



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

Monday, May 9, 2022 - 6:00 p.m.

**REGULAR MEETING
100 WEST ELDORADO PARKWAY
TOWN OF LITTLE ELM TOWN CENTER
DEVELOPMENT SERVICES CONFERENCE ROOM**

AGENDA

1. Roll Call and Call to Order of Regular Meeting.
Identification of Quorum and call to order.
2. **Discussion and Action to Approve** the Minutes of the April 11th, 2022 Regular Meeting. (Jennette Espinosa, Executive Director)
3. **Discussion and Action** to approve Chapter 380 Agreement between Little Elm EDC and the Town of Little Elm to reimburse the EDC for the second round of the Resident Voucher Program. (Jennette Espinosa, Executive Director)
4. **Discussion and Action** to Approve a Reimbursement Agreement between the Town and Little Elm Economic Development Corporation for financial responsibility in the construction of an eight (8') foot masonry screening wall for the Palladium Phase II Development. (Jennette Espinosa, Executive Director)
5. **Discussion and Action** to approve the First Amendment Performance Agreement between 575^o Pizzeria Little Elm, LLC and Little Elm Economic Development Corporation. (Jennette Espinosa, Executive Director)
6. **Director's Report:** Discuss, Update, and Action, If Needed, Regarding Project, Policies, Events, Activities, and Calendar Pertaining to EDC. (Jennette Espinosa, Executive Director)

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

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

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

8. **Reconvene into Open Session:** Take any action related to Executive Session

9. **Adjournment.**

Respectfully,

Jennette Espinosa

Executive Director

This is to certify that the above notice was posted on www.littleelm.org, Town of Little Elm website, under Agendas and Minutes prior to 5:00 p.m. this 5th day of May, 2022.



Date: 05/09/2022
Agenda Item #: 2.
Department: Economic Development Corporation
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to Approve the Minutes of the April 11th, 2022 Regular Meeting. (Jennette Espinosa, Executive Director)

RECOMMENDED ACTION:

Staff recommends approval of the Minutes as presented.

Attachments

Minutes from April 11 2022

DRAFT



**MINUTES
LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION
100 W. Eldorado Parkway**

**REGULAR MEETING
Monday, APRIL 11, 2022
6:00 PM**

Present: Ken Eaken, President; Michel Hambrick, Vice President; Taylor Girardi, Treasurer; Jack Gregg, Secretary; Michael McClellan, Council Liaison; Jeremy Bolden, Board Member

Staff Present: Jennette Espinosa, EDC Executive Director
Jennifer Eusse, Development Specialist

1. Roll Call and Call to Order of Regular Meeting: Meeting was called to order at **6:06 pm** by Ken Eaken, President.
Identification of Quorum and call to order.

Absent:
Marce Ward, Board Member
Jeff Moore, EDC Attorney
Natasha Roach, Assistant Director

2. **Discussion and Action** to approve the Minutes of the March 14th, 2022 Regular Meeting.
(Jennette Espinosa, Executive Director)

Motion by Treasurer Taylor Girardi, seconded by Secretary Jack Gregg

AYE: President Ken Eaken, Vice President Michel Hambrick, Treasurer Taylor Girardi,
Secretary Jack Gregg, Council Liaison Michael McClellan, Board Member Jeremy
Bolden

6 - 0 Passed - Unanimously

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

Motion by Vice President Michel Hambrick, seconded by Secretary Jack Gregg

AYE: President Ken Eaken, Vice President Michel Hambrick, Treasurer Taylor Girardi, Secretary Jack Gregg, Council Liaison Michael McClellan, Board Member Jeremy Bolden

6 - 0 Passed - Unanimously

4. **Director's Report:** Discuss, Update, and Action, If Needed, Regarding Project, Policies, Events, Activities, and Calendar Pertaining to EDC. (Jennette Espinosa, Executive Director)

No Action Taken

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

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

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

1. Project located in the general area of Main Street and Eldorado Parkway

Board did not enter in to Executive Session

6. **Reconvene into Open Session:** Take any action related to the Executive Session

7. Adjournment.

Respectfully,

Jennette Espinosa, Executive Director

Passed and approved this _____ day of _____ 2020



Date: 05/09/2022
Agenda Item #: 3.
Department: Economic Development Corporation
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to approve Chapter 380 Agreement between Little Elm EDC and the Town of Little Elm to reimburse the EDC for the second round of the Resident Voucher Program. (Jennette Espinosa, Executive Director)

DESCRIPTION:

As part of the American Rescue Act of 2021, the funds provided by the Federal Government were used in the COVID-10 Incentive Program. This program was initiated by the EDC and consisted of mailing \$25 vouchers to residents of Little Elm and neighboring communities in an effort to support our local restaurants through the pandemic. The EDC accepted the vouchers, submitted with the proper documentation, and reimbursed the restaurants directly. The Town has agreed to reimburse the EDC for funds paid out to the restaurants in the amount of and up to, \$100,000.00. This program will be in effect for 2 (two) years, 2022 and 2023.

