



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

Tuesday, May 2, 2023

6:00 PM

Little Elm Town Hall

100 W Eldorado Parkway, Little Elm, TX 75068

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

2. 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.

3. **Call to Order Council Workshop Immediately Following Executive Session.**

- A. Present and Discuss an **Economic Development Update on Current Developments in the Town.**
- B. Present and Discuss an **Update on the Intersection of FM 720 and Eldorado Parkway.**
- C. Present and Discuss **Town Council Joining the National League of Cities and the North Texas Commission.**

4. **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.

5. **Presentations.**

- A. Present a **Proclamation Declaring May 2023 as Mental Health Month and May 10, 2023 as Children’s Mental Health Awareness Day.**
- B. Present a **Recognition of an Award Received by the Little Elm Economic Development Corporation Presented by Texas Economic Development Council's Economic Excellence Award for 2022.**
- C. Present a **Recognition of an Award to the Little Elm Economic Development Corporation for Making the Dallas Business Journal's Book of Lists for 2022 for Deals Done in 2021.**

6. **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.

7. **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 April 18, 2023, Regular Town Council Meeting.**
- B. Consider Action to Approve an **Amendment to the Engineering Services Contract with Teague Nall and Perkins, Inc. for the Design of the King Road Expansion Project.**

- C. Consider Action to Approve a **Professional Services Design Contract with Pacheco-Koch Consulting Engineers, Inc. (a Westwood Company) for the Main Street Traffic Signal Project.**
- D. Consider Action to Approve **Change Order #2 to the Construction Contract with AUI Partners Regarding the Lakeside Sports Complex Project.**

8. **Regular Items.**

- A. Hold a Public Hearing, Present, Discuss, and Consider Action on **Ordinance No. 1708 Regarding a Request Amend a Specific Use Permit at 25691 Smotherman Road, Suite 120, Currently Zoned as Planned Development - Light Commercial (PD-LC) Through Ordinance No. 1539, with a Specific Use Permit Through Ordinance No. 1703, in Order to Allow for a New Smoking Establishment, Not to Exceed 1,479 Square Feet, for the Purposes of On-Premise Retail Sales Only.**

Open Public Hearing:

Receive Public Comments:

Close Public Hearing:

Take Action on Ordinance No. 1708:

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

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

10. **Reconvene into Open Session**

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

- COVID-19 Pandemic and the Town's response thereto, including the consideration of an emergency declaration ordinance.
- Section 551.071 for private consultation with the Town Attorney to discuss the COVID-19 pandemic and municipal authority to respond to the COVID-19 outbreak and to seek legal advice with respect to pending and contemplated litigation and including all matters on this agenda to which the Town Attorney

has a duty under the Texas Rules of Discipline and Professional conduct regarding confidential communication with the Town Council.

- Section 551.072 to discuss certain matters regarding real property.
- Section 551.074 of the Texas Government Code to discuss and deliberate personal matters to evaluate performance duties, of a public officer or employee(s).
- Section 551.076 to discuss security matters.
- Section 551.087 to discuss Economic Development.

11. **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,

Deputy Town Secretary

This is to certify that the above notice was posted on the Town's website this 28 day of April 2023 before 5:00 p.m.



Date: 05/02/2023
Agenda Item #: 3. A.
Department: Administrative Services
Strategic Goal: Ensure excellence in public services while keeping up with the growth in the community
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Present and Discuss an **Economic Development Update on Current Developments in the Town.**

DESCRIPTION:

EDC Director Jennette Espinosa will provide an update to Council regarding projects under construction and businesses coming into the Town.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.



Date: 05/02/2023
Agenda Item #: 3. B.
Department: Administrative Services
Strategic Goal: Ensure excellence in public services while keeping up with the growth in the community
Staff Contact: Wesley Brandon, Town Engineer

AGENDA ITEM:

Present and Discuss an **Update on the Intersection of FM 720 and Eldorado Parkway.**

DESCRIPTION:

At the April 18, 2023 Regular Council meeting, Council member Neil Blais requested an update on the intersection of FM 720 and Eldorado Pkwy. Town Engineer Wesley Brandon will present an update on this intersection.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.



Date: 05/02/2023
Agenda Item #: 3. C.
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 and Discuss **Town Council Joining the National League of Cities and the North Texas Commission.**

DESCRIPTION:

At the April 18, 2023 Regular Town Council Meeting, Council member Jamell Johnson requested a discussion of the Town Council joining these professional organizations.

