



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

Tuesday, February 7, 2023

6:00 PM

Little Elm Town Hall

100 W Eldorado Parkway, Little Elm, TX 75068

1. **Call to Order Council Workshop at 6:00 p.m.**
 - A. Present and Discuss an **Update on Little Elm Park Parking.**
 - B. Present and Discuss the **2022 Strategic Report.**
2. **Roll Call/Call to Order Regular Town Council Immediately Following Council Workshop.**
 - A. Invocation.
 - B. Pledge to Flags.
 - C. Items to be Withdrawn from Consent Agenda.
 - D. Emergency Items if Posted.
 - E. Request by the Town Council for Items to be Placed on a Future Agenda for Discussion and Recognition of Excused Absences.

F. **Presentation of Monthly Updates.**

Presentation of monthly updates from department heads: concerning law enforcement activities, municipal court, customer service, emergency medical services, fire department response, fire prevention activities, emergency management, ongoing economic development projects, building permits, code enforcement activities, library activities, human resources updates, information technology report, revenue and expenditure report, street construction status, sanitation services, highway construction status, utility operations, parks and recreation activities, as well as facility and fleet updates.

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

3. **Presentations.**

A. Present a **Proclamation Declaring February 12, 2023 as Cholangiocarcinoma Day.**

B. Present a **Proclamation Declaring February 2023 as Spay and Neuter Awareness Month.**

C. Present **Town Manager Challenge Coins.**

4. **Public Comments**

Persons may address the Town Council on any issue. This is the appropriate time for citizens to address the Council on any concern whether on this agenda or not. In accordance with the State of Texas Open Meeting Act, the council may not comment or deliberate such statements during this period, except as authorized by Section 551.007, Texas Government Code.

5. **Consent Agenda**

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

A. Consider Action to Approve the **Minutes from the January 17, 2023, Regular Town Council Meeting.**

B. Consider Action to Approve the **Joint Election Agreement and Contract for Election Services with the Denton County Elections Administrator.**

- C. Consider Action to Approve **Ordinance No. 1702 Ordering a General Election to be held on May 6, 2023.**
- D. Consider Action to Approve an **Agreement between the Town of Little Elm and Patricia Adams for Services as Presiding Municipal Judge and Magistrate of the Little Elm Municipal Court for a Term of Two (2) Years.**
- E. Consider Action to Approve an **Agreement between the Town of Little Elm and Collette O. Sallas for Services as Presiding Associate Municipal Judge for a Term of Two (2) Years.**
- F. Consider Action to Approve a **Construction Manager at Risk Contract to AUI Partners, LLC for the Public Works Service Center Remodel Project (Contract #2022-15).**
- G. Consider Action to Accept the **Little Elm Police Department's 2022 Racial Profiling Report.**
- H. Consider Action to Approve a **Lease Agreement for Recreational Grounds and Facilities between the Town of Little Elm and Little Elm Independent School District.**

6. **Regular Items.**

- A. Present, Discuss, and Consider Action to **Accept the Resignation of Jeremy Lukas from Town Council District 5.**

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

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

8. **Reconvene into Open Session**

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

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

9. **Adjourn.**

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

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

Respectfully,

Town Secretary

This is to certify that the above notice was posted on the Town's website this 3rd day of February 2023 before 5:00 p.m.



Date: 02/07/2023
Agenda Item #: 1. A.
Department: Administrative Services
Strategic Goal: Provide a safe and welcoming environment for Little Elm residents and visitors
Staff Contact: Chad Hyde, Director of Community Services

AGENDA ITEM:

Present and Discuss an **Update on Little Elm Park Parking.**

DESCRIPTION:

Town staff will provide an update on the plan for Little Elm Park Parking for 2023.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.



Date: 02/07/2023
Agenda Item #: 1. B.
Department: Administrative Services
Strategic Goal: Ensure strong relationship within the community and region
Staff Contact: Caitlan Biggs, Director of Administrative Services/Town Secretary

AGENDA ITEM:

Present and Discuss the **2022 Strategic Report**.

DESCRIPTION:

Town staff has published the 2022 Strategic Report and will present it to Town Council.

The report can be found

here: https://issuu.com/townoflittleelm/docs/1248-annual_strategic_report_v9

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.



Date: 02/07/2023
Agenda Item #: 3. A.
Department: Administrative Services
Strategic Goal: Ensure strong relationship within the community and region
Staff Contact: Kate Graham, Assistant to the Town Manager

AGENDA ITEM:

Present a **Proclamation Declaring February 12, 2023 as Cholangiocarcinoma Day.**

DESCRIPTION:

Mayor Cornelious will present a proclamation declraing February 12, 2023 as Cholangiocarcinoma Day.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.

Attachments

2023 Cholangiocarcinoma Day Proclamation



Proclamation

WHEREAS, February is recognized as Cholangiocarcinoma Awareness Month to bring attention to a cancer of the bile ducts, which is the second most common primary liver cancer in the world; and

WHEREAS, Cholangiocarcinoma (CCA) affects people of all ages but typically people over the age of sixty-five (65) and unfortunately has a poor prognosis; and

WHEREAS, most cases of CCA happen without any cause, though general risk factors include age, obesity, and certain diabetes and liver disease; and

WHEREAS, the incidence of this devastating cancer increases globally, it is still poorly understood and under-researched; and

WHEREAS, it is crucial to diagnose CCA as early as possible to optimize survival rates, the Global Cholangiocarcinoma Alliance supports international efforts to raise much needed awareness; and

WHEREAS, the Cholangiocarcinoma Foundation promotes the Light it Green for CCA campaign encouraging communities to light structures such as homes, offices, hospitals, towers, and bridges green to spread awareness about CCA and to show support to patients.

NOW, THEREFORE, we declare February 12, 2023 as **Cholangiocarcinoma Day in Little Elm** and encourage all residents to learn more about CCA, participate in the Light it Green campaign, and show support for those impacted by this form of cancer.

Given under my hand and Seal of the Town of Little Elm, Texas, this 7th day of February, 2023.

Curtis J. Cornelious, Mayor of Little Elm



Date: 02/07/2023
Agenda Item #: 3. B.
Department: Administrative Services
Strategic Goal: Ensure strong relationship within the community and region
Staff Contact: Kate Graham, Assistant to the Town Manager

AGENDA ITEM:

Present a **Proclamation Declaring February 2023 as Spay and Neuter Awareness Month.**

DESCRIPTION:

Mayor Cornelious will present a proclamation to the Friends of the Little Elm Animal Shelter declaring February 2023 as Spay and Neuter Awareness Month.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.

Attachments

Spay and Neuter Awareness Month Proclamation



Proclamation

WHEREAS, only 1 of every 10 dogs born will ever find a permanent home; and

WHEREAS, the main reasons animals are in shelters is Animal Control finds them roaming in the streets, or their owners give them up; and

WHEREAS, each year, approximately 2.7 million dogs and cats are euthanized each year because shelters are too full and there are not enough adoptive homes; and

WHEREAS, there are approximately 7.6 million dogs and cats entering shelters nationwide each year; and

WHEREAS, twice as many animals enter shelters as strays as compared to owner turn-ins; and

WHEREAS, it is estimated that there are as many as 70 million stray cats in the USA, and it has been impossible to estimate the number of stray dogs, but they are in the tens of millions; and

WHEREAS, there are only approximately 10% received in shelters that are spayed or neutered. This leads to the overpopulation of these animals left to breed indiscriminately; and

WHEREAS, most strays are lost pets that have never been spayed, neutered, or given any medical care.

NOW, THEREFORE, the Town of Little Elm and Friends of the Little Elm Animal Shelter proclaim February 2023 as **Spay and Neuter Awareness Month**.

Given under my hand and Seal of the Town of Little Elm, Texas, this 7th day of February, 2023.

Curtis J. Cornelious, Mayor of Little Elm



Date: 02/07/2023
Agenda Item #: 3. C.
Department: Administrative Services
Strategic Goal: Ensure excellence in public services while keeping up with the growth in the community
Staff Contact: Kate Graham, Assistant to the Town Manager

AGENDA ITEM:

Present **Town Manager Challenge Coins.**

DESCRIPTION:

Town Manager Matt Mueller will recognize Town employees by presenting them Town Manager Challenge Coins.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.



Date: 02/07/2023
Agenda Item #: 5. A.
Department: Administrative Services
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Caitlan Biggs, Director of Administrative Services/Town Secretary

AGENDA ITEM:

Consider Action to Approve the **Minutes from the January 17, 2023, Regular Town Council Meeting.**

DESCRIPTION:

The minutes from the January 17, 2023, regular Town Council meeting are attached for approval.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Minutes - January 17, 2023

DRAFT

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

REGULAR TOWN COUNCIL MEETING TUESDAY JANUARY 17, 2023 - 6:00 p.m.

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

Absent: Mayor Curtis J. Cornelious; Council Member Jeremy Lukas

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

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

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

A. Acknowledgment/Moment of Silence.

Chief Rodney Harrison started the meeting with a Moment of Silence in remembrance of Detective Jerry Walker.

B. Present Town Manager Challenge Coins.

Town Manager Matt Mueller and Mayor Pro Tem Lisa Norman presented challenge coins to Officer Josh Godi, Shane Urrutia, Travis Calendine, and Caitlan Biggs.

C. Present and Discuss the Community Waste Disposal Annual Report.

Robert Medigovich with CWD gave the annual report to Town Council.

2. Presentations.

A. Present a Proclamation Recognizing Alpha Kappa Alpha Sorority, Omega Alpha Omega Chapter.

Mayor Pro Tem Lisa Norman presented the proclamation.

- B. Present a **Proclamation Declaring January 16, 2023 as Dr. Martin Luther King, Jr. Day of Service 2023.**

The Town Council presented the proclamation.

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

- A. Invocation.

Pastor Melissa Hatch gave the invocation.

- B. Pledge to Flags.
- C. Items to be Withdrawn from Consent Agenda.

None.

- D. Emergency Items if Posted.

None.

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

Council Member Tony Singh would like an update from CoServ regarding low gas pressure during winter storm in December 2022.

F. Presentation of Monthly Updates.

Presentation of monthly updates from department heads: concerning law enforcement activities, municipal court, customer service, emergency medical services, fire department response, fire prevention activities, emergency management, ongoing economic development projects, building permits, code enforcement activities, library activities, human resources updates, information technology report, revenue and expenditure report, street construction status, sanitation services, highway construction status, utility operations, parks and recreation activities, as well as facility and fleet updates.

Deputy Town Manager Doug Peach gave an update from CoServ regarding the December 2022 winter storm and the low gas pressure experienced by some residents. He stated that staff has spoken with CoServ and they have taken short-term and long-term steps to be better prepared to handle these type of events in the future.

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

None.

4. Public Comments

Persons may address the Town Council on any issue. This is the appropriate time for citizens to address the Council on any concern whether on this agenda or not. In accordance with the State of Texas Open Meeting Act, the council may not comment or deliberate such statements during this period, except as authorized by Section 551.007, Texas Government Code.

Pastor Melissa Hatch spoke about the new foster closet, Buttons 'n Bows, opening at Button United Methodist Church that is opening the first Saturday in February.

5. Consent Agenda

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

Motion by Council Member Michael McClellan, seconded by Council Member Tony Singh **to approve the Consent Agenda.**

Vote: 5 - 0 - Unanimously

- A. Consider Action to Approve the **Minutes from the December 20, 2022, Regular Town Council Meeting.**
- B. Consider Action to Award **RFP 2022-25 for Custodial Services to CTJ Maintenance, Inc. in the estimated annual amount of \$190,000.**
- C. Consider Action to Award **RFP 2023-07 for Pizza Delivery Services to Star Papa, LP DBA Papa John's, in the estimated annual amount of \$50,000.**
- D. Consider Action to Approve **Ordinance No. 1701 Providing for Refuse Rates; Providing for a Repealing Clause; Providing for a Severability Clause; and, Providing an Effective Date for Community Waste Disposal for an Annual Market Adjustment per the Current Service Contract.**
- E. Consider Action to Award **RFP 2023-04 for Aquatics Center Concessionaire Services to Sorrells Enterprises, LLC.**
- F. Consider Action to Approve **Change Order #3 to the Construction Contract with Field Turf USA, Inc. regarding the Cottonwood Park and Lakeside Youth Sports Synthetic Turf Project.**
- G. Consider Action to Approve **Change Order #1 to the Construction Contract with AUI Partners, LLC regarding Artificial Turf for The Lawn at The Lakefront Project.**
- H. Consider Action to Approve **Temporary Access and Sidewalk Easements within the Union Park Commercial Development.**

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

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

No Executive Session.

7. Reconvene into Open Session

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

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

8. Adjourn.

Meeting was adjourned at 6:43 p.m.

Respectfully,

Caitlan Biggs
Town Secretary

Passed and Approved this 7th day of February 2023.



Date: 02/07/2023
Agenda Item #: 5. B.
Department: Administrative Services
Strategic Goal: Ensure strong relationship within the community and region
Staff Contact: Caitlan Biggs, Director of Administrative Services/Town Secretary

AGENDA ITEM:

Consider Action to Approve the **Joint Election Agreement and Contract for Election Services with the Denton County Elections Administrator.**

DESCRIPTION:

The Town of Little Elm contracts with the Denton County Elections Administrator to provide election services for all elections.

The contract attached to this item is in draft form because the Denton County Elections Administrator is waiting for all locations and entities joining the contract to give notice of their participation in the May 6, 2023, election. Once all entities have given notice, the final cost of the Town's portion will be calculated. This calculation is estimated to be available in early April.

BUDGET IMPACT:

This item is budgeted for in the General Fund operating budget.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

2023 Draft Contract - Denton County Elections

THE STATE OF TEXAS COUNTY OF DENTON

JOINT ELECTION AGREEMENT AND CONTRACT FOR ELECTION SERVICES

This CONTRACT for election services is made by and between the Denton County Elections Administrator and the following political subdivisions, herein referred to as “participating authority or participating authorities” located entirely or partially inside the boundaries of Denton County:

Participating Authorities:

[entities]

This contract is made pursuant to Texas Election Code Sections 31.092 and 271.002 and Texas Education Code Section 11.0581 for a joint May 6, 2023 election to be administered by Frank Phillips, Denton County Elections Administrator, hereinafter referred to as “Elections Administrator.”

RECITALS

Each participating authority listed above plans to hold a General or Special Election on May 6, 2023. Denton County plans to hold county-wide voting for this General Election.

The County owns the Hart InterCivic Verity Voting System, which has been duly approved by the Secretary of State pursuant to Texas Election Code Chapter 122 as amended, and is compliant with the accessibility requirements for persons with disabilities set forth by Texas Election Code Section 61.012. The contracting political subdivisions (participating authorities) desire to use the County’s voting system and to compensate the County for such use and to share in certain other expenses connected with joint elections, in accordance with the applicable provisions of Chapters 31 and 271 of the Texas Election Code, as amended.

NOW THEREFORE, in consideration of the mutual covenants, agreements, and benefits to all parties, IT IS AGREED as follows:

I. ADMINISTRATION

The participating authorities agree to hold a “Joint Election” with Denton County and each other in accordance with Chapter 271 of the Texas Election Code and this agreement. The Elections Administrator shall coordinate, supervise, and handle all aspects of administering the Joint Election as provided in this agreement. Each participating authority agrees to pay the Elections Administrator for equipment, supplies, services, and administrative costs as provided in this agreement. The Elections Administrator shall serve as the administrator for the Joint Election; however, each participating authority shall remain responsible for the decisions and actions of its officers necessary for the lawful conduct of its election. The Elections Administrator shall provide advisory services in connection with decisions to be made and actions to be taken by the officers of each participating authority as necessary.

It is understood that other political subdivisions may wish to participate in the use of the County's Verity voting system and polling places, and it is agreed that the Elections Administrator may enter into other contracts for election services for those purposes, on terms and conditions generally similar to those set forth in this contract. In such cases, costs shall be pro-rated among the participants according to Section XI of this contract.

II. LEGAL DOCUMENTS

Each participating authority shall be responsible for the preparation, adoption, and publication of all required election orders, resolutions, notices, and any other pertinent documents required by the Texas Election Code and/or the participating authority's governing body, charter, or ordinances, except that the Elections Administrator shall be responsible for the preparation and publication of all voting equipment testing notices that are required by the Texas Election Code. Election orders should include language that would not necessitate amending the order if any of the Early Voting and/or Election Day polling places change.

Preparation of the necessary materials for notices and the official ballot shall be the responsibility of each participating authority, including translation to languages other than English. Each participating authority shall provide a copy of their respective election orders and notices to the Elections Administrator.