In light of the final rule provided under the American Rescue Act of 2021, these funds are being used to support general government services. This program will be funded from the Town's general funds to support a positive economic impact to the community.

BUDGET IMPACT:

The Town agrees to pay annually to the EDC up to **One Hundred Thousand and No Dollars (\$100,00.00)** for their portion of funds from the COVID-19 Incentive Program, available through the Town's General Fund. Reimbursement is due and payable upon receipt of an invoice and proper documentation submitted by May 31, 2022 and May 31, 2023.

RECOMMENDED ACTION:

Staff recommends that the Chapter 380 Performance Agreement be approved as presented.

Attachments

380 for American Rescue Fund-Voucher Program

TOWN OF LITTLE ELM, TEXAS
and
LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION

**CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AND PERFORMANCE
AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND PERFORMANCE AGREEMENT** ("Agreement") is made and entered into by and between the **TOWN OF LITTLE ELM, TEXAS**, a Texas home-rule municipality ("Town"), and the **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation ("EDC"):

WHEREAS, on or about August 17, 2021, the Town passed Resolution No. 0817202105, approving a COVID-19 Incentive Program, electing to partner with the EDC, which is a Type A economic development corporation, created pursuant to Chapter 504 of the Texas Local Government Code, as amended; and the Texas Non- Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

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

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

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

WHEREAS, the Town agrees to pay to the EDC in two (2) equal yearly payments of **One Hundred Thousand and No Dollars (\$100,000.00)** for their portion of funds from the COVID-19 Incentive Program, available through the Town's General Fund, due and payable upon receipt of an invoice and documentation submitted by May 31, 2022 and May 31, 2023; and

WHEREAS, Section 380.002(b) of the Texas Local Government Code provides the authority for the Town to provide monies to the EDC for the development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development and expansion of commerce in the state; and

WHEREAS, the Town has concluded and hereby finds that this Agreement clearly promotes economic development in the Town of Little Elm, Texas, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the Town; and

WHEREAS, the Town has concluded and hereby finds that this Agreement clearly promotes economic development in the Town of Little Elm, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution, by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the EDC agree as follows:

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, and shall continue for two (2) years, terminating **May 31, 2023**.

SECTION 3. DEFINITIONS.

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

- (a) **Agreement.** The word "Agreement" means this Chapter 380 Economic Development Program and Performance Agreement, authorized by Chapters 380, 501 and 504 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any, and any amendments to this Agreement and/or exhibits and schedules.
- (b) **EDC.** The word "EDC" means the Little Elm Economic Development Corporation, a Type A economic development corporation, and a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 100 W. Eldorado Parkway, Little Elm, Texas 75068.
- (c) **Effective Date.** The words "Effective Date" mean the date of the latter to execute this Agreement by and between the Town and the EDC.

- (d) **Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth below in the section entitled "Events of Default."
- (e) **Program or Program Payment.** The words "Program" or "Program Payment" mean the economic development grants paid by the Town to the EDC in accordance with this Agreement.
- (f) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.
- (g) **Town.** The word "Town" means the Town of Little Elm, Denton County, Texas, a Texas home-rule municipality. For the purposes of this Agreement, Town's address is 100 W. Eldorado Parkway, Little Elm, Texas 75068.

SECTION 4. OBLIGATIONS OF THE TOWN.

The Town covenants and agrees while this Agreement is in effect; the Town shall comply with the following terms and conditions:

- (a) **Program Payments.** The Town covenants and agrees to pay to the EDC within thirty (30) days of receipt the two (2) equal yearly payments of One Hundred Thousand and No/100 Dollars (\$100,000.00) required by Resolution No. 0817202105, approving a COVID-19 Incentive Program Agreement. The final installment is to be paid by **May, 30, 2023**
- (b) **Performance.** The Town agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the Town and EDC.

SECTIONS. OBLIGATIONS OF EDC.

The EDC covenants and agrees while this Agreement is in effect; the EDC shall comply with the following terms and conditions:

- (a) **Program Payments.** The EDC covenants and agrees to use the Program Payments paid by the Town to the EDC pursuant to Section 4(a) of this Agreement, for the he development corporation shall use the grant money for the development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development and expansion of commerce in the state, in accordance with Section 380.002(b) of the Texas Local Government Code, and consistent with Chapters 501 and 504 of the Texas Local Government Code.