BUDGET IMPACT:

The cost of joining the National League of Cities is based on population. For Little Elm's current population size, the cost would be \$5,000.00 in annual dues.
The cost of joining the North Texas Commission is \$.085 per capita. With the Town's current population size, the cost would be \$4,389.40 in annual dues.

RECOMMENDED ACTION:

Town staff seeks direction from Council.



Date: 05/02/2023
Agenda Item #: 5. 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 May 2023 as Mental Health Month and May 10, 2023 as Children's Mental Health Awareness Day.**

DESCRIPTION:

Mayor Cornelious will present a proclamation declaring May 2023 as Mental Health Month and May 10, 2023 as Children's Mental Health Awareness Day.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.

Attachments

2023 Mental Health Month Proclamation



Proclamation

WHEREAS, addressing the complex mental health needs of children, youth, and families today is fundamental to the future of the Town of Little Elm; and

WHEREAS, the residents of the Town of Little Elm value their overall health and that of their families and fellow citizens and are proud to support observances such as Mental Health Month and Children's Mental Health Awareness Day; and

WHEREAS, one in five adults has a diagnosable mental health condition; and

WHEREAS, half of Denton County parents are not familiar with mental health services in their community; and

WHEREAS, the need for comprehensive, coordinated mental health services for individuals and families places upon our community is a critical responsibility; and

WHEREAS, there is a strong body of research that supports specific tools that all Americans can use, to better handle challenges, and protect their overall health and well-being; and

WHEREAS, each citizen, local business, school, government agency, healthcare provider, and faith-based organization shares the burden of mental health concerns and has a responsibility to promote mental wellness, recovery, and support prevention efforts; and

WHEREAS, the Denton County Behavioral Health Leadership Team, Denton County MHMR Center, United Way of Denton County and the Wellness Alliance for Total Children's Health of Denton County led by Cook Children's Hospital, through their unique partnership and prevention-based approach to serving children and adolescents, are effectively addressing the mental health needs of children, youth and families in our community; and

WHEREAS, it is appropriate that time should be set apart each year for the direction of our thoughts toward mental health education and the support of treatment and recovery; and

WHEREAS, it is appropriate that a day should be set apart each year for the direction of our thoughts toward our children's mental health and well-being; and

NOW, THEREFORE, we declare May 2023 as **Mental Health Month** and May 10, 2023 as **Children's Mental Health Awareness Day** and call upon our residents and all agencies and organizations interested in meeting every person's mental health needs to unite this month in the observance of such exercises as will commit the people of Denton to increasing awareness and understanding of mental health, the steps our citizens can take to protect their mental health, and the need for appropriate and accessible services for all people mental health conditions.

Given under my hand and Seal of the Town of Little Elm, Texas, this 2nd day of May, 2023.

Curtis J. Cornelious, Mayor of Little Elm



Date: 05/02/2023
Agenda Item #: 5. B.
Department: Administrative Services
Strategic Goal: Promote and expand Little Elm's identity
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Present a **Recognition of an Award Received by the Little Elm Economic Development Corporation Presented by Texas Economic Development Council's Economic Excellence Award for 2022.**

DESCRIPTION:

The Economic Excellence Recognition program provides recognition to economic development organizations that meet a desired threshold of professionalism. Recipients qualify for recognition based on training taken by their governing board/council as well as the economic development director and professional staff. Certifications, professional memberships and activities, and organizational effectiveness of the economic development staff also contribute to the standards for qualification.

The Little Elm EDC has been an annual recipient of this award since 2018.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.



Date: 05/02/2023
Agenda Item #: 5. C.
Department: Administrative Services
Strategic Goal: Promote and expand Little Elm's identity
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Present a **Recognition of an Award to the Little Elm Economic Development Corporation for Making the Dallas Business Journal's Book of Lists for 2022 for Deals Done in 2021.**

DESCRIPTION:

The Book of Lists features the Top 25 in various categories that include law firms and various business sectors including banking, advertising and marketing agencies, charitable foundations and nonprofit organizations, real estate, private employers, public companies, wealth management firms, and more. The List also features the best places to work as well as business and networking groups.

