592-19, Vendor #3120), a Texas-based purchasing cooperative that allows municipalities to purchase pre-procured equipment and forgo the traditional procurement process.

BUDGET IMPACT:

The cost of the equipment is \$376,400. Funding for the town's portion of the project cost is allocated within the town's capital improvement fund.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

- Playground Equipment Quote and Concept Drawing



Date: June 9, 2022
Project: The Lawn at the Lakefront
Location: Little Elm, Texas

To: The Town of Little Elm

BUYBOARD CONTRACT # 592-19, VENDOR # 3120

We are a self-reporting vendor for Buy Board. Please send all purchase orders, payments, etc. directly to The Whirlix Design team.

Proposal Expires: 31 Days from The Above Date

Please note that current fluctuations in material pricing may cause a proposal increase between now and the acceptance of this agreement.

Series: ***Landscape Structures and GORIC***
Surface: ***DuraPlay and FIBAR***
Installation: ***Included: By Factory Trained and Certified Installers***
Quantity/Sizes: ***See Renders***

**Base Bid: Specified Playground Equipment by Landscape Structures
and Safety Surfacing
\$395,220.00**

**BuyBoard Discount applied, new total = \$376,400.00
(Three Hundred Seventy-Six Thousand Four Hundred Dollars)**

- Playground Design by Landscape Structures
 - EPDM Surface Balls by GORIC
- Safety Surfacing by DuraPlay for the Playground area and Includes Stone Base
- Engineered Wood Fiber Safety Surfacing by FIBAR and DOES NOT include Stone Base

Base Bid Includes:

- Full Submittal Package
- Warranty as Specified
- Certified Installation
- Playground Design as Noted
- Safety Surfacing as Noted
- Freight

Base Bid Excludes:

- Sales Tax
- Drainage
- Water Play Events: *Nozzles, Pump, Structure, Etc.*
- Water Play Surface
- Textura, Oracle, Etc.

Whirlix Design Inc.
1761 International Parkway, Suite 125
Richardson, TX 75081



- Professional Liability Insurance
- Construction Management Software Required for Project
- Payment, Performance, or Maintenance Bonds
- Use of Credit Cards as Payment
- Demolition of Existing Structure
- Excavation and Removal of Soil
- Stone Base for Loose-Fill EWF
- Haul off or On Site Disposal of Remaining Dirt
- Tuff Timber or Concrete Border
- Drilling Through Rocky Soil
- Hitting of New or Existing Sprinkler pipes
- Hitting of private electrical, water, sewer, internet, etc. that are not detectible during a commercial line location
- Sod Replacement due to Reasonable Path of Travel to Project or Play Area Location. We need access to project location.
- Surveying of Site
- Craning of Equipment
- Logistical Issues that Prevent Truck or Equipment Access to Site
- Special Augers or Drilling Equipment
- Certified Payroll / Progress Billing
- Setting of Control Points or Benchmarks
- Remobilization Charges Due to Weather or Project Delays
- Offsite Storage of Equipment Due to Weather or Project Related Delays
- On Site Security
- Permitting and Inspections
- Third Party Inspections
- Wet Stamped Engineering Drawings
- Dumpster
- Latrine on Site
- Soil Testing
- Geotechnical Report

Prepared by Greg Hawkins · Whirlix Design Inc · ghawkins@whirlix.com · 972.824.4815

Payment terms will be based, in part, on credit review that is pulled from The Experian Business Division.

TERMS: 60% Deposit Due Upon Approval of Project and 40% Due When Material Ships.

Pursuant to Tex. Prop. Code § 53.159, Whirlix will need any and all Bond information at the time of Signed Proposal, Contract, and / or Deposit.

Whirlix Design Inc.
1761 International Parkway, Suite 125
Richardson, TX 75081



All taxes now or hereafter levied by federal, state or local authority upon the sale of any of the forgoing products to be paid for by the purchaser. All quotations are subject to the conditions printed on the following pages if any and when accepted are subject to the approval of an officer of this company.

TERMS AND CONDITIONS OF SALE

TERMINOLOGY:

The party, to whom this Proposal is submitted will be called the "Purchaser" and Whirlix Design Inc., will be called the "Company." The word "parties" means collectively the Purchaser and the Company.