- (b) **Performance.** The EDC agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the EDC and Town.

SECTION 6. EVENT OF DEFAULT.

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

SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

Failure of the Town or EDC to comply with or perform any term, obligation or condition of this Agreement shall constitute an Event of Default. The non-defaulting party shall give written notice to the other parties of any default, and the defaulting party shall have thirty (30) days to begin to cure said default. Should said default remain uncured, the non-defaulting party or parties shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default.

SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party, which shall not be unreasonably withheld or delayed.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. The EDC warrants and represents that the

individual executing this Agreement on behalf of the EDC has full authority to execute this Agreement and bind the EDC to the same.

- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Entire Agreement.** This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.
- (h) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion acts of God, inclement weather, fire or other casualty, court injunction or other cause outside the control of the party who is to perform, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- (i) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.
- (j) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

[The Remainder of this Page Intentionally Left Blank]

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

TOWN:

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

Curtis Cornelious, Mayor

Date: _____

APPROVED AS TO FORM:

Caitlan Biggs, Town Secretary

Date: _____

LEEDC:

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

By: _____
Ken Eaken, President

Date: _____

ATTEST:

Jennette Espinosa, Executive Director

Date: _____

EXHIBIT A
Town Resolution No. 0817202105

RESOLUTION NO. 0817202105

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, APPROVING A COVID-19 INCENTIVE PROGRAM AND THE FORM OF THE PROGRAM INCENTIVE AGREEMENT; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE

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

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

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

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

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

WHEREAS, on August 17, 2021, the Little Elm Town Council determined that it is in the best interests of the citizens of Little Elm, Texas that economic development funds be provided to Local Business in exchange for their participation in the Project; and

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


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

Section 1. That the foregoing recitals are hereby found to be true and correct findings of the Town Council of the Town of Little Elm, and are fully incorporated into the body of this Resolution.

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

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

.PASSED AND ADOPTED, this the 17th day of August, 2021.

DocuSigned by:

727FE0F9CA75481...

Curtis Cornelious, Mayor

ATTEST:

DocuSigned by:


13D40235A2334C5...
Caitlan Biggs, Town Secretary

Exhibit A

[Form of Incentive Agreement]

INCENTIVE AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1. Recitals Incorporated; Effective Date.

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

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

Section 2. Term and Termination.

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

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

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

Section 3. Recitals Incorporated and Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTN: _____

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

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

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

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

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

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

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

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

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

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

Section 7. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LOCAL BUSINESS:

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

Phone : _____ Phone: _____

LITTLE ELM EDC:

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

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

TOWN:

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

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

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

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

Exhibit 1: Request for a Grant of Project Funds form

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

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

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

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

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

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

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

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

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

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

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

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

EXECUTED BY THE PARTIES:

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

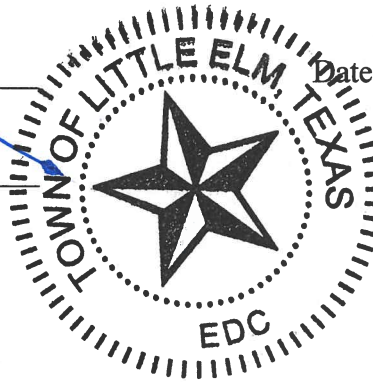
By: _____

Ken Eaken

President

Date: _____

8-9-2021



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

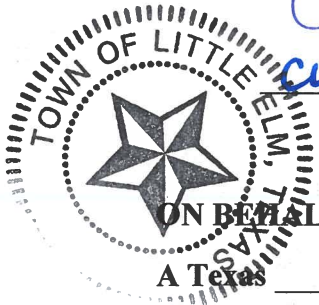
By: _____

Curtis Cornelious

Mayor

Date: _____

8-17-2021



ON BEHALF OF LOCAL BUSINESS _____

A Texas _____

[entity type]

By: _____

Date: _____

(Printed Name)

Title

EXHIBIT 1

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



REQUEST FOR GRANT OF PROJECT FUNDS



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

Local Business Name: _____ Date submitted: _____

MATERIALS WHICH MUST ACCOMPANY THIS REQUEST

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

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

GUIDELINES FOR EDC ACCEPTING VOUCHER FOR REIMBURSEMENT

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

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

VERIFICATION & SIGNATURE

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

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

_____ (title) of _____ (business name)

on this the _____ day of _____, 2020.