III. VOTING LOCATIONS

The Elections Administrator shall select and arrange for the use of and payment for all Early Voting and Election Day voting locations. Voting locations will be, whenever possible, the usual voting location for each election precinct in elections conducted by each participating authority, and shall be compliant with the accessibility requirements established by Election Code Section 43.034 and the Americans with Disabilities Act (ADA). The proposed voting locations are listed in Exhibit A of this agreement. In the event a voting location is not available or appropriate, the Elections Administrator will arrange for use of an alternate location. The Elections Administrator shall notify the participating authorities of any changes from the locations listed in Exhibit A.

IV. ELECTION JUDGES, CLERKS, AND OTHER ELECTION PERSONNEL

Denton County shall be responsible for the appointment of the presiding judge and alternate judge for each polling location. The Elections Administrator shall make emergency appointments of election officials if necessary.

Upon request by the Elections Administrator, each participating authority agrees to assist in recruiting bilingual polling place officials (fluent in both English and Spanish). In compliance with the Federal Voting Rights Act of 1965, as amended, each polling place containing more than 5% Hispanic population as determined by the 2020 Census shall have one or more election officials who are fluent in both the English and Spanish languages. If a presiding judge is not bilingual, and is unable to appoint a bilingual clerk, the Elections Administrator may recommend a bilingual worker for the polling place. If the Elections Administrator is unable to recommend or recruit a bilingual worker, the participating authority or authorities served by that polling

place shall be responsible for recruiting a bilingual worker for translation services at that polling place.

The Elections Administrator shall notify all election judges of the eligibility requirements of Subchapter C of Chapter 32 of the Texas Election Code, and will take the necessary steps to insure that all election judges appointed for the Joint Election are eligible to serve.

The Elections Administrator shall arrange for the training and compensation of all election judges and clerks. The Election judges and clerks who attend in-person voting equipment training and/or procedures training, shall be compensated at the rate of \$13 an hour. Election judges and clerks that elect to complete online training shall be compensated as a rate of a flat \$40. In the event that as Election judge or clerk completes both in-person and online training, they shall be compensated for the training resulting in the highest pay and will not be compensated for both trainings.

The Elections Administrator shall arrange for the date, time, and place for presiding election judges to pick up their election supplies. Each presiding election judge will be sent a letter from the Elections Administrator notifying them of their appointment, the dates/times and locations of training and distribution of election supplies, and the number of election clerks that the presiding judge may appoint.

Each election judge and clerk will receive compensation at the hourly rate established by Denton County pursuant to Texas Election Code Section 32.091 and overtime after 40 hours worked per week, if applicable. The election judge, or their designee, will receive an additional sum of \$25.00 for picking up the election supplies and equipment prior to Election Day and for returning the supplies and equipment to the central counting station after the polls close. Likewise, the Presiding Judge in Early Voting, or their designee, will receive an additional sum of \$25.00 for picking up the election supplies prior to the first day of Early Voting and for returning the supplies and equipment to the Elections Department after Early Voting has ended.

The compensation rates established by Denton County are:

Early Voting – Presiding Judge (\$15/hour), Alternate Judge (\$14/ hour), Clerk (\$13/ hour)

Election Day – Presiding Judge (\$15/hour), Alternate Judge (\$14/ hour), Clerk (\$13/ hour)

The Elections Administrator may employ other personnel necessary for the proper administration of the election, as well as, pre and post-election administration. In such cases, costs shall be pro-rated among participants of this contract. Personnel working in support of full-time staff will be expensed on a pro-rated basis and include a time period of one week prior to the election, during the election, and one week post-election. Personnel working in support of the Early Voting Ballot Board and/or central counting station on election night will be compensated at the hourly rate set by Denton County in accordance with Election Code Sections 87.005, 127.004, and 127.006.

If elections staff is required outside of the hours of the office's normal scope of business, the entity(ies) responsible for the hours will be billed for those hours. The Elections Administrator will determine when those hours are necessary, the number of staff and whom are necessary, along with to whom the hours are to be billed. Cost for these hours will be billed at a rate of 1.5 times the staff's hourly rate (See Sections XV #10). The Election Administrator has the right to waive these costs as they see fit.

V. PREPARATION OF SUPPLIES AND VOTING EQUIPMENT

The Elections Administrator shall arrange for delivery of all election supplies and voting equipment including, but not limited to, the County's Verity voting system and equipment, official ballot paper, sample ballots, voter registration lists, and all forms, signs, maps and other materials used by the election judges at the voting locations. The Elections Administrator shall ensure availability of tables and chairs at each polling place and shall procure rented tables and chairs for those polling places that do not have tables and/or chairs. Any additional required materials (required by the Texas Election Code) must be provided by the participating authority, and delivered to the Elections Office thirty-three (33) calendar days (April 3, 2023) prior to Election Day. If this deadline is not met, the material must be delivered by the participating authority, to all Early Voting and Election Day locations affected, prior to voting commencing. The Elections Administrator shall be responsible for conducting all required testing of the voting equipment, as required by Chapters 127 and 129 of the Texas Election Code.

At each polling location, joint participants shall share voting equipment and supplies to the extent possible. The participating authorities shall share a mutual ballot in those precincts where jurisdictions overlap. Multiple ballot styles shall be available in those shared polling places where jurisdictions do not overlap. The Elections Administrator shall provide the necessary voter registration information, maps, instructions, and other information needed to enable the election judges in the voting locations that have more than one ballot style to conduct a proper election.

Each participating authority shall furnish the Elections Administrator a list of candidates and/or propositions showing the order and the exact manner in which the candidate names and/or proposition(s) are to appear on the official ballot (including titles and text in each language in which the authority's ballot is to be printed). **Said list must be provided to the Elections Office within three (3) business days following the last day to file for a place on the ballot** or after the election is ordered, whichever is later. The list must be in a Word document, the information will preferably be in sentence case format, be in Arial 12 point font, and must contain candidate contact information for the purposes of verifying the pronunciation of each candidate's name. Each participating authority shall be responsible for proofreading and approving the ballot insofar as it pertains to that authority's candidates and/or propositions. Each participating authority shall be responsible for proofing and approving the audio recording of the ballot insofar as it pertains to that authority's candidates and/or propositions. **The approval must be finalized with the Elections Office within five (5) calendar days of the receipt of the proofs, or the provided proofs shall be considered approved.**

The joint election ballots shall list the County's election first. The joint election ballots that contain ballot content for more than one joint participant because of overlapping territory shall

be arranged with the appropriate school district ballot content appearing on the ballot following the County's election, followed by the appropriate city ballot content, and followed by the appropriate water district or special district ballot content.

Early Voting by personal appearance and on Election Day shall be conducted exclusively on Denton County's Verity voting system including provisional ballots.

The Elections Administrator shall be responsible for the preparation, testing, and delivery of the voting equipment for the election as required by the Election Code.

The Elections Administrator shall conduct criminal background checks on the relevant employees upon hiring as required by Election Code 129.051(g).

VI. EARLY VOTING

The participating authorities agree to conduct joint early voting and to appoint the Election Administrator as the Early Voting Clerk in accordance with Sections 31.097 and 271.006 of the Texas Election Code. Each participating authority agrees to appoint the Elections Administrator's permanent county employees as deputy early voting clerks. The participating authorities further agree that the Elections Administrator may appoint other deputy early voting clerks to assist in the conduct of early voting as necessary, and that these additional deputy early voting clerks shall be compensated at an hourly rate set by Denton County pursuant to Section 83.052 of the Texas Election Code. Deputy early voting clerks who are permanent employees of the Denton County Elections Administrator or any participating authorities shall serve in that capacity without additional compensation.

Exhibit A of this document includes locations, dates, and times that voting will be held for Early Voting by personal appearance. Any qualified voter of the Joint Election may vote early by personal appearance at any one of the joint early voting locations. All requests for temporary branch polling places will be considered and determined based on the availability of facility and if it is within the Election Code parameters. All costs for temporary locations including coverage by Election Administration staff will be borne by the requesting authority. The Elections Administrator will determine when those hours are necessary, the number of staff and who are necessary, along with to whom the hours are to be billed. Cost for these hours will be billed at a rate of 1.5 times the staff's hourly rate (See Sections XV #10). The Election Administrator has the right to waive these costs as they see fit.

The standard dates and hours for the May 6, 2023 election will be as follows:

Monday, April 24, 2023 through Saturday, April 29, 2023; 8am – 5pm
Sunday, April 30, 2023; 11am-5pm
Monday, May 1, 2023 through Tuesday, May 2, 2023; 7am-7pm.

As Early Voting Clerk, the Elections Administrator shall receive applications for early voting ballots to be voted by mail in accordance with Chapters 31 and 86 of the Texas Election Code. Any requests for early voting ballots to be voted by mail received by the participating authorities

shall be forwarded immediately by fax or courier to the Elections Administrator for processing. The address of the Early Voting Clerk is as follows:

Frank Phillips, Early Voting Clerk
Denton County Elections
PO Box 1720
Denton, TX 76202
Email: elections@dentoncounty.gov

Any requests for early voting ballots to be voted by mail, and the subsequent actual voted ballots that are sent by a contract carrier (ie. UPS, FedEx, etc.) shall be delivered to the Early Voting Clerk at the Denton County Elections Department physical address as follows:

Frank Phillips, Early Voting Clerk
Denton County Elections
701 Kimberly Drive, Suite A101
Denton, TX 76208
Email: elections@dentoncounty.gov

The Elections Administrator shall post on the county website, the participating authority's Early Voting Roster on a daily basis. In accordance with Section 87.121 of the Election Code, the daily roster showing the previous day's early voting activity will be posted no later than 11:00 am each business day.

VII. EARLY VOTING BALLOT BOARD

Denton County shall appoint the Presiding Judge of an Early Voting Ballot Board (EVBB) to process early voting results from the Joint Election. The Presiding Judge, with the assistance of the Elections Administrator, shall appoint an Alternate Judge and one or more additional members to constitute the EVBB. The Elections Administrator shall determine the number of EVBB members required to efficiently process the early voting ballots.

VIII. CENTRAL COUNTING STATION AND ELECTION RETURNS

The Elections Administrator shall be responsible for establishing and operating the central counting station to receive and tabulate the voted ballots in accordance with the provisions of the Texas Election Code and of this agreement.

The participating authorities hereby, in accordance with Section 127.002, 127.003, and 127.005 of the Texas Election Code, appoint the following central counting station officials:

Counting Station Manager: Brandy Grimes, Deputy Elections Administrator
Tabulation Supervisor: Jason Slonaker, Technology Resources Coordinator
Presiding Judge: Early Voting Ballot Board Judge
Alternate Judge: Early Voting Ballot Board Alternate Judge

The counting station manager or their representative shall deliver timely cumulative reports of the election results as precincts report to the central counting station and are tabulated by posting on the Election Administrator's Election Night Results website. The manager shall be responsible for releasing unofficial cumulative totals and precinct returns from the election to the joint participants, candidates, press, and general public by distribution of hard copies at the central counting station (if requested) and by posting to the Election Administrator's Election Night Results website. To ensure the accuracy of reported election returns, results printed on the reports produced by Denton County's voting equipment will not be released to the participating authorities at the remote collection locations or from individual polling locations.

The Elections Administrator will prepare the unofficial canvass reports after all precincts have been counted and will deliver a copy of the unofficial canvass to each participating authority as soon as possible after all returns have been tabulated. The Elections Administrator will include the tabulation and precinct-by-precinct results that are required by Texas Election Code Section 67.004 for the participating authorities to conduct their respective canvasses. Each participating authority shall be responsible for the official canvass of its respective election(s), and shall notify the Elections Administrator, or their designee, of the date of the canvass, no later than three days after Election Day.

The Elections Administrator shall be responsible for conducting the post-election manual recount required by Section 127.201 of the Texas Election Code unless a waiver is granted by the Secretary of State. Notification and copies of the recount, if waiver is denied, will be provided to each participating authority and the Secretary of State's Office.

IX. PARTICIPATING AUTHORITIES WITH TERRITORY OUTSIDE DENTON COUNTY

Each participating authority with territory containing population outside of Denton County agrees that they Elections Administrator shall administer only the Denton County portion of those elections.

X. RUNOFF ELECTIONS

Each participating authority shall have the option of extending the terms of this agreement through its runoff election, if applicable. In the event of such runoff election, the terms of this agreement shall automatically extend unless the participating authority notifies the Elections Administrator in writing within three (3) business days of the original election.

Each participating authority shall reserve the right to reduce the number of early voting locations and/or Election Day voting locations in a runoff election.

Each participating authority eligible to hold runoff elections agrees that the date of the runoff election, if necessary, shall be Saturday, June 10, 2023, with early voting being held in accordance with the Election Code.

XI. ELECTION EXPENSES AND ALLOCATION OF COSTS

The participating authorities agree to share the costs of administering the Joint Election.

Allocation of general expenses, which are not directly attributable to an individual polling location, will be expensed by each participating authority's percentage of registered voters of the total registered voters of all participating authorities.

Expenses for Early Voting by personal appearance shall be allocated based upon the actual costs associated with each early voting location. Each participating authority shall be responsible for an equal portion of the actual costs associated with the early voting locations within their jurisdiction. Participating authorities that do not have a polling location within their jurisdiction shall pay an equal portion of the nearest polling location.

Election Day location expenses will be allocated based on each participating authority's percentage of registered voters assigned to each polling place. If a participating authority's election is conducted at more than one Election Day polling location there shall be no charges or fees allocated to the participating authority for the cost of the Election Day polling location in which the authority has fewer than 50% of the total registered voters served by that polling location, except that if the number of registered voters in all of the authority's polling locations is less than the 50% threshold, the participating authority shall share the expenses, based on their percentage of registered voters, of the polling location at which it has the greatest percentage of registered voters.

In the event that participating authorities with overlapping boundaries cannot make an agreement on Early Voting and/or Election Day locations, the requesting participating authority agrees to bear the entire expense of the location.

Each participating authority requesting additional hours, outside of the standard hours, for a location or locations, agree to split the cost of the additional open hours equally amongst the requesting participating authorities.

Costs for Early Voting by mail, in-person ballots, provisional ballots, and Poll Pad paper shall be allocated according to the actual number of ballots issued to each participating authority's voters and the cost shared equally amongst participating authorities of each ballot style.

Each participating authority agrees to pay the Elections Administrator an administrative fee equal to ten percent (10%) of its total billable costs in accordance with Section 31.100(d) of the Texas Election Code.

The Denton County Elections Administrator shall deposit all funds payable under this contract into the appropriate fund(s) within the county treasury in accordance with Election Code Section 31.100.

The Denton County Elections Administrator reserves the right to adjust the above formulas in agreement with an individual jurisdiction if the above formula results in a cost allocation that is inequitable.

If any participating authority makes a special request for extra Temporary Branch Early Voting by Personal Appearance locations as provided by the Texas Election Code, that entity agrees to pay the entire cost for that request.

Participating authorities having the majority of their voters in another county, and fewer than 500 registered voters in Denton County, and that do not have an Election Day polling place or early voting location within their Denton County territory shall pay a flat fee of \$400 for election expenses.

Election expenses, including but not limited to, overtime charges for Election Office staff, and any unforeseen expenses needed to conduct the election, will be borne by the participating authority or authorities, affected.

XII. WITHDRAWAL FROM CONTRACT DUE TO CANCELLATION OF ELECTION

Any participating authority may withdraw from this agreement and the Joint Election should it cancel its election in accordance with Sections 2.051 - 2.053 of the Texas Election Code. The withdrawing authority is fully liable for any expenses incurred by the Denton County Elections Administrator on behalf of the authority plus an administrative fee of ten percent (10%) of such expenses. Any monies deposited with the Elections Administrator by the withdrawing authority shall be refunded, minus the aforementioned expenses and administrative fees, if applicable.

It is agreed that any of the joint election early voting locations that are not within the boundaries of one or more of the remaining participating authorities, with the exception of the early voting location at the Denton County Elections Building, may be dropped from the joint election unless one or more of the remaining participating authorities agreed to fully fund such location(s). In the event that any early voting location is eliminated under this section, as addendum to the contract shall be provided to the remaining participants within five days after notification of all intents to withdraw have been received by the Elections Administrator.

XIII. RECORDS OF THE ELECTION

The Elections Administrator is hereby appointed general custodian of the voted ballots and all records of the Joint Election as authorized by Section 271.010 of the Texas Election Code.