GENERAL CONDITIONS:

- (a) The Company reserves the right to accept or reject any proposal by Purchaser.
- (b) All proposals accepted by the Company shall be subject to all the terms and conditions stated on the face and back of this Proposal.
- (c) This Proposal, when accepted by an officer of the Company, shall constitute the complete agreement between the parties hereto and it is expressly agreed and stipulated that there are no promises, representations, provisions or understandings of any nature whatsoever pertaining to the subject matter hereof not expressly stated herein.
- (d) No modification of this Proposal and no modification of any ensuing agreement shall be of any force and effect unless the same shall be in writing, signed by the duly authorized representative of the Purchaser and thereafter accepted by an officer of the Company, indicating the agreed price and schedule adjustment, if any.
- (e) All provisions of the contract ensuing from this Proposal shall be subject to all restrictions and regulations of the United States, of any State Government or any subdivision or agency thereof, whether imposed by legal or administrative authority or by voluntary cooperation with any agency, public or private, in existence at the time the Company accepts this Proposal. The goods and/or services described herein (or on the specification provided herewith) comply with applicable safety and health standards issued pursuant to the Occupational Safety and Health Standards Act of 1970 ("the Act") and in effect on this date as such standards are interpreted and understood by the Company. These standards may be amended and/or their meaning may be clarified prior to shipment or performance, and if such change or clarification requires changes in the goods and services described herein, the Company shall make the necessary changes available to the Purchaser. Purchaser shall pay the Company for any and all such changes at the Company's prices therefor in effect at time of shipment or performance, as the case maybe. The foregoing provisions shall not be construed to modify or affect in any manner whatsoever the Company's disclaimer of any liability for consequential damages contained elsewhere in these terms and conditions of sale.
- (f) The Company shall be excused from all responsibility or liability for nonperformance or delayed performance caused by failure of the Purchaser to convey information necessary for the Company to complete its work, any labor difficulty, fire, flood, accident, transportation difficulty, material or fuel or power shortage, war, governmental action or any contingency of whatsoever nature, in whole or in part, beyond its control. If, during the period of delayed performance resulting from any cause in whole or in part beyond the Company's control, the Company's costs are increased, the Company shall be entitled to pass those cost increases on to the Purchaser and Purchaser hereby agrees to pay same. If any delay not within the Company's control, in whole or in part, prevents performance for twelve (12) months or more, the Purchaser or the Company may cancel the remaining unperformed portion of this Proposal.
- (g) The provisions of the contract ensuing from this Proposal shall be interpreted and enforced in accordance with the laws of the state of Texas.
- (h) The provisions of the contract ensuing from this Proposal shall be binding upon the heirs, administrators, executors, legal representatives, successors or assigns to the parties hereto.
- (i) If installation is included in this Proposal, the Purchaser shall provide at no cost to the Company water, electricity, telephone and sanitary facilities unless otherwise agreed in writing. If the installation superintendent finds that these utilities are not available or that, for any other reason the site is not ready for installation, it shall be the obligation of the Purchaser to assume all costs occasioned by failure to timely supply such utilities, proper information or adequate storage.
- (j) It is agreed that the material or equipment described on the face hereof is not consumer goods and that title thereto remains in the Company until the total price has been paid in cash, at which time title will pass to the Purchaser, unless the Terms of Payment as described on the face hereof otherwise provide.
- (k) To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless Purchaser from and against all claims, damages, losses and expenses, including but not limited to attorneys fees arising or resulting from performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the work itself) including loss of use resulting there from, but only to the extent of the companies negligence. In any and all claims against the Purchaser by any employee of the Company the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of changes, compensation or benefits payable by the Company under worker's compensation acts, disability benefits acts or other employee benefit acts. The obligation of the Company assumed hereunder shall in no event be construed to extend to the liability of any architect or engineer retained by the Purchaser or others. In no event shall the Company be liable to the Purchaser on a claim of any kind, including negligence, for any interruption of operation, loss of anticipated profits or for special, indirect or consequential damages of any nature. The Purchaser shall indemnify and hold the Company harmless from any loss or damage to the Company's work or material resulting from weather, fire, flood, windstorm, other trades or any other peril or cause not within the exclusive control of the Company.
- (l) Any amount past due shall accrue interest at 1.5% per month.

Whirlix Design Inc.
1761 International Parkway, Suite 125
Richardson, TX 75081



- (m) The Company shall be entitled to recover all legal fees and other costs of collection of payment from Purchaser.
- (n) Purchaser shall, upon notice of completion of installation of each separable unit of Company's work, inspect same. The Purchaser shall conclusively be presumed to have made complete and final acceptance thereof unless written objection is conveyed within ten (10) days of Company's notice.
- (o) Any dispute between the parties arising out of or pertaining in any way to this Proposal, the contract ensuing from it and/or any goods purchased or work performed by the Company shall, at the Company's sole option, be resolved by binding arbitration held in or such other location as the Company may select and give notice of said location to Purchaser.