Signature

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



Date: 05/09/2022
Agenda Item #: 4.
Department: Economic Development Corporation
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to Approve a Reimbursement Agreement between the Town and Little Elm Economic Development Corporation for financial responsibility in the construction of an eight (8') foot masonry screening wall for the Palladium Phase II Development. (Jennette Espinosa, Executive Director)

DESCRIPTION:

As part of the Development Agreement, the Town has approved the construction plans which include an eight (8') foot tall screening wall along the north property line of the 4.096-acre tract of land consisting of Lot 1, Block A of the Palladium II Addition. Council approved April 5, 2022, a developer's agreement between the Town, EDC, and Palladium Little Elm Phase 2 for the construction of the masonry screen wall. Finance presented to Council a budget amendment to fund the Town's portion of the wall from escrow funds, May 3, 2022. This agreement is outlining the portion of the funds for such project to be paid to EDC.

BUDGET IMPACT:

This Reimbursement Agreement between the Town and the EDC provides that the Town will reimburse the EDC for the Town's financial responsibility in the construction of an eight (8') foot masonry screening wall in the amount of **Eighty Seven Thousand, Six Hundred and Fifty One No/100 Dollars (\$87,651.00)** due and payable upon receipt of an invoice and documentation submitted by April 30, 2023. Total cost of construction of the masonry wall is **One Hundred Eighty Nine Thousand, Five Hundred Twenty Six No/100 Dollars. (\$189,526.00).**

RECOMMENDED ACTION:

Staff recommends that the Reimbursement Agreement be approved as presented.

Attachments

Reimbursement between Town and EDC for Palladium Wall

**REIMBURSEMENT
AGREEMENT BY AND
BETWEEN THE
TOWN OF LITTLE ELM, TEXAS,
AND THE
LITTLE ELM ECONOMIC DEVELOPMENT
CORPORATION**

This Reimbursement Agreement (hereinafter referred to as the "Agreement") entered into by and between the Town of Little Elm, Texas, a Texas home-rule municipality (hereinafter referred to as the "Town"), and the Little Elm Economic Development Corporation, a Texas non-profit corporation (hereinafter referred to as the "EDC"), is made and executed on the following recitals, terms and conditions:

WHEREAS, on April 5, 2022 parties entered into a Development Agreement by and between the TOWN OF **LITTLE ELM, TEXAS, TOWN OF LITTLE ELM, TEXAS**, a Texas home-rule municipality, 100 W. Eldorado Parkway, Little Elm, Texas 75068, (hereinafter referred to as the "Town"), the **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation, 100 W. Eldorado Parkway, Little Elm, Texas 75068 (hereinafter referred to as the "LEEDC"), and **PALLADIUM LITTLE ELM PHASE II, LTD.**, a Texas limited partnership, 13455 Noel Road, Suite 400, Dallas, Texas 75240 (hereinafter referred to as the "Developer"), for the purposes and considerations stated below:

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

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

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

WHEREAS, this Reimbursement Agreement between the Town and EDC, provides that the Town will reimburse the EDC for the Town's financial responsibility in the construction of the 8ft masonry screening wall in the amount of **Eighty Seven Thousand, Six Hundred and Fifty One No/100 Dollars (\$87,651.00)** as depicted in Exhibit B, due and payable upon receipt of an invoice and documentation submitted by April 30, 2023. Total cost construction of the masonry wall is **One Hundred Eighty Nine Thousand, Five Hundred and Twenty Six No/100 Dollars (\$189,526.00)** as depicted in Exhibit C; and

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the EDC and Town agree as follows:

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, as defined herein, and shall continue thereafter until **April 30, 2023**.

SECTION 3. DEFINITIONS.

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

- (a) **Agreement.** The word "Agreement" means this Reimbursement Agreement, together with all exhibits and schedules attached to this Reimbursement Agreement from time to time, if any.
- (b) **Effective Date.** The words "Effective Date" mean the date of the latter to execute this Agreement by and between the Town and LEEDC.
- (c) **Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth below in the section entitled "Events of Default."
- (d) **EDC.** The word "EDC" means the Little Elm Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 100 W. Eldorado Parkway, Little Elm, Texas 75068.
- (e) **Property.** The word "Property" means the approximately 4.096 acre tract or tracts of land, consisting of Lot 1, Block A of the Palladium II Addition, an addition to the Town of Little Elm, Denton County, Texas.