Access to the election records shall be available to each participating authority as well as to the public in accordance with applicable provisions of the Texas Election Code and the Texas Public Information Act. The election records shall be stored at the offices of the Elections Administrator or at an alternate facility used for storage of county records. The Elections Administrator shall ensure that the records are maintained in an orderly manner so that the records are clearly identifiable and retrievable.

Records of the election shall be retained and disposed of in accordance with the provisions of Section 66.058 of the Texas Election Code. If records of the election are involved in any pending election contest, investigation, litigation, or open records request, the Elections Administrator shall maintain the records until final resolution or until final judgment, whichever is applicable.

It is the responsibility of each participating authority to bring to the attention of the Elections Administrator any notice of pending election contest, investigation, litigation or open records request which may be filed with the appropriate participating authority.

XIV. RECOUNTS

A recount may be obtained as provided by Title 13 of the Texas Election Code. By signing this document, the presiding officer of the contracting participating authorities agree that any recount shall take place at the office of the Elections Administrator, and that the Elections Administrator shall serve as Recount Supervisor, and the participating authority's official or employee who performs the duties of a secretary under the Texas Election Code shall serve as Recount Coordinator.

The Elections Administrator agrees to provide advisory services to each participating authority as necessary to conduct a proper recount.

XV. MISCELLANEOUS PROVISIONS

1. It is understood that to the extent space is available, other districts and political subdivisions may wish to participate in the use of the County's election equipment and voting places, and it is agreed that the Elections Administrator may contract with such other districts or political subdivisions for such purposes and that in such event there may be an adjustment of the pro-rata share to be paid to the County by the participating authorities.
2. The Elections Administrator shall file copies of this document with the Denton County Treasurer and the Denton County Auditor in accordance with Section 31.099 of the Texas Election Code.
3. Nothing in this contract prevents any party from taking appropriate legal action against any other party and/or other election personnel for a breach of this contract or a violation of the Texas Election Code.
4. This agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas.
5. In the event that one of more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
6. All parties shall comply with all applicable laws, ordinances, and codes of the State of Texas, all local governments, and any other entities with local jurisdiction.

7. The waiver by any party of a breach of any provision of this agreement shall not operate as or be construed as a waiver of any subsequent breach.
8. Any amendments of this agreement shall be of no effect unless in writing and signed by all parties hereto.
9. Failure for a participating authority to meet the deadlines as outline in this contract may result in additional charges, including but not limited to, overtime charges, etc.

Elections Staffing Hourly Rate (includes all benefit pay):

Absentee Voting Coordinator	\$43.137
Voter Registration Clerk	\$33.198 - \$35.590
Technology Resources Coordinator	\$46.790
Elections Technician	\$31.220 - \$37.234
Voter Registration Coordinator	\$40.308
Training Coordinator	\$45.243
Election Coordinator	\$37.234

XIV. COST ESTIMATES AND DEPOSIT OF FUNDS

The total estimated obligation for each participating authority under the terms of this agreement is listed below. The exact amount of each participating authority's obligation under the terms of this agreement shall be calculated after the May 6, 2023 election (or runoff election, if applicable). The participating authority's obligation shall be paid to Denton County within 30 days after the receipt of the final invoice from the Denton County Elections Administrator.

The total estimated obligation for each participating authority under the terms of this agreement shall be provided within 45 days after the last deadline for ordering an election:

[costs]

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XVII. JOINT CONTRACT ACCEPTANCE AND APPROVAL

IN TESTIMONY HEREOF, this agreement has been executed on behalf of the parties hereto as follows, to-wit:

- (1) It has on the 23rd day of January, 2023 been executed by the Denton County Elections Administrator pursuant to the Texas Election Code so authorizing;
- (2) It has on the 7th day of February, 2023 been executed on behalf of the Town of Little Elm pursuant to an action of the Town of Little Elm Town Council so authorizing;

ACCEPTED AND AGREED TO BY DENTON COUNTY ELECTIONS ADMINISTRATOR:

APPROVED:



Frank Phillips, CERA

ACCEPTED AND AGREED TO BY THE TOWN OF LITTLE ELM:

APPROVED:

ATTESTED:

CURTIS J. CORNELIOUS, MAYOR

CAITLAN BIGGS, TOWN SECRETARY



Date: 02/07/2023
Agenda Item #: 5. C.
Department: Administrative Services
Strategic Goal: Ensure strong relationship within the community and region
Staff Contact: Caitlan Biggs, Director of Administrative Services/Town Secretary

AGENDA ITEM:

Consider Action to Approve **Ordinance No. 1702 Ordering a General Election to be held on May 6, 2023.**

DESCRIPTION:

The Town of Little Elm is ordering a general and special election to be held on May 6, 2023, for the following purposes:

- To elect a Town Council Member for Place 5, for a three (3) year term; and
- To elect a Town Council Member for Place 6, for a three (3) year term.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Ordinance No. 1702

TOWN OF LITTLE ELM, TEXAS

ORDINANCE NO. 1702

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS, ORDERING A GENERAL ELECTION TO BE HELD ON SATURDAY, MAY 6, 2023, FOR THE FOLLOWING PURPOSES: ELECT (1) TOWN COUNCIL MEMBER FOR PLACE 5 FOR A THREE (3) YEAR TERM; ELECT ONE (1) TOWN COUNCIL MEMBER FOR PLACE 6 FOR A THREE (3) YEAR TERM; PROVIDING FOR THE APPOINTMENT OF ELECTION OFFICERS; PROVIDING FOR THE DESIGNATION OF THE PLACES AND MANNER OF HOLDING SAID ELECTION; PROVIDING FOR THE DESIGNATION OF THE EARLY VOTING POLLING PLACES; PROVIDING FOR THE DESIGNATION OF THE EARLY VOTING CLERK; PROVIDING FOR THE POSTING AND PUBLICATION OF NOTICE; PROVIDING A SEVERABILITY AND CONFLICTS CLAUSE; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Section 41.001 of the Texas Election Code, as amended, establishes Saturday, May 6, 2023, as a “uniform election date” for the purposes of conducting an election within the Town of Little Elm, Texas (**“Town”**); and

WHEREAS, the Town Council Member terms of office for Place 5 and Place 6 will expire in May, 2023, and must be filled by general election; and

WHEREAS, the Town has entered into a Joint Election Agreement and Contract for Election Services (**“Election Services Agreement”**) with the Denton County Elections Administrator (**“Elections Administrator”**) for conducting the general election within the Town, which Election Services Agreement provides, among other things, that the Elections Administrator will conduct the general election for the Town; will appoint election judges, clerks, and other election personnel; will provide voting supplies and equipment; will conduct early voting; will count and provide election returns; and will designate early voting polling sites and Election Day voting sites for the Town.

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

Section 1. Findings.

The facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct legislative findings and are adopted as part of this ordinance for all purposes.

Section 2. Election Order; Election Date; Purpose of Election.

A general election of the Town shall be held on May 6, 2023, between the hours of 7:00

a.m. and 7:00 p.m., at those Election Day voting sites as determined by the Elections Administrator, for the following purposes:

- (1) To elect a Town Council Member for Place 5, for a three (3) year term;
- (2) To elect a Town Council Member for Place 6, for a three (3) year term;

Section 3. Candidate Filing Deadline.

Candidates for Town Council Member for Place 5 and Town Council Member for Place 6, may file with the Town Secretary of the Town of Little Elm, Texas ("**Town Secretary**"), for one of the two (2) places beginning on January 18, 2023, and until 5:00 p.m. on February 17, 2023. The last date and time for a write-in candidate shall be 5:00 p.m. on February 21, 2023.

Section 4. Voting System, Ballots.

Voting on the date of the election, and early voting therefore, shall be by the use of a lawfully approved voting system, as provided in the Election Services Agreement. The preparation of the voting equipment to be used in connection with such voting system and the official ballots for the election shall conform to the Texas Election Code, as amended, so as to permit the electors of the Town to vote for Town Council Member for Place 5 and Town Council Member Place 6. Said ballots shall have printed therein such provisions, markings, and language as may be required by law and as set forth by the Elections Administrator pursuant to the provisions of the Elections Services Agreement, and in substantially the following form and language:

**GENERAL ELECTION
Town of Little Elm, Texas
May 6, 2023**

OFFICIAL BALLOT

Council Member for Place 5

Council Member for Place 6

Section 5. Election Precincts; Polling Places.

All election precincts, early voting polling sites and Election Day polling sites shall be determined by the Elections Administrator pursuant to the Election Services Agreement.

Section 6. Appointment of a Presiding Election Judge, and Alternate Presiding Election Judge; Notice of Appointment.

A Presiding Judge and Alternate Presiding Judge for all designated polling places shall be appointed by the Elections Administrator, pursuant to provisions of the Election Services Agreement, and in accordance with Section 32.009 of the Texas Election Code.

Section 7. Early Voting; Early Voting Polling Place(s).

Early voting shall commence in the at the Little Elm Town Hall in the Council Conference Room (next to Council Chambers) located at 100 W. Eldorado Pkwy, Little Elm, TX 75068 on April 24, 2023 (as well as at any other polling site(s) determined by the Elections Administrator pursuant to the Election Services Agreement), and shall close on May 2, 2023. During the lawful early voting by personal appearance period (April 24, 2023, through May 2, 2023), the Town Secretary (or designated personnel of the Elections Administrator) shall keep such place(s) for early voting open for early voting by personal appearance schedule as follows:

April 24 – April 29	8:00 a.m. to 5:00 p.m.
April 30	11:00 a.m. to 5:00 p.m.
May 1 – May 2	7:00 a.m. to 7:00 p.m.

The main early voting location is at the Denton County Elections Administration, 701 Kimberly Dr., Ste. A111, Denton, TX 76208.

Section 8. Applications for Ballot by Mail and Federal Post Card Applications.

Applications for a Ballot by Mail and Federal Post Card Applications must be submitted between January 1, 2023 and April 25, 2023 by mail, fax or email to:

Frank Phillips
Early Voting Clerk
PO Box 1720
Denton, TX 76202
Fax: 940-349-3201
Email: elections@dentoncounty.com
Website: <https://www.votedenton.gov/>

Section 9. Election Compliance.

This election shall be held in accordance with, and shall be governed by, the election laws

of the State of Texas. In all Town elections, the Mayor, Town Secretary, or Town Council shall perform each act as is required to be performed, in connection with the holding and consummation of such election, and to give effect to the intent of this ordinance and all Town obligations as set forth in the Election Services Agreement.

Section 10. Voting Qualification; Voting Materials.

All registered, qualified voters of the Town shall be permitted to vote at the election. In addition, the election materials enumerated in the Texas Election Code, as amended, shall be printed in English and Spanish for use at the polling places and for early voting for the election.

Section 11. Compensation for Services.

The Presiding Election Judge, Alternate Presiding Judge, and each Election Clerk shall be compensated at the rate determined by the Elections Administrator, pursuant to the provisions of the Election Services Agreement.

Section 12. Notices.

The Town Secretary is hereby ordered and directed to give notice of the general election by:

- (a) Publishing the notice of the election at least once, not more than thirty (30) days nor less than ten (10) days before the election in the official newspaper of the Town, or between April 6, 2023 and April 26, 2023;
- (b) Filing with the Town Secretary a copy of the notice of the election;
- (c) Posting a copy of the notice on the bulletin board used for posting notices of the meetings of the Town Council and on the Town's website (www.littleelm.org) at least twenty-one (21) days before the election, by April 15, 2023; and
- (d) Delivering notice of the election to the Denton County clerk not later than the 60th day before Election Day, or March 7, 2023.

The Town Secretary shall file with the Town Secretary a copy of the Publisher's Affidavit, which complies with the Texas Election Code, as amended, that the notice was published, with the name of the newspaper and the dates of publication.

Section 13. Run-Off Election.

In accordance with the State Constitution, the Texas Election Code, and the Charter, in the event that no candidate receives a majority of the votes for an office, there shall be a runoff election held on a date authorized by the Texas Election Code. If a run-off election

becomes necessary it shall be ordered by the Mayor or Mayor Pro-tem not later than five (5) days after the canvassing of the returns of the general election, or as otherwise authorized by the Texas Election Code. The Town may, at its option, choose to conduct any runoff election in conjunction with the Denton County Elections administrator through the provisions of the Election Services Agreement.

Section 14. Severability Clause; Conflicts with Election Services Agreement.

If any word, section, article, phrase, paragraph, sentence, clause, or portion of this ordinance or application thereto to any person or circumstance is held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portion of this ordinance; and the Town Council hereby declares it would have passed such remaining portions of this ordinance despite such invalidity which remaining portions shall remain in full force and effect. Additionally, it is the intent of the Town Council in adopting this ordinance to fully comply with the terms of the Election Services Agreement. Should any conflict arise between any term of this ordinance and the Town's obligations under the Election Services Agreement, it is the express intent of the Town Council that the terms of the Election Services Agreement should control and govern the administration of the general election addressed in this ordinance.

Section 15. Effective Date.

This ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, Texas
this 7th day of February 2023.

Curtis J. Cornelious, Mayor

ATTEST:

Caitlan Biggs, Town Secretary

APPROVED AS TO FORM:

Robert F. Brown, Town Attorney



Date: 02/07/2023
Agenda Item #: 5. D.
Department: Finance
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Kelly Wilson, Chief Financial Officer

AGENDA ITEM:

Consider Action to Approve an **Agreement between the Town of Little Elm and Patricia Adams for Services as Presiding Municipal Judge and Magistrate of the Little Elm Municipal Court for a Term of Two (2) Years.**

DESCRIPTION:

The current agreement approved December 15, 2020 between the Town of Little Elm and our Municipal Court Judge, Patricia Adams, has expired. The agreement attached will renew the contract for an additional two-year term set to expire in September 2024. Texas Government Code 30.00006 and the Town's Code of Ordinances; Chapter 34, Section 34-10 requires the judge to hold two-year terms from the date of appointment.

The attached agreement is for the same compensation terms and duties except for increasing the magistrate rate from \$100 an hour to \$150 an hour. This will mirror the current rate for Municipal Judge services.

BUDGET IMPACT:

Funding for services is identified in the General Fund-Municipal Court operating budget.

RECOMMENDED ACTION:

Staff recommends approval. Brown & Hofmeister, LLP has reviewed contract as to form and legality.

Attachments

Adams Contract

STATE OF TEXAS

COUNTY OF DENTON

KNOW ALL BY THESE PRESENTS:

AGREEMENT

For and in consideration of the mutual terms, conditions and covenants therein contained, the following agreement is entered into by and between the Town of Little Elm, Texas (hereinafter referred to as the "Town") and Patricia Adams (hereinafter referred to as "Adams").

I.

The Town has appointed Adams as Municipal Judge of the Little Elm Municipal Court of Record for a term of two (2) years. Such term commencing on October 1, 2022 and expiring on September 30, 2024. This agreement is renewable if both parties agree to the terms.

II.

Adams' services as Municipal Judge are on an on-call basis, and Adams will be reasonably available to perform her role as Municipal Court Judge as requested by the Town. Adams' services as a magistrate for the Town's jail are on an on-call basis, and Adams will be reasonably available to perform her duties as a magistrate as requested by the Town, in accordance with the requirements of the Code of Criminal Procedure. Adams is required to provide her own robe. Adams is further required to spend a reasonable amount of time participating in judicial continuing legal education programs so as to enhance her abilities to perform as Municipal Court Judge and to enhance the stature of such duties.

III.

In consideration for her Municipal Judge services, Adams shall receive the compensation in the amount of One Hundred and Fifty and No/100 Dollars (\$150.00) for each hour that Adams performs duties as Municipal Court Judge of the Little Elm Municipal Court of Record from October 1, 2022 until September 30, 2024. Time worked in less than one (1) hour increments shall be billed at the hourly rate set forth for each quarter hour worked by Adams.

In consideration for her services as a magistrate for Town's jail, Adams shall receive One Hundred Fifty and No/100 Dollars (\$150.00) for each hour of magistrate duties performed for Town's jail, with one (1) hour minimum for each call out for such services. After the first hour, time worked shall be billed at the hourly rate set forth above for each quarter hour worked by Adams. Payment by the Town for such services shall be from Town's current funds. The Town makes no warranties or representations as to the amount of work Adams will receive under this Agreement.

IV.

Adams may be removed from office by the Town at any time for incompetency, misconduct, malfeasance, unsatisfactory performance, or disability or otherwise in accordance with applicable law (including, without limitation, the Town Charter or Town ordinance), rule, or regulation. Adams shall be required to provide at least thirty (30) days' notice of resignation.

V.