PRICES:

Unless otherwise specifically stated on the face of this proposal, all prices are:

- (a) F.O.B. shipping point;
- (b) Subject to revision to conform to the Company's price in effect at time of shipment;
- (c) Quoted on delivered basis where installed by others to include delivery to nearest freight station or railroad;
- (d) Do not include the cost of any surety bond for performance or payment of the Company's work, and
- (e) Based on full-time, continuous labor without interruption during regular working hours until completion and subject to revision if the Purchaser requires overtime work or changes to the work, including additional time for performance, increased labor costs, overhead and profit.

SHIPPING CONDITIONS:

Unless otherwise specifically stated on the face hereof, all deliveries and shipments are subject to the following conditions:

- (a) F.O.B. shipping point, with no transportation or other allowances;
- (b) Partial shipments may be made at the Company's sole discretion. Payment for such partial shipment(s) shall be made in the proportion of the contract price that the partial shipment bears to the whole, in accordance with the terms of payment set forth on the face hereof, and
- (c) Shipping dates are approximate. It shall be the responsibility of the Purchaser to advise as to the earliest shipping dates when material may be conveyed, as governed by actual building conditions. If shipment is made and the building is not ready to receive the equipment, the Purchaser must arrange storage in a dry place and assume responsibility for same.

MAINTENANCE:

After delivery the Company shall have no responsibility for maintenance and Purchaser agrees to maintain the material or equipment at its own expense, or until the arrival of the Company's installers.

CLAIMS:

The Company's responsibility for loss, damage, delay, or non-delivery ceases upon delivery of material or equipment to a public carrier, and any such claim must be filed against the carrier by the consignee or the Purchaser. Claims for shortages, errors in packing or overcharges must be made to the Company within twenty (20) days after receipt of shipment or such claim shall be deemed to have been waived.

CANCELLATIONS OR POSTPONEMENTS:

- (a) No contract ensuing from this Proposal is subject to cancellation or postponement by the Purchaser except upon written consent of the president of Whirlix Design Inc.
- (b) Any such duly authorized cancellation or postponement shall be subject to a charge to reimburse the Company for all costs incurred in connection therewith, including reasonable profit and damages for Company's work to date of termination.
- (c) The Company reserves the right to refuse shipment during any period when, in its sole judgment, the Purchaser's credit is unsatisfactory, or until receipt of full or partial advance payment.

SIZES AND WEIGHTS:

Measurements, dimensions and weights are subject to variations and are not guaranteed by the Company.

LIMITED WARRANTY:

As the exclusive limited remedy of the Purchaser, the Company warrants the equipment or material listed on the face hereof to be free from defects in material or workmanship under normal use and service, its obligation under this warranty being limited to the repair or replacement, F.O.B. its factory, for any part or parts of its own manufacture which shall, within one (1) year after date of shipment of such equipment or material to the Purchaser, be returned to it with transportation charges prepaid and of which Company has received written notice of such alleged defects and further provided that this material or equipment shall have been maintained in its original installation or shall have been in the continuous possession of the original user. This warranty is expressly in lieu of all other express or implied warranties including, but not limited to, any warranty of merchantability or fitness for a particular purpose, and of all other obligations and liabilities on the Company's part. The Company neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of its material or equipment. There are no warranties except those stated in the Proposal. The Company makes no representations whatsoever in regard to merchandise, equipment, parts or accessories not of the Company's own manufacture, the Company's liability in such cases being limited to such warranty, if any, as the manufacturer thereof may grant to the Company and if none, to the warranties herein expressed. In recognition of the fact that the Company's price makes no provision for such risk, the Company shall not be liable for direct, special or consequential damages or delays, including but not limited to lost profits, good will, loss of time, inconvenience or commercial loss, if such occurs, on account of defective material or workmanship or delays or accelerations in shipment, nor will any allowance be granted for any repairs, alterations, work done or expense incurred in connection with any repairs, alterations or replacements. The Company shall in no way be liable or responsible for injuries or damages to persons or property



arising out of the use or operation of all the material or equipment within described, including component parts thereof, and the Purchaser hereby agrees to indemnify and save harmless the Company from all such liability and responsibility. The Company reserves the right to make any changes in design, additions to and improvements in its product without imposing any obligation upon itself to install them on its product previously manufactured.

(PURCHASER SIGN BELOW)

APPROVED AND ACCEPTED:

PLACE

DATE

DATE

PURCHASER'S FIRM NAME

BY _____
AUTHORIZED REPRESENTATIVE

BY _____
OFFICER'S SIGNATURE

TITLE _____

TITLE _____

Whirlix Design Inc.
1761 International Parkway, Suite 125
Richardson, TX 75081