- (f) **Screening Wall.** The eight foot (8') tall screening wall along the northern property line of the Property being (as that term is defined in the Second and Amended and Restated Chapter 380 Economic Development Program and Agreement), for a distance of approximately 493 linear feet, and with the construction materials and architectural design required to meet the Town's ordinance, rules and regulations as set forth more specifically on Exhibit A of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (g) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.
- (h) **Town.** The word "Town" means the Town of Little Elm, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 100 W. Eldorado Parkway, Little Elm, Texas 75068.

SECTION 4. AFFIRMATIVE OBLIGATIONS OF THE TOWN AND EDC.

The parties covenant and agree with each other that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Payment for the Screening Wall by the Town:** Payment for the Screening Wall by Town. The Town covenants and agrees to contribute the sum of **Eighty-Seven Thousand Six Hundred Fifty-One and No/100 Dollars (\$87,651.00)** to the EDC towards the construction of the Screening Wall within thirty (30) days of receipt of paid invoices, paid receipts, or other documentation for the Screening Wall in a form acceptable to the EDC.
- (b) **Payment for the Screening Wall by EDC.** The EDC covenants and agrees to contribute the sum of **Twenty-Eight Thousand Four Hundred Thirty-Seven and 50/100 Dollars (\$28,437.50)** towards the construction of the Screening within thirty (30) days of receipt of paid invoices, paid receipts, or other documentation for the Screening Wall in a form acceptable to the EDC, and shall be paid accordingly as depicted in Exhibit B, by EDC, the Town and Palladium.
- (c) Total cost of the of the screening wall is **One Hundred Eighty-Nine Thousand Five Hundred Twenty-Six and 00/100 Dollars (\$189,526.00).**

SECTIONS. EVENTS OF DEFAULT.

Failure of either party to comply with or perform any term, obligation, or condition of this Agreement shall constitute an event of default. The non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to begin to cure said default. Should said default remain uncured, the non-defaulting party shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default.

SECTION 6. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual or individuals executing this Agreement on behalf of Town has full authority to execute this Agreement and bind the Town to the same. LEEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

If to the Town: Town of Little Elm
Town Hall
100 W. Eldorado Parkway
Little Elm, Texas 75068
Attn: Matt Mueller, Town Manager
E-mail: mmueller@littleelm.org
Telephone: (214) 975-0405

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

- (h) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

[The Remainder of this Page Intentionally Left Blank]

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

TOWN:

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

Curtis Cornelious, Mayor

Date: _____
—

APPROVED AS TO FORM:

Caitlan Biggs, Town Secretary

Date: _____

EDC:

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

Ken Eaken, President

Date: _____

ATTEST:

Jennette Espinosa, Executive Director

Date: _____

Exhibit A

[Depiction of the Screening Wall]