The terms, obligations, and requirements of this Agreement shall be construed in accordance with the laws of the State of Texas (without regard to the conflict of law provisions). The obligations and requirements of the parties hereto are performable in the Town of Little Elm, Denton County, Texas and venue for any dispute relating to this Agreement lies in Denton County, Texas

VI.

The parties hereto agree that Adams may only serve beyond the term of this Agreement upon the express authorization of the governing body of the Town. The parties agree that this provision shall control over any law, rule or regulation in conflict herewith.

VII.

This Agreement is executed on behalf of the Town by the Town Manager who is authorized to execute this instrument by Council approved hereto passed and duly recorded in its minutes.

VIII.

This instrument shall be the entire agreement and understand between parties hereto and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exit. This Agreement cannot be amended orally.

WITNESS the signature of all parties hereto in single or multiple originals on this the 7th day of February, 2023 in Denton County, Texas.

TOWN OF LITTLE ELM, TEXAS

BY: _____
Patricia A. Adams, Municipal Judge

BY: _____
Curtis J. Cornelius, Mayor

APPROVED TO FORM:

ATTEST:

BY: _____
Robert Brown, Town Attorney

BY: _____
Caitlan Biggs, Town Secretary



Date: 02/07/2023
Agenda Item #: 5. E.
Department: Finance
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Kelly Wilson, Chief Financial Officer

AGENDA ITEM:

Consider Action to Approve an **Agreement between the Town of Little Elm and Collette O. Sallas for Services as Presiding Associate Municipal Judge for a Term of Two (2) Years.**

DESCRIPTION:

The current agreement that was approved December 15, 2019, between the Town of Little Elm and our Alternate Municipal Court Judge, Collette O. Sallas, has expired. The agreement attached will renew the contract for an additional two-year term set to expire in September 2024. Texas Government Code 30.00006 and the Town's Code of Ordinances; Chapter 34, Section 34-10 requires the judge to hold two-year terms from the date of appointment.

The attached agreement is for the same compensation terms and duties except for increasing the magistrate rate from \$100 an hour to \$150 an hour. This will mirror the current rate for Municipal Judge services.

BUDGET IMPACT:

Funding has been established in the General Fund-Municipal Court operating budget.

RECOMMENDED ACTION:

Staff recommends approval. Brown & Hofmeister, LLP has reviewed contract as to form and legality.

Attachments

Alternate Municipal Court Judge Sallas contract agreement

ASSOCIATE MUNICIPAL COURT JUDGE LETTER AGREEMENT

On or about February 7, 2023 the Mayor of the Town of Little Elm, with the concurrence of the Town Council for the Town of Little Elm ("Town"), appointed Colette O. Sallas to serve as Alternate Associate Municipal Court Judge ("Associate Judge") for the Town of Little Elm. This Letter Agreement ("Agreement") shall become effective on October 1, 2022 subject to the following terms and conditions for such professional services.

Section 1. Appointment.

- a. The Associate Judge shall be appointed in accordance with the Town Charter, and upon approval of the Town Council.
- b. The Associate Judge shall perform duties in compliance with the Town Ordinances, specifically including, but not limited to, Chapter 34.

Section 2. Term and Termination.

- a. The Associate Judge shall be, at all times and for all purposes, an independent contractor of the Town, as that term is defined by Texas legal authority. The Associate Judge agrees that no property right shall be created by the execution of this Agreement.
- b. The Associate Judge shall serve as an Associate Municipal Court Judge beginning on the effective date of this Agreement and shall end on September 30, 2024.
- c. The Associate Judge shall serve at the pleasure of the Town Council. The Town Council, with or without cause, and without notice, may terminate this Agreement and the Associate Judge's services at any time, in accordance with state law.

Section 3. Duties.

- a. The Associate Judge shall preside over the Little Elm Municipal Court and perform all duties set forth below in accordance with the schedule promulgated by the Presiding Judge.
- b. The Associate Judge shall perform the functions and duties specified in the applicable sections of the Town Charter and Town Ordinances, and shall perform such other legally permissible and proper duties and functions, as the Town shall assign from time to time.
- c. The Associate Judge shall perform all services and duties customarily performed by a judge of a municipal court in the State of Texas.
- d. The Associate Judge is required to keep abreast of state law and local ordinances, including state-mandated fees for the Little Elm Municipal Court. Although a

recognized function of judicial discretion, the Associate Judge shall endeavor to enforce the law consistently and within suggested state guidelines and pursuant to the Rules adopted by the Town, and shall be uniform and consistent in the implementation of judicial policy in accordance with State law and local ordinances. The Associate Judge shall apply the law and enter judgments in accordance with State law and local ordinances, shall abide by all mandatory provisions of the law, and shall not create or apply exceptions where none exist under law. Judicial discretion shall only be applied where allowed under law.

- e. The Associate Judge shall operate within the docket schedule prepared and coordinated by the Presiding Judge of the Town, the Court Administrator, the Town Attorney and the Town Manager, or designees thereof. The Associate Judge shall timely perform all duties, including, but not limited to, the dockets set forth in the docket schedule.

Section 4. Standing Orders.

- a. The Town Council desires uniformity and consistency in the implementation of judicial policy in accordance with state law and local ordinances. Therefore, the Associate Judge shall utilize the "Bench Book" produced by the Texas Municipal Court Education Center and comply with standing orders promulgated by the Presiding Judge.
- b. The Presiding Judge will promulgate and maintain judicial policies and procedures for insertion into "Rules" which addresses the daily administration of the municipal court and trial procedures, for matters such as dismissals, installment payments, deferred disposition, and continuances. Any changes to the Rules must be in writing and acknowledged by the Associate Judge. No policy will be implemented by the clerks of the court prior to the same being in written form, executed by the Presiding Judge, and approved by the Town Council. Court clerks will not enforce oral policies.
- c. The Associate Judge shall adhere to the Rules.

Section 5. Municipal Court.

- a. The Presiding Judge and Court Administrator will coordinate a specific date and time, as needed, to allow the Presiding Judge or an associate judge to review and execute all necessary court documents. This schedule shall be a permanent responsibility, which must be maintained other than for emergencies or upon advance notice. The Associate Judge shall be available to sign documents when scheduled to do so by the Presiding Judge or in exigent circumstances when requested by the Court Administrator.

- b. Court shall commence promptly for scheduled docket times on designated court dates. The Associate Judge shall make every effort to take the bench and convene court dockets at the designated docket time.

Section 6. *Magistrate Services*

- a. Magistrate Service shall be performed on an as-needed basis in accordance with the provisions of the Rules and all applicable state and federal laws. An officer or community services officer shall be made available for assisting with magistrate services.
- b. All paperwork from magistrate services must be properly completed. The Associate Judge shall ensure that no judicially inputted information is omitted on judgments, warrants and probable cause affidavits. The Associate Judge will return any documents prepared by Town staff that are not properly completed for correction; however, this shall in no way be read to create a duty for the Associate Judge to correct the document or to give legal advice to Town staff.
- c. The Associate Judge shall be available as needed to sign warrants, probable cause affidavits or emergency magistrate services (such as for medical emergencies) at times other than as scheduled, or for times outside the normal business day of 8:00 a.m. to 5:00 p.m. The Police Department shall use all reasonable efforts to ensure that each situation receives immediate judicial attention. The Associate Judge will be compensated according to the rate(s) specified in Section 7 - *Compensation and Evaluation* of this Agreement for each additional job duty required. Additionally, as needed the Judge must be available to sign both search and arrest warrants.
- d. The Associate Judge shall be available according to the schedule promulgated by the Presiding Judge and when acting as a substitute for the Presiding Judge, unless alternate magistrate services have been agreed upon twenty-four hours prior to the changed date and time.

Section 7. *Compensation and Evaluation.*

- a. As compensation for all required services, and as outlined above, the Town agrees to pay to the Associate Judge according to a flat rate per job duty according to the following schedule:

Magistrate Services (per hour) (quarter hour increment)	\$150.00
Court dockets (per hour) (quarter hour increment)	\$150.00

- b. In the event the Associate Judge is required to testify at a court proceeding relative to her duties as Associate Judge, the Associate Judge shall be entitled to receive compensation at an amount \$ 150.00 per hour of appearance in court, to be approved by the Town in advance of such testimony, when feasible.

- c. The Associate Judge shall send all to the Town once per month no later than the fifth day of each month. The bill shall indicate each date that the Associate Judge performed a compensable duty outlined in Section 7(a,) above, the duty performed, and the applicable rate. The bill shall also provide a total invoiced amount for the month.
- d. The Town shall pay the Associate Judge once per month within twenty-one {21} days from the date the invoice is received by the Town unless the invoice is disputed by the Town, in which instance the Town may withhold the amount(s) of the disputed charges until such dispute is settled.
- e. Associate Judge will not be compensated for state required training.

Section 8. At any time that the compensation rate is adjusted, reviewed or evaluated for the prosecutor or presiding judge, then the same evaluation shall be had for the associate judge.

General Provisions.

- a. The text herein, or as amended hereafter, in writing, by agreement of Town and Associate Judge, shall constitute the entire agreement between the parties.
- b. This Agreement shall be governed by the laws of the State of Texas and venue for any proceeding related to this Agreement shall be in Denton County, Texas.
- c. If any provision or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

WITNESS the signature of all parties hereto in single or multiple originals on this the 7th day of February, 2023 in Denton County, Texas.

TOWN OF LITTLE ELM, TEXAS

Colette O. Sallas

Curtis J. Cornelious, Mayor

APPROVED TO FORM:

ATTEST:

Robert Brown, Town Attorney

Caitlan Biggs, Town Secretary



Date: 02/07/2023
Agenda Item #: 5. F.
Department: Public Works
Strategic Goal: Ensure excellence in public services while keeping up with the growth in the community
Staff Contact: Jason Shroyer, Director of Public Works

AGENDA ITEM:

Consider Action to Approve a **Construction Manager at Risk Contract to AUI Partners, LLC for the Public Works Service Center Remodel Project (Contract #2022-15).**

DESCRIPTION:

The Public Works Service Center was originally built in 2004 and is the main operating building for the Town's Public Works functions; Administration, Utilities (Water Distribution, Water Quality, Wastewater Collection, Wastewater Treatment), Streets, Stormwater, Solid Waste and Fleet. Due to the growth of the department and the changes in operations, the building is in need of an expansion and remodel. In connection with the expansion, the new Service Center will also become the operations center and laboratory for the Town's wastewater treatment plant. Currently, the wastewater treatment laboratory is located at the plant and was built in the late 1970s. It has significantly exceeded its life expectancy, and due to the increase in staff and the ever-changing regulatory environment is in need of complete replacement. Rather than complete reconstruction, staff has decided to take advantage of the cost savings associated with combining both projects into one and moving the laboratory into the Service Center. This will also provide additional continuity between laboratory staff and department administration.

This project will provide for a 3,400 square foot addition to the east of the existing structure which will include a completely new layout of the administrative side of the building, to include a lobby, offices, conference room and cubicle areas for staff. The renovation will also include two new restrooms and a remodel of all the existing restroom space. The existing employee break area will be remodeled and then re-purposed to become the new wastewater treatment laboratory. Several of the existing storage areas and bays will be enclosed and remodeled into office space and the new employee break and meeting area, adding approximately 4,300 square feet of new space. This newly expanded building will better serve the needs of the Public Works department and provide for all planned future growth in the department.

In April 2022, town staff issued a request for qualifications (RFQ) seeking contractors experienced in completing building construction/remodeling services. Three firms responded to the RFQ, and after the responses were evaluated by staff, AUI Partners was selected as the most qualified firm to

complete the project. The design plans are complete, and the contractor is preparing final pricing for the project. In order to begin scheduling the initial construction work and material orders, staff is requesting approval to award the construction contract. Any increases to this initial contract amount will require additional approval from Town Council.

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

BUDGET IMPACT:

Funding for the project is allocated within the capital improvement program budget. Proposed Contract Amount: \$2,800,000. Funding identified for the construction of this project is the 2021 CO Bonds.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Draft Contract
GMP Proposal

TOWN OF LITTLE ELM, TEXAS
CONSTRUCTION MANAGER AT RISK AGREEMENT

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

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

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

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

ARTICLE 1. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

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

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

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

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

ARTICLE 2. EMPLOYMENT OF CONTRACTOR

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

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

1. Contractor's Representative:

2. Owner's Representative:

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

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

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

ARTICLE 3. SCOPE OF SERVICES

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

ARTICLE 4. CONTRACTOR'S LIABILITY

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

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

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

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

ARTICLE 5. CONFIDENTIAL INFORMATION

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

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

ARTICLE 6. INDEMNITY

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

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

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

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

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

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

ARTICLE 7. TERMINATION OR SUSPENSION

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

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

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

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

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

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

ARTICLE 8. CLAIMS AND DISPUTES

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

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

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

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

ARTICLE 9. INSURANCE AND BONDS

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

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

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

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

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

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

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

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

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

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

REQUIRED WORKERS' COMPENSATION COVERAGE

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

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

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

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

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

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

ARTICLE 10. MISCELLANEOUS

§10.1 Choice of Law

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

§10.2 Severability

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

§10.3 Notice

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

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

If to Contractor:

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

§10.4 Unsatisfactory Work

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

§10.5 Retainage

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

§10.6 No Respondeat Superior

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

§10.7 Conflict of Interest

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

§10.8 Non-Waiver

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

§10.9 Assignment

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

§10.10 No Third-Party Beneficiary Created

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

§10.11 Signatures

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

IN WITNESS WHEREOF, the parties execute below:

TOWN OF LITTLE ELM, TEXAS

CONTRACTOR.

Matt Mueller, Town Manager

Signature

Date: _____

Printed Name & Title

Date: _____



13600 Heritage Pkwy, Suite 150
Fort Worth, Texas 76177
P 817.926.4377 F 817.926.6416

January 26, 2023

Town of Little Elm
Public works Expansion
Guaranteed Maximum Price

We are pleased to offer the following Guaranteed Maximum Price for the Town of Little Elm Public Works Expansion project:

<u>Description</u>	<u>GMP (\$)</u>
Demolition	\$35,000.00
Earthwork	\$24,761.00
Utilities	\$42,300.00
Pavement Markings	\$3,000.00
Landscaping/Irrigation Allowance	\$65,910.00
Wood Fence	\$7,500.00
Concrete	\$228,052.00
Masonry	\$102,456.00
PE Metal Bldg	\$235,000.00
Millwork	\$83,469.00
Joint Sealants/Waterproofing	\$52,600.00
Doors/Hdwr	\$110,000.00
Storefront/Windows	\$116,720.00
Drywall/Framing	\$177,196.00

Flooring	\$143,328.00
Painting	\$72,107.00
Toilet Partitions/Accessories	\$24,448.00
Appliances	\$10,000.00
Office Trailer for Staff	\$35,000.00
Signage	\$19,083.00
Fire Sprinklers	\$53,000.00
Plumbing	\$164,945.00
HVAC	\$136,500.00
Electrical/Lighting/Fire Alarm	\$164,775.00
Catwalk & Wash Equipment	\$67,875.00
A/V/Data/Comm Allowance	\$75,000.00
Subtotal:	\$2,250,025.00
Owner Contingency	\$120,000.00
General Conditions:	\$215,000.00
Insurance (1.75%):	\$43,137.94
Fee/OH (3.5%):	\$87,785.70
Proposal Total:	\$2,715,948.64
Add Bond:	\$33,949.36
Total w/Bond:	\$2,749,898.00

Qualifications:

1. Owner Contingency of \$120,000 is included.
2. Allowance of \$75,000 is included for Security & Access Control.
3. Performance & Payment Bonds are included.
4. GMP pricing is based on documents prepared by Hidell and Associates Architects dated 12/13/2022 including addendum #1 dated 1/5/2023.

Exclusions:

1. Material Tax.
2. City permits and impact fees.
3. Franchise utility fees (Gas, Power, Telephone, etc.)
4. Relocation of existing franchise utilities other than indicated on bid documents.
5. Rock Excavation.
6. Unforeseen conditions.
7. Removal of asbestos or hazardous materials.
8. Construction cores included for doors, final keying and cores by owner.

We greatly appreciate the opportunity. Please let me know if you have any questions.

Sincerely,
AUI Partners, LLC.



Dustin Stiffler
President



Date: 02/07/2023
Agenda Item #: 5. G.
Department: Administrative Services
Strategic Goal: Provide a safe and welcoming environment for Little Elm residents and visitors
Staff Contact: Rodney Harrison, Police Chief

AGENDA ITEM:

Consider Action to Accept the **Little Elm Police Department's 2022 Racial Profiling Report.**

DESCRIPTION:

Article 2.132 (7) of the Texas Code of Criminal Procedure requires the annual reporting to the local governing body of data collected on the race or ethnicity of individuals stopped and issued citations or arrested for traffic violations and whether or not those individuals were searched.

During the 85th Texas Legislative Session, Senate Bill 1849, known as the Sandra Bland Act, was passed and made the Motor Vehicle Contact Search Analysis mandatory for all law enforcement agencies in Texas, effective September 1, 2017.

This report provides information related to data collected from motor vehicles stops in which a citation or warning is issued and to arrests made as a result of those stops, including information such as:

- The race or ethnicity of the individual detained;
- Whether a search was conducted and, if so, whether the detained individual consented to the search; and
- Whether the peace officer knew the race or ethnicity of the individual before detaining them.

The conclusion of the report is that there were no allegations of Racial Profiling in 2022 for the Little Elm Police Department and that the department is in compliance with Texas Code of Criminal Procedure Article 2.132.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

2022 Racial Profiling Report



Little Elm Police Department Racial Profiling Report

2022

January 25, 2023

Contents

Texas Code of Criminal Procedure – Article 2.131-2.132.....	2
Art. 2.131 Racial Profiling Prohibited.....	3
Texas Code of Criminal Procedure – Article 2.133-2.136.....	6
Art. 2.133 Reports Required for Motor Vehicle Stops.....	7
Art. 2.134 Compilation and Analysis of Information Collected	8
Art. 2.136 Liability	9
Little Elm Police Department	10
2021 Data Compilation – Total Traffic Related Contacts	18
2021 Data Compilation – Total Traffic Related Searches	19
2021 Data Compilation – Result of Stop.....	20
Best Practices – 2.01 Bias Based Profiling (EV).....	21
Complaints Made.....	23
Conclusion.....	23
TCOLE Submission.....	24
TCOLE 2021 Racial Profile Agency Report Exemption	26
Report Submission	27

Texas Code of Criminal Procedure

Article 2.131-2.132

- Prohibits racial profiling by police officers
- Requires implementation of a process by which complaints may be made for racial profiling
- Requires collection of data related to motor vehicle stops resulting in citations and/or arrests:
 - Race of the individual
 - Whether a search was conducted
 - Whether the search was consensual
 - Whether the officer knew the race of the individual being stopped prior to the stop
 - Whether the officer used physical force that resulted in bodily injury during the stop
 - Location and Reason for the stop
- Requires the Chief of Police to submit an annual report to the Texas Commission on Law Enforcement (TCOLE) and the Little Elm City Council

Art. 2.131. RACIAL PROFILING PROHIBITED.

A peace officer may not engage in racial profiling.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING.

(a) In this article:

- (1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle stops in the routine performance of the officers' official duties.
- (2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.
- (3) "Race or ethnicity" means the following categories:
 - (A) Alaska native or American Indian;
 - (B) Asian or Pacific Islander;
 - (C) black;
 - (D) white; and
 - (E) Hispanic or Latino.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

- (1) clearly define acts constituting racial profiling;
- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
- (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
- (4) provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;
- (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information relating to:

- (A) the race or ethnicity of the individual detained;
- (B) whether a search was conducted and, if so, whether the individual detained consented to the search;
- (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;
- (D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;
- (E) the location of the stop; and
- (F) the reason for the stop; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

- (A) the Texas Commission on Law Enforcement; and
- (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651, Occupations Code. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by

a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

(g) On a finding by the Texas Commission on Law Enforcement that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

(h) A law enforcement agency shall review the data collected under Subsection (b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. [3389](#)), Sec. 25, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. [686](#)), Sec. 2.05, eff. May 18, 2013.

Acts 2017, 85th Leg., R.S., Ch. 173 (H.B. [3051](#)), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. [1849](#)), Sec. 5.01, eff. September 1, 2017.

Texas Code of Criminal Procedure

Article 2.133-2.136

- Requires law enforcement agencies to submit a yearly report of the information collected to the governing body of the municipality
- Reports required for motor vehicle stops
- Compilation of data
- Analysis of data is not required
- Little Elm Police Department is exempt from reporting additional identifying information pertaining to motor vehicle stops

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE STOPS.

- (a) In this article, "race or ethnicity" has the meaning assigned by Article 2.132(a).
- (b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:
 - (1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:
 - (A) the person's gender; and
 - (B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;
 - (2) the initial reason for the stop;
 - (3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;
 - (4) whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;
 - (5) the reason for the search, including whether:
 - (A) any contraband or other evidence was in plain view;
 - (B) any probable cause or reasonable suspicion existed to perform the search; or
 - (C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;
 - (6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;
 - (7) the street address or approximate location of the stop;
 - (8) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and
 - (9) whether the officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop.
- (c) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. [3389](#)), Sec. 26, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. [1849](#)), Sec. 5.02, eff. September 1, 2017.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

(a) In this article:

(1) "Motor vehicle stop" has the meaning assigned by Article [2.132\(a\)](#).

(2) "Race or ethnicity" has the meaning assigned by Article [2.132\(a\)](#).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article [2.133](#). Not later than March 1 of each year, each law enforcement agency shall submit a report containing the incident-based data compiled during the previous calendar year to the Texas Commission on Law Enforcement and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency.

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article [2.133](#) to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities;

(B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; and

(2) Information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested

by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Texas Commission on Law Enforcement, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(g) On a finding by the Texas Commission on Law Enforcement that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 27, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.06, eff. May 18, 2013.

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 5.03, eff. September 1, 2017.


Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Little Elm Police Department

General Order 2900 (Issued 12-21-2015, replaced Lexipol 328)

- Policy effective June 9, 2020
- Reviewed July 28, 2021
- States purpose
- Establishes policy
- Prohibits discriminatory practices
- Establishes complaint process
- Establishes disciplinary and corrective actions
- Establishes public education
- Provides for training
- Establishes guidelines for data collection
- Use of video/audio equipment and review

LITTLE ELM POLICE DEPARTMENT GENERAL ORDERS	
SUBJECT: RACIAL PROFILING	NUMBER: 2900
EFFECTIVE DATE: 01/12/2021	REVIEW DATE: 07/28/2021
AMENDS/SUPERSEDES: Lexipol 328	APPROVED:  Chief of Police
BEST PRACTICE STANDARDS: 2.01.1	

NOTE: This General Order is for internal use only and does not enhance an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this General Order, if proven, can only form the basis of a complaint by this Department and only in a non-judicial, administrative setting.

INDEX WORDS:

Audio and Video Recording
Collection of Information
Complaint
Ethnicity
Race

Racial Profiling
Reporting
Review
Training

I. PURPOSE

- A. The purpose of this order is to reaffirm the Town of Little Elm Police Department's commitment to unbiased policing in all its encounters with any person; to reinforce procedures that serve to ensure public confidence and mutual trust through the provision of services in a fair and equitable fashion; and to protect our officers from unwarranted accusations of misconduct when they act within the dictates of departmental policy and the law.

II. POLICY

- A. It is the policy of this Department to police in a proactive manner and to aggressively investigate suspected violations of the law. Officers shall actively enforce local, state and federal laws in a responsible and professional manner without regard to race, ethnicity, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group. Officers are strictly prohibited from engaging in racial profiling as defined in this policy. Racial profiling is an unacceptable police tactic and will not be condoned.
- B. This General Order is adopted in compliance with the requirements of Articles 2.131 through 2.136, Texas Code of Criminal Procedure, which prohibits Texas peace officers from engaging in racial profiling.

III. **DEFINITIONS**

- A. **Acts Constituting Racial Profiling** - acts initiating law enforcement action, such as a traffic stop, a detention, a search, issuance of a citation, or an arrest based solely upon an individual's race, ethnicity, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group rather than upon the individual's behavior, information identifying the individual as having possibly engaged in criminal activity, or other lawful reasons for the law enforcement action
- B. **Motor Vehicle Stop** – means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.
- C. **Race or Ethnicity** - persons of a particular descent, including Caucasian, African, Hispanic, Asian, Middle Eastern or Native American descent.
- D. **Racial Profiling** - a law enforcement-initiated action based on an individual's race, ethnicity, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity. Racial profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants, persons needing assistance, or other citizen contacts.

IV. **PROHIBITION**

- A. Officers of the Little Elm Police Department are strictly prohibited from engaging in racial profiling. The prohibition against racial profiling does not preclude the use of race, ethnicity or national origin as factors in a detention decision by an officer. Race, ethnicity or national origin may be legitimate factors in such a decision when used as part of a description of a suspect or witness for whom an officer is searching.

V. **COMPLAINT PROCESS**

- A. No person shall be discouraged, intimidated or coerced from filing a complaint, or be discriminated against because they have filed a complaint.
- B. Any person who believes that a peace officer employed by the Little Elm Police Department has engaged in racial profiling with respect to that person, may file a complaint in accordance with the provisions of General Order 300, Discipline/Complaints against Police Personnel.
 - 1. An employee who is contacted regarding a complaint against an officer shall follow the procedures set forth in General Order 300, Section X. Investigation of Externally Originated Complaints.
 - 2. Citizens who appear in person wishing to file a complaint shall be provided with a departmental brochure, "How to File a Complaint." Brochures are maintained in the Little Elm Police Department lobby, and at Little Elm Town Hall. Citizens may also be directed to the Departmental website to file a complaint.

- C. Any supervisor who becomes aware of an alleged or suspected violation of this General Order shall report the alleged violation in accordance with General Order 300, Discipline, Section XI. Investigation of Internally Originated Complaints.
- D. Complaints of racial profiling shall be classified as a Level I complaint, and shall be investigated by the Office of the Chief of Police, unless otherwise directed by the Chief of Police. A log of all Racial Profiling Complaints will be maintained by the Office of the Chief of Police.

VI. DISCIPLINARY AND CORRECTIVE ACTIONS

- A. Any officer of this Department who is found, after investigation, to have engaged in racial profiling in violation of this General Order may be subject to disciplinary action, up to and including termination. Disciplinary or corrective actions may include diversity, sensitivity or other appropriate training or counseling, as determined by the Chief of Police.

VII. PUBLIC EDUCATION

- A. This Department shall provide education to the public concerning the racial profiling complaint process. The primary method of public education shall be through a brochure, "How to File a Complaint" which are maintained in the lobby of the Little Elm Police Department, and at the Little Elm Town Hall. These brochures are available in both English and Spanish versions. Other education methods may be utilized to inform the public, including news media, civic presentations, the Internet, and/or public meetings.

VIII. COLLECTION OF INFORMATION AND ANNUAL REPORT WHEN CITATION ISSUED OR ARREST MADE

- A. For each motor vehicle stop in which a citation is issued and for each arrest resulting from a motor vehicle stop, an officer involved in the stop shall collect the following information:
 - 1. Information identifying the race or ethnicity of the individual detained. The following codes will be used to identify the individual's race:
 - B = Black / African
 - A = Asian
 - I = Native American / American Indian
 - H = Hispanic
 - W = White / Caucasian
 - 2. Whether a search was conducted and if so, whether the individual detained consented to the search ; and

3. Whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and
 4. If the person contacted is a resident of the Town of Little Elm, this shall be reflected in the Racial Profiling module in the Brazos ticket writing program.
- B. The information collected shall be entered in to the Racial Profiling module in the Brazos ticket writing program by the officer in a timely manner. All stops requiring Racial Profiling data collection must be entered.
- C. The Professional Standards Lieutenant shall ensure all Racial Profiling Data is collected and reported to the Chief of Police. The data collected shall be compiled in an annual report covering the period January 1 through December 31 of each year, and shall be submitted to the governing body of the Town of Little Elm no later than March 1 of the following year. The report will include:
1. A breakdown of citations by race or ethnicity;
 2. Number of citations that resulted in a search;
 3. Number of searches that were consensual;
 4. Number of citations that resulted in custodial arrest; and
 5. Public education efforts concerning the racial profiling complaint process.
- C. The annual report shall not include identifying information about any individual stopped or arrested, and shall not include identifying information about any peace officer involved in a stop or arrest.
- D. Racial Profiling Data will also be reported to the Texas Commission on Law Enforcement (TCOLE) by March 1 of each year, following the Commission's prescribed format.

IX. AUDIO AND VIDEO EQUIPMENT

- A. Each motor vehicle regularly used by this department to make motor vehicle stops shall be equipped with a mobile video camera system capable of recording video and audio, and each motorcycle regularly used by this department to make motor vehicle stops shall be equipped with audio recording equipment.
- B. Each motor vehicle stop made by an officer of this department capable of being recorded by video and audio, or by audio only for motorcycles, shall be recorded.
- C. Supervisors and Officers shall ensure that mobile video camera equipment, and/or audio equipment, is properly functioning prior to commencing their tour of duty. Police units with malfunctioning or inoperable mobile video camera equipment shall not be utilized under normal circumstances.

D. Supervisors shall have the authority to assign units with malfunctioning or inoperable mobile video equipment when situations dictate. Officers assigned to such units shall collect and document the information listed below for each motor vehicle stop. All documentation must be submitted to the officer's supervisor prior to ending that tour of duty. Documentation shall include but is not limited to Field Interview Forms, Traffic Citations and Warning Tickets.

1. A physical description of any person operating the motor vehicle, who is detained as a result of the stop, including:
 - a. the person's gender; and
 - b. the person's race or ethnicity, as stated by the person, or if the person does not state, the person's race or ethnicity, as determined by the officer to the best of his or her ability. Officers will not ask the individual to identify their race or ethnicity;
2. Whether the officer knew the race or ethnicity of the individual detained before detaining that individual;
3. The initial reason for the stop;
4. Whether the officer conducted a search as a result of the stop, and, if so, whether or not the person detained consented to the search;
5. Whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;
6. The reason for the search, including whether:
 - a. Any contraband or other evidence was in plain view;
 - b. Any probable cause or reasonable suspicion existed to perform the search; or
 - c. The search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle
7. Whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of Penal Code, a violation of traffic law or ordinance or an outstanding warrant and a statement of the offense charged.
8. The street address or approximate location of the stop;
9. Whether the officer issued a citation or a written warning as a result of the stop; and
10. Whether the person contacted is a resident or non-resident of the Town of Little Elm. This shall be reflected on each citation issued, using an (R) for residents or an (NR) for non-resident.

XI. REVIEW OF VIDEO AND AUDIO DOCUMENTATION

- A. Each audio and video recording shall be retained for a minimum period of ninety (90) days, unless a complaint is filed alleging that an officer has engaged in racial profiling with respect to a motor vehicle stop. The Patrol Operations Commander shall ensure that all audio and recordings are properly stored and retained in accordance with applicable laws and this General Order.
- B. If a complaint is received alleging that an officer has engaged in racial profiling, the audio / video recording shall be forwarded to the Office of the Chief of Police who shall retain the video until final disposition of the complaint has been made.
- C. The Patrol Operations Commander or his designee shall review a randomly selected sampling of video and audio recordings, made recently by officers employed by the Department, in order to determine if patterns of racial profiling exist. These reviews shall be conducted monthly and documented on the appropriate form (LEPD-018)
 - 1. Written documentation shall include:
 - a. the names of the officers whose stops were reviewed;
 - b. the date(s) of the videos reviewed;
 - c. the date the actual review was conducted; and
 - d. the name of the person conducting the review.
 - 2. The Patrol Operations Commander shall forward the required documentation to the Office of the Chief of Police.
 - 3. The Patrol Operations Commander shall maintain a file of all video review documentation performed, in compliance with this General Order.
- D. In reviewing audio and video recordings, the Patrol Operations Commander or his designee, shall seek to determine if the officer(s) reviewed have engaged in a pattern of racial profiling, that includes multiple acts constituting racial profiling for which there is no reasonable, credible explanation based on established police and law enforcement procedures.

XII. TRAINING

- A. Each peace officer employed by the Department shall complete the comprehensive education and training program on racial profiling established by the Texas Commission on Law Enforcement (TCOLE) not later than the second anniversary of the date the officer was licensed, or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

XIII. EFFECTIVE DATE

- A. Any previous directive, rule, order or regulation that pertains to this subject matter and its amendments shall remain in full force and effect for any violation(s) which occur prior to the effective date of this General Order.

- B. If any section, sentence, clause or phrase of this General Order is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this General Order.
- C. All training on this General Order will be in accordance with General Order 100, Written Directive System, Chapter VIII, Training.
- D. The effective date is stated in the header block of this General Order.