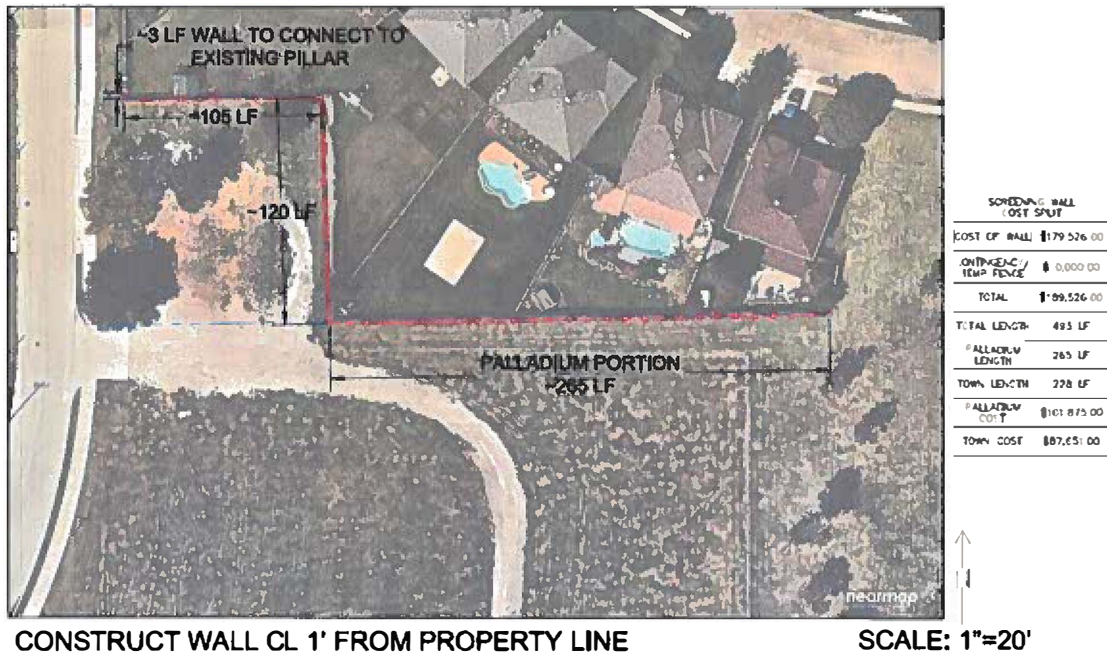


Exhibit B

Estimate and Financing Costs of Construction and materials for Screening Wall

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

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

EDC Contribution

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

TOLE Contribution

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

Exhibit C

Wesley Brandon
Town of Little Elm
100 West Eldorado Pkwy
Little Elm, Texas 75068



EXHIBIT "A" PROPOSAL

PROJECT: Palladium Wall
LOCATION: Little Elm, Texas

DATE: 1/18/22
PROPOSAL NO: 30-22-01 18-02

Ratliff Hardscape, Ltd. proposes to furnish equipment, materials, and labor to perform the following work for the referenced project.

01	Permits	1	LS	950.00	\$	950.00
02	Structural Inspections	1	LS	2,200.00	\$	2,200.00
03	Site Facilities	1	LS	625.00	\$	625.00
04	8'-0" Ht. Stacked Stone Wall (to match Little Elm Typical Stone Wall)	483	LF	320.00	\$	157,760.00
05	8'-6" Ht. Primary Stone Columns (Rt. 18x25x10)	9	EA	1,999.00	\$	17,991.00
06	Project Contingency	1	LS	10,000.00	\$	10,000.00

TAX EXEMPT taxes Little Texas 8.25% %

THIS PROPOSAL IS VALID FOR THIRTY (30) DAYS FROM THE DATE OF THIS PROPOSAL. THIS PROPOSAL AND ITS TERMS AND CONDITIONS OR ANY OTHER SPECIAL CONDITIONS EXHIBIT "B" SHALL BECOME PART OF THE CONTRACT AS EXHIBIT "A". A CONTRACT SHALL BE PROVIDED BY THE OWNER, GENERAL CONTRACTOR, OR RATLIFF HARDSCAPE, LTD. AND EXECUTED PRIOR TO COMMENCEMENT OF ANY WORK. THE ABOVE QUANTITIES HAVE BEEN ESTIMATED; HOWEVER, THIS PROPOSAL IS A UNIT PRICE BASIS WITH PAYMENTS TO BE MADE BY THE HIRING OWNER OR GENERAL CONTRACTOR BY USING FIELD MEASURED QUANTITIES OF WORK COMPLETED. RATLIFF HARDSCAPE, LTD. SHALL SUBMIT BY THE 15TH OF EACH MONTH, PARTIAL ESTIMATES TO THE OWNER OR GENERAL CONTRACTOR WHICH INCLUDE ALL OF THE COMPLETED WORK PLUS ANY MATERIAL ON HAND FOR THE UNCOMPLETED PORTION. THE RETAINAGE AMOUNT TO BE WITHHELD FROM EACH MONTHLY INVOICE SHALL BE SPECIFIED BY THE HIRING OWNER OR GENERAL CONTRACTOR. IF NOT SPECIFIED, NO RETAINAGE WILL BE WITHHELD. PAYMENT TERMS ARE NET FIFTEEN (15) DAYS FROM THE DATE OF THE INVOICE. ALL INVOICES NOT RECEIVED IN FULL BY THE DUE DATE SHALL BEAR INTEREST FROM THE DUE DATE UNTIL THE DATE FULL PAYMENT IS RECEIVED AT RATE OF 18% PER ANNUUM. SALES TAX MUST BE APPLIED UNLESS MATERIAL USED FOR REALTY IMPROVEMENTS OF A TAX EXEMPT ENTITY OR BY RECEIPT OF A "SALES TAX EXEMPT" CERTIFICATE. PLEASE REVIEW ALL THE SPECIAL CONDITIONS PROVIDED HEREON AS EXHIBIT "B".

PLEASE SIGN THIS PROPOSAL AND RETURN ONE (1) ORIGINAL TO OUR OFFICE. YOUR ACCEPTANCE OF THIS PROPOSAL SHALL CONSTITUTE THE INTENT TO ENGAGE INTO A CONTRACT WITH RATLIFF HARDSCAPE, LTD. TO PERFORM THE ABOVE REFERENCED WORK.

ACCEPTED:

(OWNER/GENERAL CONTRACTOR)

By: _____

Signature

Print Name

Its: _____

As

RESPECTFULLY SUBMITTED:

Ratliff Hardscape, Ltd.

(CONTRACTOR / SUB-CONTRACTOR)

By: Bruce M

Signature

Bruce McWhorter

Print Name

Its: President & C O O

Tax



Date: 05/09/2022
Agenda Item #: 5.
Department: Economic Development Corporation
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to approve the First Amendment Performance Agreement between 575° Pizzeria Little Elm, LLC and Little Elm Economic Development Corporation. (Jennette Espinosa, Executive Director)

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:

- **Qualified Expenditures:** All documentation for qualified expenditures in the minimum amount of **One Million and No/100 Dollars (\$1,000,000.00)** is now due by **October 1, 2022**.
- **Certificate of Occupancy:** The Developer covenants and agrees to obtain a Certificate of Occupancy by **September 1, 2022**.
- **Operate 575° Pizzeria Restaurant:** The Developer covenants and agrees to be open to the general public by **September 1, 2022**.
- **Job Creation and Retention:** Developer covenants and agrees by **September 1, 2022**, and during the term of this agreement, to employ and maintain a minimum of forty (40) Full-Time Equivalent employees. Developer agrees to beginning on **October 1, 2023**, to deliver to the EDC an annual compliance verification disclosing and certifying the number of Full-Time Equivalent employees

BUDGET IMPACT:

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

RECOMMENDED ACTION:

Staff recommends that the First Amendment Performance Agreement be approved as presented.

Attachments

First Amendment Performance Agreement - 575 Pizzeria

FIRST AMENDMENT TO PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** by and between **575° PIZZERIA - LITTLE ELM, LLC**, a Texas limited liability company (hereinafter referred to as "Developer"), and the **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the "LEEDC"), is made and executed on the following recitals, terms and conditions.

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

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

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

WHEREAS, Developer has applied to LEEDC for financial assistance necessary for the construction of Qualified Expenditures to be made to the property generally located at 211 E. Eldorado Parkway, Suite 100, Town of Little Elm, Texas (hereinafter referred to as the "Property"); and

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

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

NOW, THEREFORE, for and in consideration of the agreements contained herein, and

other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the LEEDC and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, and shall continue thereafter until **December 31, 2026**, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

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

- (a) **Act.** The word "Act" means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word "Agreement" means this Performance Agreement, together with all exhibits and schedules attached to this Performance Agreement from time to time, if any.
- (c) **Developer.** The word "Developer" means 575° Pizzeria - Little Elm, LLC, a Texas limited liability company, its successors and assigns, whose address for the purposes of this Agreement is 3350 Olsen, Suite 1400, Amarillo, Texas 79109.
- (d) **Effective Date.** The words "Effective Date" mean the date of the latter to execute this Agreement by and between the LEEDC and Developer.
- (e) **Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth below in the section entitled "Events of Default."
- (f) **Full-Time Equivalent Employment Position.** The words "Full-Time Employment Position" or "Full-Time Equivalent Employment Positions" mean and include a job requiring a minimum of One Thousand Five Hundred and Sixty (1560) hours of work averaged over a twelve (12) month period.
- (g) **LEEDC.** The term "LEEDC" means the Little Elm Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 100 W. Eldorado Parkway, Little Elm, Texas 75068.
- (h) **Property.** The word "Property" means 211 E. Eldorado Parkway, Suite 100, Little Elm,

Texas 75068.

- (i) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures consisting of the construction and installation of improvements, consisting of a minimum 4,800 square foot 575° Pizzeria Restaurant located on the Property, and those expenses which otherwise meet the definition of “project” as that term is defined by Section 501.103 of the Act, and the definition of “cost” as that term is defined by Section 501.152 of the Act.
- (j) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE COVENANTS OF DEVELOPER.

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

- (a) **Qualified Expenditures.** Developer covenants and agrees to submit to the LEEDC upon request invoices, receipts, or other documentation of the Qualified Expenditures made to the Property in a form acceptable to the LEEDC prior to any reimbursement. Developer covenants and agrees to provide to the LEEDC upon request said invoices, receipts, or other documentation in the minimum amount of **One Million and No/100 Dollars (\$1,000,000.00) by October 1, 2022.**
- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained by **September 1, 2022**, a Certificate of Occupancy from the Town of Little Elm, Texas, for a minimum of 4,800 square feet of 575° Pizzeria Restaurant space located on the Property.
- (c) **Operate 575° Pizzeria Restaurant.** Developer covenants and agrees by **September 1, 2022**, and during the Term of this Agreement to keep open to the general public the 575 Pizzeria Restaurant located on the Property.
- (d) **Job Creation and Retention.** Developer covenants and agrees by **September 1, 2022**, and during the Term of this Agreement to employ and maintain a minimum of forty (40) Full-Time Equivalent Employment Positions working at the Property. Developer covenants and agrees beginning on **October 1, 2023** (for the initial reporting period of September 1, 2022 to August 31, 2023), and during the Term of this Agreement, Developer shall deliver to LEEDC an annual compliance verification signed by a duly authorized representative of Developer that shall certify the number of Full-Time Equivalent Employment Positions, and shall disclose and certify the average wage for all Full-Time Equivalent Employment Positions (the “Annual Compliance Verification”). The Developer covenants and agrees beginning on **October 1, 2023**, and annually thereafter during the Term of this Agreement, there will be a total of **four (4) Annual Compliance Verifications** due and submitted to