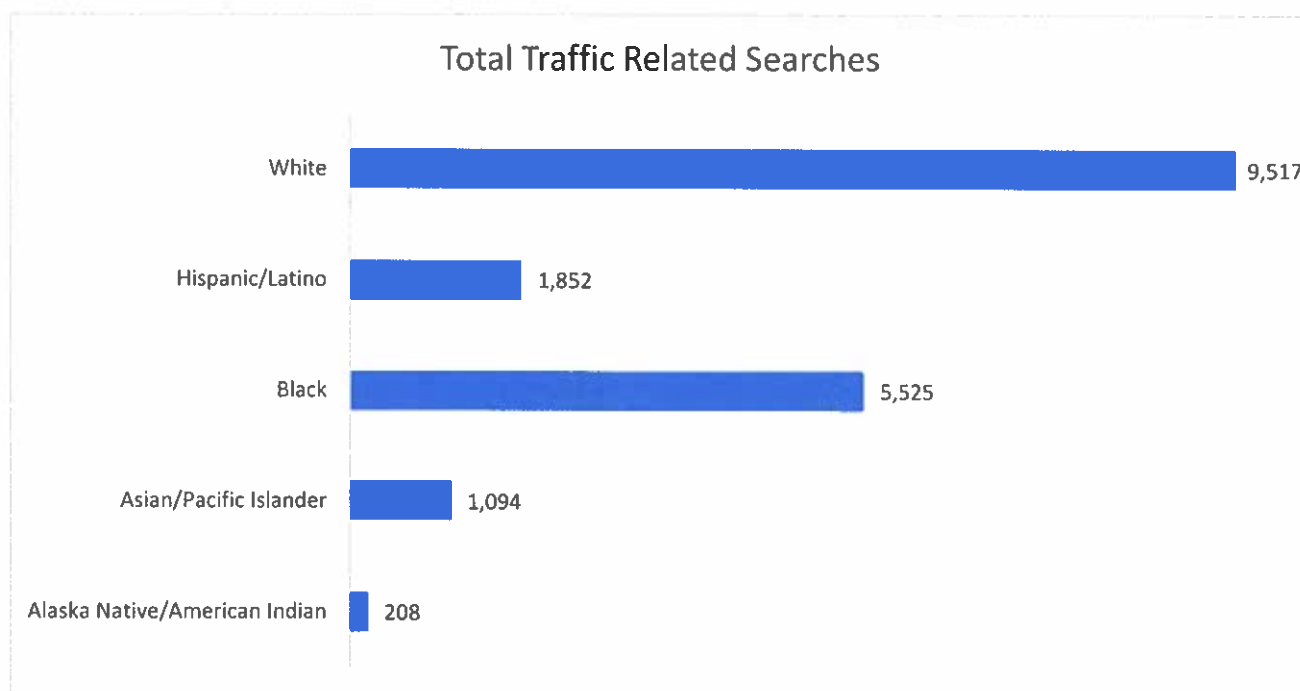
2022 Data Compilation

Total Traffic Related contacts Resulting in Search, Arrest, or Citation/Warning

Total County by Number / Percentage

Race	Traffic Related Contact Resulting in Search, Arrest or Citation/Warning	Traffic Related Contact Resulting in Search, Arrest or Citation/Warning Percentage
Alaskan Native / American Indian	208	1%
Asian / Pacific Islander	1,094	6%
Black	5,525	30%
Hispanic / Latino	1,852	10%
White	9,517	52%
Total	18,196	100%

Graphical Analysis

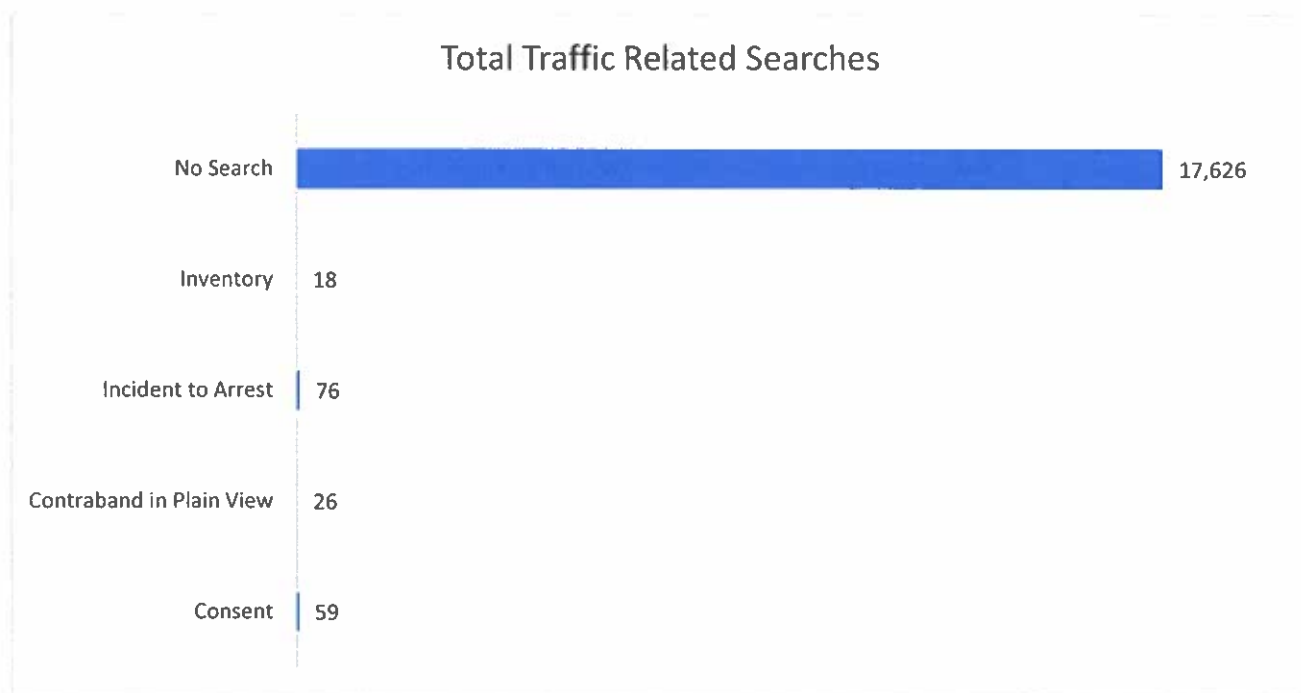


Total Traffic Related Searches

Total by Raw Number / Percentage

Searches	Total Searches	Percentage
Consent	59	0.32%
Contraband In Plain View	26	0.14%
Incident to Arrest	76	0.42%
Inventory	18	0.10%
No Search	17,626	96.87%
Probable Cause	391	2.15 %
Total	18,196	100%

Graphical Analysis

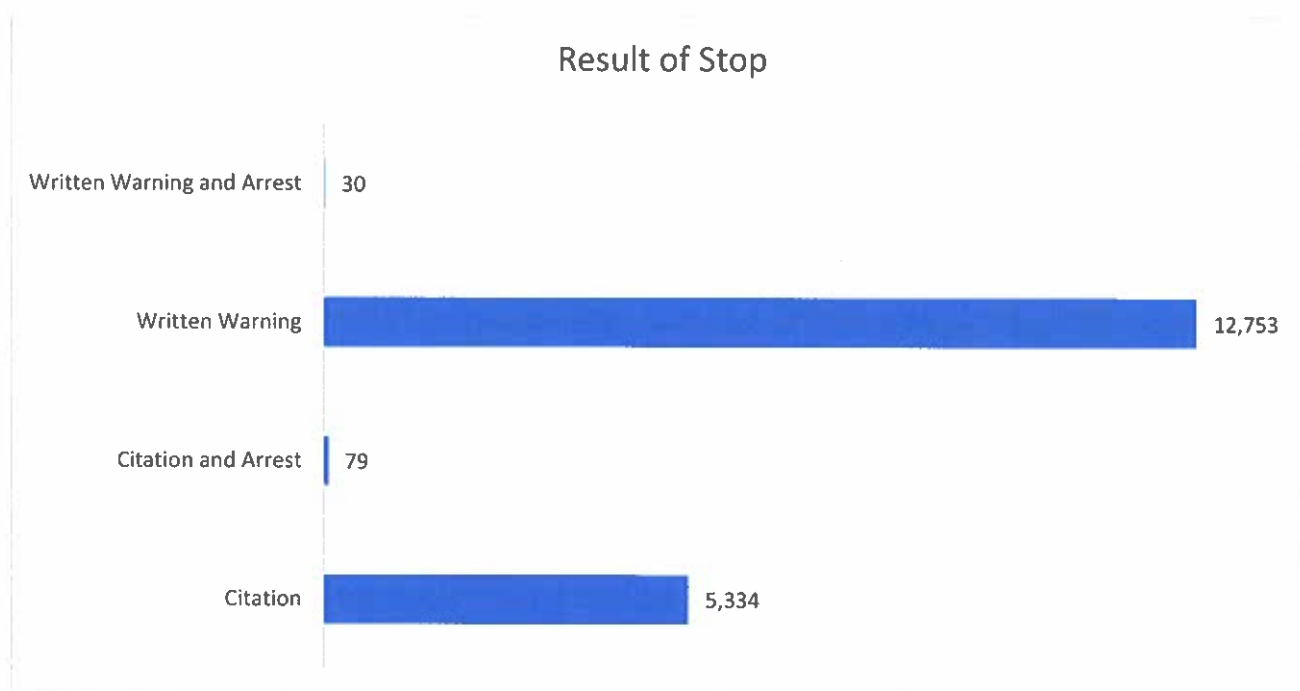


Result of Stop

Total by Raw Number / Percentage

Result of Stop	Total Result	Percentage
Citation	5,334	29.31%
Citation and Arrest	79	0.43%
Written Warning	12,753	70.09%
Written Warning and Arrest	30	0.16%
Total	18,196	100%

Graphical Analysis





Texas Police Chiefs Association

DOCUMENT SUBMISSION FORM

Agency: Little Elm Police Department

Best Practice **2.01 Bias Based Profiling (EV)**

The agency has a written directive, complying with current laws on the reporting of the Bias Based Profiling information collected by the agency, and training of enforcement personnel in the prohibition of Bias Based Profiling. If the Agency uses in-car cameras and/or body cameras, the directive shall require the supervisory review of at least three random videos, at least every six months, per officer.

Discussion: Bias based profiling and especially racial profiling is highly injurious to a law enforcement agency as it erodes public confidence in equality of treatment. Agencies should ensure their definition of racial profiling (part of bias based profiling) meets the definition of the Texas Code of Criminal Procedure Article 3.05 as well as the operational procedures required under Articles 2.131 through 2.138.

Prohibition of Bias Based Profiling however is broader than the state required racial profiling prohibition. The agency's written directive should meet or exceed state law requirements for prohibition of racial profiling, but must also prohibit any profiling based on ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group. Agencies need to ensure their policy includes all of this expanded definition.

Agencies are required to publish an annual report of their traffic stops under Article 2.134. This annual report is also required as part of this standard but will not be submitted electronically. Agencies should indicate on their Document Submission Form that the Annual Reports are in file. If all other parts of the Best Practice requirements are met, the standard will be "Accepted" and the actual annual reports will be reviewed on-site by the Final Review team.

Minimum Training Level 2. While a higher level of training is always encouraged, the training portion of this standard may be met by showing that officers have received Roll-call Training or a formal Training Bulletin, watched a video, received a copy of a policy which was discussed with a Supervisor, or received a copy of a policy and been tested over its content.

When conducting random, quarterly, supervisory reviews of officer's video supervisors are not required to watch each incident of an 8, 10, or 12 hour shift; however, reviewing the footage in a manner intended to gain an understanding of that officer's performance and adherence to policy and law is required.

TCOLE Submission
Little Elm Police Department
2022 Racial Profiling Report

Gender

Female	6,814
Male	11,382
Total	18,196

Race and ethnicity

Alaskan Native / American Indian	208
Asian / Pacific Islander	1,094
Black	5,525
Hispanic / Latino	1,852
White	9,517
Total	18,196

Was race or ethnicity know prior to the stop?

No	17,631
Yes	565
Total	18,196

Reason for Stop?

Moving Traffic Violation	11,119
Pre Existing Knowledge	775
Vehicle Traffic Violation	4,798
Violation of Law / Unknown	1,504
Total	18,196

Street Address or approximate location of the stop

City Street	14,200
County Road	131
Private Property or Other/Unknown	567
State Highway	175
US Highway	3,123
Total	18,196

Was a search conducted?

No	17,626
Yes	570
Total	18,196

Reason for Search

Consent	59
Contraband in Plain View	26
Incident to Arrest	76
Inventory	18
No Search	17,626
Probable Cause	391
Total	18,196

Was Contraband Discovered?

No	142
Yes	428
Total	570

Description of Contraband

Alcohol	58
Currency	2
Drugs	329
Other	72
Stolen Property	1
Weapons	11
Total	473

Result of Stop

Citation	5,334
Citation and Arrest	79
Written Warning	12,753
Written Warning and Arrest	30
Total	18,196

Arrest base on

Outstanding Warrant	26
Violation of City Ordinance	11
Violation of Penal Code	56
Violation of Traffic Law	15
Total	109

Was physical force resulting in bodily injury used during stop?

No	18,185
Yes	11
Total	18,196

Was arrest due to contraband found?

No	84
Yes	25
Total	109

TCOLE 2022 Racial Profile Agency Report Exemption

Agency Name	Filing Status	Reason for Filing as Tier 1 or Tier 2	Chief Administrator and Agency Contact information*	Date Filed	Online Electronic Report	Agency Supplied Report
LITTLE ELM POLICE DEPT. Agency No: 121203	Partially Exempt (Tier 1)	Audio/Video Equipped	RODNEY HARRISON Phone: 214-975-0460 Email: rharrison@littleelm.org Mailing Address: LITTLE ELM POLICE DEPT. 88 W. Eldorado Pkwy Little Elm, TX 75068	02/06/2023	yes	yes

Article 2.132 CCP Law Enforcement Policy on Racial Profiling

Article 2.132(b) CCP Law Enforcement Policy on Racial Profiling LITTLE ELM POLICE DEPARTMENT. has adopted a detailed written policy on racial profiling. Our policy:

- (1) clearly defines acts constituting racial profiling;
- (2) strictly prohibit peace officers employed by the LITTLE ELM POLICE DEPARTMENT from engaging in racial profiling;
- (3) implements a process by which an individual may file a complaint with the LITTLE ELM POLICE DEPT. if the individual believes that a peace officer employed by the LITTLE ELM POLICE DEPARTMENT has engaged in racial profiling with respect to the individual;
- (4) provides public education relating to the agency's complaint process;
- (5) requires appropriate corrective action to be taken against a peace officer employed by the LITTLE ELM POLICE DEPARTMENT who, after an investigation, is shown to have engaged in racial profiling in violation of the LITTLE ELM POLICE DEPARTMENT's policy adopted under this article;
- (6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:
 - (A) the race or ethnicity of the individual detained;
 - (B) whether a search was conducted and, if so, whether the individual detained consented to the search; and
 - (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;
 - (D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;
 - (E) the location of the stop
 - (F) the reason for the stop; and
- (7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:
 - (A) the Commission on Law Enforcement; and
 - (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state outlines performance of the officers' official duties.

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Little Elm, TX PD

Jan 1, 2022 - Dec 31, 2022

Texas TCOLE SB1187 Racial Profiling Report (2022)

PLEASE NOTE: This report is based on the format provided by the Texas Commission on Law Enforcement (TCOLE), current as of Dec. 14, 2022.

01. Total Traffic Stops			
			18,196
			18,196
02. Location of Stop			
CITY STREET	78.04%		14,200
COUNTY ROAD	0.72%		131
PRIVATE PROPERTY OR OTHER	3.12%		567
STATE HIGHWAY	0.96%		175
US HIGHWAY	17.16%		3,123
Total	100.00%		18,196
03. Was Race Known Prior to Stop?			
N	96.89%		17,631
Y	3.11%		565
Total	100.00%		18,196
04. Race or Ethnicity			
ALASKA NATIVE/AMERICAN INDIAN	1.14%		208
ASIAN/PACIFIC ISLANDER	6.01%		1,094
BLACK	30.36%		5,525
HISPANIC/LATINO	10.18%		1,852
WHITE	52.30%		9,517
Total	100.00%		18,196
05. Gender			
FEMALE	ALASKA NATIVE/AMERICAN INDIAN	0.60%	41
	ASIAN/PACIFIC ISLANDER	4.75%	324
	BLACK	33.96%	2,314

Little Elm, TX PD

Jan 1, 2022 - Dec 31, 2022

Texas TCOLE SB1187 Racial Profiling Report (2022)

PLEASE NOTE: This report is based on the format provided by the Texas Commission on Law Enforcement (TCOLE), current as of Dec. 14, 2022.

05. Gender			
FEMALE	HISPANIC/LATINO	7.22%	492
	WHITE	53.46%	3,643
		100.00%	6,814
MALE	ALASKA NATIVE/AMERICAN INDIAN	1.47%	167
	ASIAN/PACIFIC ISLANDER	6.77%	770
	BLACK	28.21%	3,211
	HISPANIC/LATINO	11.95%	1,360
	WHITE	51.61%	5,874
		100.00%	11,382
Total			18,196

06. Reason for Stop?			
MOVING TRAFFIC VIOLATION	ALASKA NATIVE/AMERICAN INDIAN	1.20%	133
	ASIAN/PACIFIC ISLANDER	7.18%	798
	BLACK	27.32%	3,038
	HISPANIC/LATINO	8.71%	969
	WHITE	55.59%	6,181
		100.00%	11,119
PRE EXISTING KNOWLEDGE	ALASKA NATIVE/AMERICAN INDIAN	0.52%	4
	ASIAN/PACIFIC ISLANDER	6.58%	51
	BLACK	25.42%	197
	HISPANIC/LATINO	1.16%	9
	WHITE	66.32%	514
		100.00%	775
VEHICLE TRAFFIC VIOLATION	ALASKA NATIVE/AMERICAN INDIAN	0.96%	46

Little Elm, TX PD

Jan 1, 2022 - Dec 31, 2022

Texas TCOLE SB1187 Racial Profiling Report (2022)

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06. Reason for Stop?			
VEHICLE TRAFFIC VIOLATION	ASIAN/PACIFIC ISLANDER	3.83%	184
	BLACK	35.99%	1,727
	HISPANIC/LATINO	12.63%	606
	WHITE	46.58%	2,235
		100.00%	4,798
VIOLATION OF LAW	ALASKA NATIVE/AMERICAN INDIAN	1.66%	25
	ASIAN/PACIFIC ISLANDER	4.06%	61
	BLACK	37.43%	563
	HISPANIC/LATINO	17.82%	268
	WHITE	39.03%	587
		100.00%	1,504
Total			18,196
07. Was a Search Conducted?			
N	ALASKA NATIVE/AMERICAN INDIAN	1.17%	207
	ASIAN/PACIFIC ISLANDER	6.18%	1,089
	BLACK	29.66%	5,227
	HISPANIC/LATINO	10.09%	1,778
	WHITE	52.90%	9,325
		100.00%	17,626
Y	ALASKA NATIVE/AMERICAN INDIAN	0.18%	1
	ASIAN/PACIFIC ISLANDER	0.88%	5
	BLACK	52.28%	298
	HISPANIC/LATINO	12.98%	74
	WHITE	33.68%	192
		100.00%	570

Little Elm, TX PD

Jan 1, 2022 - Dec 31, 2022

Texas TCOLE SB1187 Racial Profiling Report (2022)

PLEASE NOTE: This report is based on the format provided by the Texas Commission on Law Enforcement (TCOLE), current as of Dec. 14, 2022.

07. Was a Search Conducted?			
Total			18,196
08. Reason for Search?			
CONSENT	ASIAN/PACIFIC ISLANDER	1.69%	1
	BLACK	45.76%	27
	HISPANIC/LATINO	11.86%	7
	WHITE	40.68%	24
		100.00%	59
CONTRABAND IN PLAIN VIEW	BLACK	46.15%	12
	HISPANIC/LATINO	15.38%	4
	WHITE	38.46%	10
		100.00%	26
INCIDENT TO ARREST	ASIAN/PACIFIC ISLANDER	1.32%	1
	BLACK	44.74%	34
	HISPANIC/LATINO	11.84%	9
	WHITE	42.11%	32
		100.00%	76
INVENTORY	BLACK	33.33%	6
	HISPANIC/LATINO	16.67%	3
	WHITE	50.00%	9
		100.00%	18
NO SEARCH	ALASKA NATIVE/AMERICAN INDIAN	1.17%	207
	ASIAN/PACIFIC ISLANDER	6.18%	1,089
	BLACK	29.66%	5,227
	HISPANIC/LATINO	10.09%	1,778
	WHITE	52.90%	9,325
		100.00%	17,626

Little Elm, TX PD

Jan 1, 2022 - Dec 31, 2022

Texas TCOLE SB1187 Racial Profiling Report (2022)

PLEASE NOTE: This report is based on the format provided by the Texas Commission on Law Enforcement (TCOLE), current as of Dec. 14, 2022.

08. Reason for Search?			
PROBABLE CAUSE	ALASKA NATIVE/AMERICAN INDIAN	0.26%	1
	ASIAN/PACIFIC ISLANDER	0.77%	3
	BLACK	56.01%	219
	HISPANIC/LATINO	13.04%	51
	WHITE	29.92%	117
		100.00%	391
Total			18,196
09. Was Contraband Discovered?			
N	ASIAN/PACIFIC ISLANDER	2.11%	3
	BLACK	52.11%	74
	HISPANIC/LATINO	11.27%	16
	WHITE	34.51%	49
		100.00%	142
Y	ALASKA NATIVE/AMERICAN INDIAN	0.23%	1
	ASIAN/PACIFIC ISLANDER	0.47%	2
	BLACK	52.34%	224
	HISPANIC/LATINO	13.55%	58
	WHITE	33.41%	143
		100.00%	428
Total			570

Little Elm, TX PD

Jan 1, 2022 - Dec 31, 2022

Texas TCOLE SB1187 Racial Profiling Report (2022)

10. Description of Contraband			
ALCOHOL	BLACK	29.31%	17
	HISPANIC/LATINO	27.59%	16
	WHITE	43.10%	25
		100.00%	58
CURRENCY	BLACK	50.00%	1
	WHITE	50.00%	1
		100.00%	2
DRUGS	ALASKA NATIVE/AMERICAN INDIAN	0.30%	1
	ASIAN/PACIFIC ISLANDER	0.61%	2
	BLACK	55.62%	183
	HISPANIC/LATINO	14.29%	47
	WHITE	29.18%	96
		100.00%	329
OTHER	BLACK	52.78%	38
	HISPANIC/LATINO	6.94%	5
	WHITE	40.28%	29
		100.00%	72
STOLEN PROPERTY	BLACK	100.00%	1
		100.00%	1
WEAPONS	BLACK	36.36%	4
	HISPANIC/LATINO	18.18%	2
	WHITE	45.45%	5
		100.00%	11
Total			473
11. Result of the Stop			
CITATION	ALASKA NATIVE/AMERICAN INDIAN	1.52%	81
	ASIAN/PACIFIC ISLANDER	4.52%	241

Little Elm, TX PD

Jan 1, 2022 - Dec 31, 2022

Texas TCOLE SB1187 Racial Profiling Report (2022)

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11. Result of the Stop			
CITATION	BLACK	31.27%	1,668
	HISPANIC/LATINO	15.62%	833
	WHITE	47.08%	2,511
		100.00%	5,334
CITATION AND ARREST	ALASKA NATIVE/AMERICAN INDIAN	1.27%	1
	ASIAN/PACIFIC ISLANDER	2.53%	2
	BLACK	51.90%	41
	HISPANIC/LATINO	16.46%	13
	WHITE	27.85%	22
		100.00%	79
WRITTEN WARNING	ALASKA NATIVE/AMERICAN INDIAN	0.99%	126
	ASIAN/PACIFIC ISLANDER	6.67%	851
	BLACK	29.80%	3,800
	HISPANIC/LATINO	7.83%	998
	WHITE	54.72%	6,978
		100.00%	12,753
WRITTEN WARNING AND ARREST	BLACK	53.33%	16
	HISPANIC/LATINO	26.67%	8
	WHITE	20.00%	6
		100.00%	30
Total			18,196
12. Arrest Based On			
	HISPANIC/LATINO	100.00%	1
		100.00%	1
OUTSTANDING WARRANT	BLACK	73.08%	19

Little Elm, TX PD

Jan 1, 2022 - Dec 31, 2022

Texas TCOLE SB1187 Racial Profiling Report (2022)

PLEASE NOTE: This report is based on the format provided by the Texas Commission on Law Enforcement (TCOLE), current as of Dec. 14, 2022.

12. Arrest Based On			
OUTSTANDING WARRANT	HISPANIC/LATINO	19.23%	5
	WHITE	7.69%	2
		100.00%	26
VIOLATION OF CITY ORDINANCE	BLACK	63.64%	7
	HISPANIC/LATINO	18.18%	2
	WHITE	18.18%	2
		100.00%	11
VIOLATION OF PENAL CODE	ASIAN/PACIFIC ISLANDER	3.57%	2
	BLACK	44.64%	25
	HISPANIC/LATINO	14.29%	8
	WHITE	37.50%	21
		100.00%	56
VIOLATION OF TRAFFIC LAW	ALASKA NATIVE/AMERICAN INDIAN	6.67%	1
	BLACK	40.00%	6
	HISPANIC/LATINO	33.33%	5
	WHITE	20.00%	3
		100.00%	15
Total			109

13. Was Physical Force Used?			
N	ALASKA NATIVE/AMERICAN INDIAN	1.14%	208
	ASIAN/PACIFIC ISLANDER	6.02%	1,094
	BLACK	30.34%	5,518
	HISPANIC/LATINO	10.18%	1,851
	WHITE	52.32%	9,514
		100.00%	18,185

Little Elm, TX PD

Jan 1, 2022 - Dec 31, 2022

Texas TCOLE SB1187 Racial Profiling Report (2022)

PLEASE NOTE: This report is based on the format provided by the Texas Commission on Law Enforcement (TCOLE), current as of Dec. 14, 2022.

13. Was Physical Force Used?			
Y	BLACK	63.64%	7
	HISPANIC/LATINO	9.09%	1
	WHITE	27.27%	3
		100.00%	11
Total			18,196
Was Arrest Due to Contraband Found?			
N	ALASKA NATIVE/AMERICAN INDIAN	1.19%	1
	ASIAN/PACIFIC ISLANDER	2.38%	2
	BLACK	54.76%	46
	HISPANIC/LATINO	14.29%	12
	WHITE	27.38%	23
		100.00%	84
Y	BLACK	44.00%	11
	HISPANIC/LATINO	36.00%	9
	WHITE	20.00%	5
		100.00%	25
Total			109



Date: 02/07/2023
Agenda Item #: 5. H.
Department: Community Services
Strategic Goal: Maximize community recreation and leisure activities
Staff Contact: Chad Hyde, Director of Community Services

AGENDA ITEM:

Consider Action to Approve a **Lease Agreement for Recreational Grounds and Facilities between the Town of Little Elm and Little Elm Independent School District.**

DESCRIPTION:

In consideration of the mutual covenants and agreements set forth in the lease, and other good and valuable considerations, Little Elm Independent School District (LEISD) will lease the 23 acres of land at Brent Park Area, located behind/around Brent Elementary. The lease term will be for twenty-five (25) years and shall run from the effective date until December 31, 2047, at which time will be terminated, extended, or renewed.

As consideration for LEISD leasing the leased premises to the Town, the Town agrees to maintain the leased property and make the following required capital improvements:

- Renovation and/or replacement of athletic fields, trails, and surrounding areas.
- Parking lot improvements, as needed.
- All infrastructure that supports athletic facilities.

No rent shall be paid as part of this lease. The Town agrees to provide space within the lease premises for portable temporary school buildings, if the need arises from LEISD. The Town will use the leased premises for recreational activities and such other activities as may be related to such operations unless LEISD gives the Town prior written consent for a different use.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

LEISD Lease Agreement

THE STATE OF TEXAS
COUNTY OF DENTON

§
§
§

TOWN OF LITTLE ELM, TEXAS
AND
LITTLE ELM INDEPENDENT SCHOOL DISTRICT

LEASE AGREEMENT FOR RECREATIONAL GROUNDS AND FACILITIES

This Lease Agreement for Recreational Grounds and Facilities ("**Lease**") is made and entered into by and between Little Elm Independent School District ("**LEISD**" or "**Lessor**"), whose address for the purposes of this Lease is 400 Lobo Lane, Little Elm, Texas 75068, and the Town of Little Elm, Denton County, Texas ("**Town**" or "**Lessee**"), whose address for the purposes of this Lease is 100 W. Eldorado Parkway, Little Elm, Texas. This Lease shall be effective as of the date of the latter to execute this Lease by and between the Lessor and Lessee ("**Effective Date**").

WITNESSETH:

ARTICLE I

Leased Premises

- 1.1 In consideration of the mutual covenants and agreements set forth in this lease, and other good and valuable consideration, LEISD does hereby lease to the Town, and the Town does hereby lease from LEISD, the following property:

Being 23 acres of land as more particularly described and/or depicted in *Exhibit A*, which is attached hereto and incorporated herein for all purposes;

together with all rights, privileges, easements, and appurtenances belonging to or in any way pertaining to the said premises and together with the building and other improvements now situated or to be erected upon the leased premises ("**Leased Premises**"). The Town has inspected the Leased Premises and by the execution of this Lease accepts it in its present condition, as is, where is, and with all faults.

ARTICLE 2

Term and Termination

Initial Term

- 2.1 The initial term of this Lease shall for twenty-five (25) years and shall run from the Effective Date until December 31, 2047, at which time the Lease shall terminate unless sooner terminated, extended and/or renewed as provided in this Lease. If the Town does not vacate the Leased Premises following expiration or termination of this lease, the Town will become a tenant at will and must vacate the Leased Premises on receipt of notice from LEISD. No holding over by the Town, whether with or without the consent of LEISD, will extend the term.

Extension Term

- 2.2 The Town shall have the right to renew and extend the Lease for another twenty-five (25) year term provided that the Town provides written notice to LEISD of its intent to do so during the last year of the initial term of the Lease and at least ninety (90) days before the initial term of the Lease is set to expire.

Termination and Assumption of Debt Service

- 2.3 2.3 LEISD may terminate this Lease, at any time, with or without cause. LEISD shall notify the Town at least ninety (90) days prior to its intention to terminate the Lease. **Should LEISD terminate the Lease without cause, however, LEISD shall either, at LEISD's option: (1) assume the debts, liabilities and obligations of the Town related to any improvements that the Town has made to the Leased Premises; or (2) reimburse the Town for the then-fair market value of the capital improvements that the Town has made to the Leased Premises, assuming depreciation on a straight-line basis over the twenty-five (25) year term of the Lease.** Notwithstanding the foregoing, to the extent any improvement the Town has made to the Leased Premises has fully depreciated, LEISD shall not be responsible for assuming the debts, liabilities, and obligations of the Town or reimbursing the Town for the then-fair market value of those capital improvements at termination. By way of example and not as a limitation, if the Town installs an athletic field with a useful life of ten (10) years but finances the field for a period longer than ten (10) years, LEISD is not responsible for any assumption of debt, liability, obligation or

reimbursement to Town for the athletic field if the Lease is terminated after the end of the useful life of the athletic field.

- 2.4 If the Town terminates or abandons this Lease or defaults beyond any applicable cure period, LEISD shall not be responsible for reimbursing Town or assuming liability for any additions, alterations, or improvements installed by Town.
- 2.5 At any time during the term, LEISD may choose to renovate, demolish, and/or construct additions to any of the LEISD facilities currently known as Brent Elementary School. In such event, LEISD shall provide at least ninety (90) days' advance written notice to Town of LEISD's intent to renovate, demolish, and/or construction additions to the LEISD facility. In the event LEISD intends to construct an addition to one of LEISD's facilities that will include a portion of the Leased Premises, LEISD may terminate the lease as to that portion of the Leased Premises without penalty. The Town and LEISD shall coordinate any construction, demolition, or renovation work to be done on the Leased Premises and any LEISD facility.

ARTICLE 3

Consideration

Consideration

- 3.1 As consideration for LEISD leasing the Leased Premises to the Town, the Town agrees to maintain the Leased Properties and make required capital improvements to the Leased Premises. The Town agrees to make the following capital improvements to the Leased Premises when funding is allocated for improvements:
- Renovation and/or replacement of athletic fields, trails, and surrounding areas.
 - Parking lot improvements as needed.
 - All infrastructure that supports athletic facilities.

No rent shall be paid as part of this Lease. The Town agrees to provide space within the Leased Premises for portable temporary school buildings if the need arises from LEISD.