LEEDC covering the Full-Time Equivalent Employment Positions created and maintained during the Term of this Agreement. All Annual Compliance Verifications shall include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports.

- (e) **Chamber of Commerce.** Developer agrees to obtain a Yacht Level membership or higher prior to opening for business (obtained CO) and agrees to maintain said membership for the Term of this Agreement.
- (f) **Performance Conditions.** Developer agrees to make, execute and deliver to LEEDC such other promissory notes, instruments, documents and other agreements as LEEDC or its attorneys may reasonably request to evidence this Agreement.
- (g) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Developer and LEEDC.

SECTION 5. AFFIRMATIVE COVENANTS OF LEEDC.

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

- (a) **Financial Assistance.** LEEDC covenants and agrees to submit reimbursement for Qualified Expenditures made by the Developer in the amount of **Four Hundred Thousand and No/100 Dollars (\$400,000.00)** within thirty (30) days of receipt of invoices, receipts, or other documentation in the minimum amount of **One Million and No/100 Dollars (\$1,000,000.00)** by **October 1, 2022**, consistent with Section 4(a) of this Agreement, and receives a certificate of occupancy and is open for business consistent with Sections 4(b) and 4(c) of this Agreement.
- (b) **Performance.** LEEDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between LEEDC and the Developer.

SECTION 6. CESSATION OF ADVANCES.

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

SECTION 7. EVENTS OF DEFAULT.

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

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

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

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

SECTION 9. INDEMNIFICATION.

Developer shall indemnify, save, and hold harmless LEEDC, its directors, officers, agents, attorneys, and employees (collectively, the "Indemnitees") from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnatee if the claim, demand, action or cause of action directly or indirectly relates to tortious interference with contract or business interference, or wrongful or negligent use of LEEDC's financial assistance by Developer or its agents and employees; (ii) any administrative or investigative proceeding by any governmental authority directly or indirectly related, to a claim, demand, action or cause of action in which LEEDC is a disinterested party; (iii) any claim, demand, action or cause of action which directly or indirectly contests or challenges the legal authority of LEEDC or Developer to enter into this Agreement; and (iv) any and

all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements) that any Indemnatee suffers or incurs as a result of any of the foregoing; provided, however, that Developer shall have no obligation under this Section to LEEDC with respect to any of the foregoing arising out of the gross negligence or willful misconduct of LEEDC or the breach by LEEDC of this Agreement. If any claim, demand, action or cause of action is asserted against any Indemnatee, such Indemnatee shall promptly notify Developer, but the failure to so promptly notify Developer shall not affect Developer's obligations under this Section unless such failure materially prejudices Developer's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by Developer in writing, as so long as no Default or Event of Default shall have occurred and be continuing, such Indemnatee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Developer to participate in such contest. Any Indemnatee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Developer may be liable for payment of indemnity hereunder shall give Developer written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Developer's concurrence thereto.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Developer warrants and represents that the individual or individuals executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. LEEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to LEEDC: Little Elm Economic Development Corporation
100 W. Eldorado Parkway
Little Elm, Texas 75068
Attn: Jennette Espinosa, Executive Director
Telephone: (214) 975-0455

if to Developer: 575° Pizzeria - Little Elm, LLC
3350 Olsen, Suite 1400
Amarillo, Texas 79109
Attn: Brian Kelleher
Telephone: (806) 322- 2370

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

[The Remainder of this Page Intentionally Left Blank]

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

LEEDC:

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

By: _____
Ken Eaken, President
Date Signed: _____

ATTEST:

Jennette Espinosa, Executive Director

DEVELOPER:

575° PIZZERIA - LITTLE ELM, LLC,
a Texas limited liability company,

By: _____
Brian Kelleher
Title: Member
Date Signed: 5/3/22