ARTICLE 4

Use of Leased Premises during the Term; Insurance

Permitted Use

- 4.1 The Town will use the Leased Premises for recreational activities and such other activities as may be related to such operations unless LEISD gives the Town prior written consent for a different use.

Waste, Nuisance, or Illegal Uses

- 4.2 The Town may not use, or permit the use of, the Leased Premises in any manner that result in waste of the Leased Premises or constitutes a nuisance or interference with the rights of others. Nor may the Town use, or permit the use of, the Leased Premises for any illegal purpose or a purpose which constitutes a violation of any law, ordinance, or governmental regulation or order. The Town shall obtain and pay for all permits required for the Town's occupancy and use of the Leased Premises and any improvements located thereon and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by the Town of the Leased Premises or any improvements located thereon. The Town agrees not to use, or permit using, the Leased Premises in any manner that will cause a cancellation of, or an increase in, the existing rates for fire, liability, or other insurance policies covering the Leased Premises or any improvements on them or insuring LEISD for any liability in connection with owning the Leased Premises. LEISD will join, if necessary, in the application for any permit or authorization with respect to any authorized use of the Leased Premises.

Utility Services

- 4.3 The Town shall pay the cost of utility services, including but not limited to initial connection charges, if any, all charges for gas and electricity used on the Leased Premises. The Town shall pay water bills.

Insurance

- 4.4 The Town shall each keep in force throughout the Term of this Lease a Commercial General Liability insurance policy or policies to protect against liability resulting from any accident occurring in or upon the Leased Premises with a limit of not less than \$1,000,000 per occurrence and not less than \$2,000,000 in the annual aggregate, covering bodily injury and property damage liability and shall cause LEISD to be named as an

additional insured on such policies of insurance. The Town shall maintain insurance of the Town's personal property. LEISD shall maintain insurance on the real property and existing improvements. The Town shall maintain insurance on any improvements they construct, install, maintain, or use on the property during the initial term or any extension. The Town shall deliver certificates of insurance to LEISD prior to the commencement of the initial term.

ARTICLE 5

Covenant Against Liens

Liens of the Town

- 5.1 If, because of any act or omission of the Town, any lien, charge, or order for payment of money is filed against the Leased Premises, the Town shall, at its expense, cause the lien or liens to be discharged of record or bonded within ninety (90) days after it receives written notice from LEISD of their filing.

ARTICLE 6

Services, Maintenance, Surrender, Alterations, and Additions

- 6.1 The Town shall be responsible for routine, general maintenance of the Leased Premises including, but not limited to, the following:
All landscape, irrigation, hardscape, fencing, parking lots, athletic fields, sport courts, and all other infrastructure.
- 6.2 During the term of this Lease, the Town shall be responsible for repairs to the following services or systems:
1. Landscape
 2. Irrigation
 3. Hardscape
 4. Fencing
 5. Parking lots
 6. Athletic fields
 7. Trails
 8. All other infrastructure to support the athletic fields

- 6.3 The Town shall be responsible for all major repairs and/or replacement of items one through eight, and for the maintenance of items one through eight under Section 6.2 above.

Maintenance and Surrender by Lessee

- 6.4 The Town shall maintain the Leased Premises throughout the Lease term, and any extensions of that term, and keep them free from waste and nuisance. At the termination of this Lease, the Town shall deliver the Leased Premises in as good a state of repair and condition as they were in at the time LEISD delivered possession to the Town, reasonable wear and tear, and damage by fire, tornado, or other casualty excepted. In the event the Town should neglect to reasonably maintain the Leased Premises, LEISD shall have the right, but not the obligation, to cause repairs or corrections for which the Town is responsible under this section.

Alteration and Additions

- 6.5 The Town may make additions or improvements to or alterations of the Leased Premises consisting of the capital improvements described in Section 3.1, or other additions, alterations, or improvements approved by LEISD in advance in writing. All maintenance and repair, and each such addition, improvement, or alteration (a) must not, individually or in the aggregate, substantially lessen the Fair Market Value of the Leased Premises or materially affect the Leased Premises' usefulness for LEISD purposes, (b) shall be completed expeditiously in a good and workmanlike manner, and in compliance with all applicable laws and regulations, and (c) shall become part of the Leased Premises and subject to this Lease. The Town shall be responsible for all costs and expenses related to the design, installation and construction of the additions or improvements and the utilities therefor. Any such additions or improvements shall remain on the Leased Premises upon expiration or termination of this Lease and shall become the property of LEISD.

ARTICLE 7

Damage or Destruction

Notice to LEISD

- 7.1 If the Leased Premises, or any structures or improvements on the Leased Premises should be damaged or destroyed by fire, tornado or other casualty, the Town shall give immediate written notice of the damage or destruction to LEISD, including a description of the damage and, as far as known to the Town, the cause of the damage. LEISD shall not be responsible for reimbursing the Town for any damage or destruction to additions, alterations, or improvements installed by Town.

Total Destruction

- 7.2 If the Leased Premises are totally destroyed by fire, tornado, or other casualty not the fault of the Town or any person in or about the Leased Premises with the express consent of the Town, or if it should be so damaged by such a cause that rebuilding or repairs cannot reasonably be completed within 365 calendar days this Lease shall terminate. LEISD shall not be responsible for reimbursing the Town for any damage or destruction to additions, alterations, or improvements installed by Town.

ARTICLE 8

Condemnation

Notice

- 8.1 If any proceedings or negotiations are instituted which do or may result in a taking, each party will promptly give notice thereof to the other, describing its nature and extent.

Condemnation

- 8.2 If during the term of this Lease, or any extension or renewal of the Lease, all, or any part of, the Leased Premises should be taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, those portions of the Leased Premises so taken shall be removed from the terms of this Lease.

Condemnation Award

- 8.3 LEISD shall receive the award from any condemnation, however, the Town shall be entitled to that portion of the net award representing payment for its leasehold interest and any improvements made by the Town to the Leased Premises. All amounts paid pursuant to an agreement with a condemning authority in connection with any taking shall be deemed to constitute an award on account of such taking.

ARTICLE 9

Inspection

Inspection

- 9.1 The Town and its officers, agents, employees, and representatives shall have the right to enter into and upon any and all parts of the Leased Premises at all reasonable hours for purposes of inspection, cleaning, maintenance, repairs, alterations, or additions as the Town may deem necessary (but without any obligation to perform any of these functions except as expressly provided in this Lease).
- 9.2 LEISD and its officers, agents, employees, and representatives shall have the right to enter into and upon any and all parts of the Leased Premises at all reasonable hours for purposes of inspection, access, parking, cleaning, maintenance, repairs, alterations, or additions as LEISD may deem necessary (but without any obligation to perform any of these functions except as expressly provided in this Lease).

ARTICLE 10

Assignment

Assignment

- 10.1 Neither the Town or LEISD may assign this Lease without the prior written consent of the other party.

ARTICLE 11

Events of Default, Remedies

Town's Default

- 11.1 If the Town defaults in the observance or performance of any provision of this Lease, and the default continues for sixty (60) days after LEISD gives written notice to the Town specifying the default and demanding that it be cured, such occurrence, condition, or act shall constitute an "Event of Default" under this Lease and LEISD may, pursuant to the terms of this Lease, terminate it. In the event LEISD is terminating for Town's default, LEISD shall not be responsible for reimbursing Town or assuming liability for any additions, alterations, or improvements installed by Town.

Waiver of Default

11.2 No waiver by either party of any default or violation or breach of any of the terms, provision and covenants contained in this Lease shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants of the Lease. Forbearance by either party to enforce one or more of the remedies provided in this Lease or by law upon an event of default shall not be deemed or construed to constitute a waiver of such default.

ARTICLE 12

Notices and Addresses

Notice

12.1 All notices to be given under this Lease shall be in writing, given by certified mail or registered mail, addressed to the proper party, and shall be deemed duly served and given when received by the party to whom it is directed at the following addresses:

Lessor: The Town of Little Elm
100 W. Eldorado Parkway
Little Elm, Texas 75056
Attn: Matt Mueller
Town Manager

And cc: Brown and Hofmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Texas 75081
Attn: Robert F. Brown

Lessee: Little Elm Independent School District
400 Lobo Lane
Little Elm, Texas 75068
Attn: Daniel Gallagher
Superintendent

and cc: Walsh Gallegos Treviño Kyle & Robinson P.C.
P.O. Box 168046
Irving, Texas 75016-8046
Attn: Elisabeth Nelson

Either party may change the address to which Notices are to be sent by giving the other party notice of the new address in the manner provided in this Section.

ARTICLE 13

Miscellaneous

Amendments

- 13.1 No amendment, modification, or alteration of the terms of this Lease shall be binding unless the same is in writing, dated subsequent to the date of this Lease, and duly executed by authorized representatives of both parties to this Lease.
- 13.2 This Lease shall be binding upon, and inure to the benefit of, the parties to the Lease and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Lease.

Quiet Enjoyment

- 13.3 Upon due performance by the Town of its covenants and agreements under this Lease, LEISD covenants that the Town shall and may at all times peaceably and quietly have, hold and enjoy the Leased Premises during the Lease term.

Severability

- 13.4 In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Lease, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been included in the Lease.

Prior Agreements Superseded

- 13.5 This Lease constitutes the sole and only agreement of the parties to the Lease and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Lease.

Texas Law to Apply

- 13.6 This Lease shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the parties created by this Lease are performable in Denton County, Texas. Venue for any dispute arising under this Lease shall be in Denton County, Texas.

Attorneys Fees and Costs

- 13.7 If, as a result of a breach of this Lease by either party, the other party employs an attorney or attorneys to enforce its rights under this Lease, then the breaching or defaulting party agrees to pay the other party the reasonable attorney's fees and costs incurred to enforce the Lease.

Construction

- 13.8 All terms used in this Lease, regardless of the number or gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and by other gender, masculine, feminine or neuter, as the context or sense of this Lease or any section, subsection, or clause herein may require as if such terms had been fully and properly written in such number or gender.

Modification

- 13.9 No changes, additions or interlineations made to this Lease shall be binding unless initialed by both parties.

Non-waiver

- 13.10 No delay or failure by either party to exercise any right under this Lease and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

Force Majeure

- 13.12 Neither LEISD nor the Town shall be required to perform any term, condition or covenant in this Lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods and any other cause not reasonably within the control of Lessor or Lessee. Including a declared state of national emergency due to reasons including mass illness, and which by the exercise of due diligence Lessor or Lessee is unable, wholly or in part, to prevent or overcome. Such obligation to perform shall be extended by a period of time equal to the duration of such events. However, in the event that the force majeure condition should extend beyond six (6) months, then the inability to perform any obligations may be considered a default by the non-defaulting party.

Headings

- 13.13 The Article and Section headings are for convenience and reference only and shall not be

used to limit or otherwise affect the meaning of any provision of this Lease.

Counterparts

13.14 This Lease may be executed in multiple counterparts, each of which shall be deemed a fully enforceable original but all of which together shall constitute one and the same instrument.

Relationship of Parties

13.15 Lessor and Lessee shall not be considered or deemed to be joint ventures or partners and neither shall have the power to bind or obligate the other except as set forth herein, it being expressly understood and agreed that no provision contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Lease.

Governmental Immunity

13.16 Notwithstanding anything to the contrary, by entering into this Lease nothing herein is intended to waive or limit the governmental immunity under law by the Town or LEISD.

EXECUTED in triplicate originals on the dates set forth below.

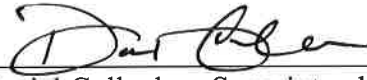
TOWN OF LITTLE ELM, TEXAS,
A Texas home-rule municipality

Curtis Cornelious, Mayor
Date Executed: _____

ATTEST:

Caitlan Biggs, Town Secretary

**LITTLE ELM INDEPENDENT SCHOOL
DISTRICT,**
A Texas political subdivision

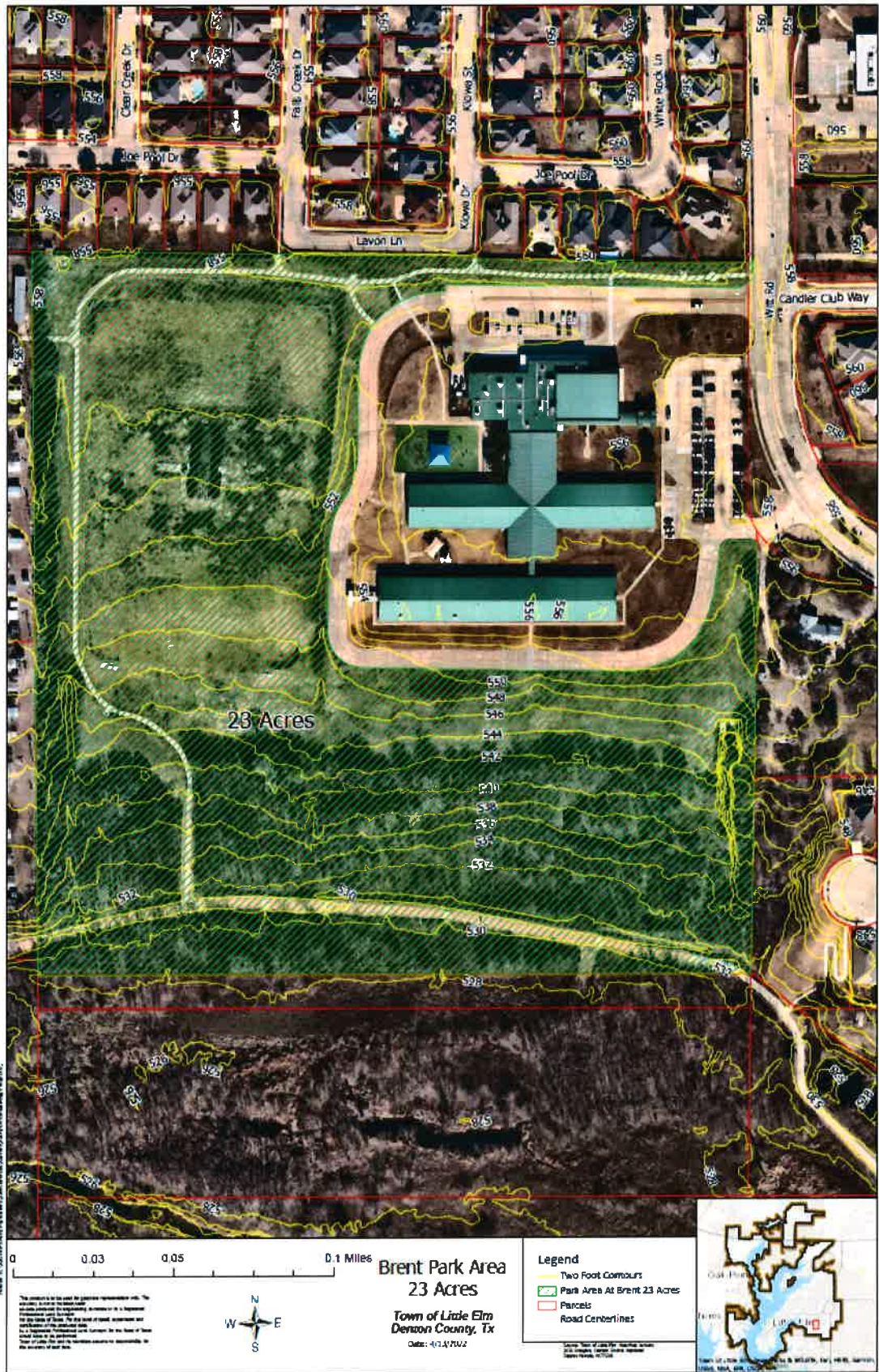


Daniel Gallagher, Superintendent

Date Executed: 1/23/23

Exhibit A

**Legal Description and/or Depiction
of the Leased Premises**





Date: 02/07/2023
Agenda Item #: 6. A.
Department: Administrative Services
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Matt Mueller, Town Manager

AGENDA ITEM:

Present, Discuss, and Consider Action to **Accept the Resignation of Jeremy Lukas from Town Council District 5.**

DESCRIPTION:

Town Council Member Jeremy Lukas, who currently represents District 5, is moving out of this district and has notified Town Council that he is resigning from his position as Town Council Member. This item formally accepts his resignation.

According to Section 3.05 of the Town Charter, if there is a vacancy in the office of Mayor or Council Member, such vacancy shall be filled by special election within one hundred twenty (120) days after such vacancy occurs, in accordance with the Texas Constitution, and the Texas Election Code, as amended.

However, the May 6, 2023, General Election falls within 120 days of the date the vacancy occurred. Therefore, a special election will not be held. This vacancy will be filled during the May election.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends acceptance.