This year, Little Elm EDC made the List at #14 for development deals recorded in the amount of \$84.4M dollars. The EDC has been recognized for the Book of Lists from 2013 -2021.

BUDGET IMPACT:

There is no budget item for this item.

RECOMMENDED ACTION:

Information only, no action required.



Date: 05/02/2023
Agenda Item #: 7. A.
Department: Administrative Services
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Kate Graham, Assistant to the Town Manager

AGENDA ITEM:

Consider Action to Approve the **Minutes from the April 18, 2023, Regular Town Council Meeting.**

DESCRIPTION:

The minutes from the April 18, 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 - April 18, 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 APRIL 18, 2023 - 6:00 p.m.

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

Staff Jennette Espinosa, Executive Director; Joe Florentino, Assistant Town Manager; Matt Mueller,

Present: 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

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

Meeting was called to order at 6:06 p.m.

A. Present and Discuss Town Purchase Card Program.

Town Manager Matt Mueller gave an update to the Council regarding Town purchase cards and the recently implemented audit of employee purchase cards. Rebecca Hunter, Purchasing Manager, gave Council an overview of the audit results.

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

A. Invocation.

The invocation was given by Council member Neil Blais.

B. Pledge to Flags.

C. Items to be Withdrawn from Consent Agenda.

Council member Michael McClellan asked for further information on items G and H on the Consent Agenda prior to voting on the Consent Agenda.

D. Emergency Items if Posted.

None.

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

Council member Jamell Johnson requested a discussion of joining the National League of Cities and the North Texas Commission. Council member Neil Blais requested an update on the intersection of FM 720 and Eldorado Pkwy.

- 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.

Town Manager Matt Mueller gave an update to Council on the Touch a Truck/Town Expo event that occurred on April 15.

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

None.

3. **Presentations.**

- A. Present a **Recognition for Participants of the Mayor's Math Challenge.**

Mayor Cornelious and Council member Singh recognized the winners of the 2023 Mayor's Math Challenge. Dr. Monique Thompson gave an update on the success of this year's math challenge and carnival.

- B. Present a **Recognition to Friends of the Little Elm Animal Shelter (FLEAS) for a Donation to the Animal Shelter.**

The Friends of the Little Elm Animal Shelter (FLEAS) presented the Town's Animal Services department with a \$5,000 grant for sound upgrades in the animal shelter. Mayor Cornelious presented a certificate of recognition to FLEAS to express the Town's thanks.

- C. Present a **Recognition for Staff Sergeant Brian C. Shoemaker.**

Chair of the Veterans Committee Mike Watts recognized a resident, Staff Sergeant Brian Cole Shoemaker for receiving the Air and Space Commendation Medal. His mother, resident Stephanie Kleszcz, was present to receive a challenge coin on behalf of Staff Sergeant Shoemaker.

- D. Present a **Proclamation Declaring April 22, 2023 as Earth Day.**

Mayor Cornelious read a proclamation declaring April 22, 2023 as Earth Day. Representatives from Keep Little Elm Beautiful (KLEB) were present to receive the proclamation.

- E. Present a **Proclamation Declaring April 23 through 29, 2023 as Disability Book Week.**

Mayor Cornelious proclaimed April 23 through 29, 2023 as Disability Book Week.

- F. Present a **Proclamation Declaring April 2023 as Child Abuse Prevention Month.**

Mayor Cornelious read a proclamation declaring April 2023 as Child Abuse Prevention Month. Representatives from CASA of Denton County were present to receive the proclamation and give an update on their work.

- G. Present a **Proclamation Declaring April 2023 as Sexual Assault Awareness Month.**

Mayor Pro Tem Lisa Norman read a proclamation declaring April 2023 as Sexual Assault Awareness Month. A representative from Denton County Friends of the Family was present to receive the proclamation and gave an update on their work.

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.

None.

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.

Town Manager Matt Mueller described the Lakefront Residential Overlay District to clarify items G and H on the Consent Agenda.

Motion by Council Member Michael McClellan, seconded by Council Member Jamell Johnson **to approve the Consent Agenda.**

Vote: 6 - 0 - Unanimously

- A. Consider Action to Approve the **Minutes from the March 28, 2023, Special Town Council Meeting.**
 - B. Consider Action to Approve **Resolution No. 0418202301 Declaring the Public Necessity to Acquire Fee Simple Right-of-Way Across Certain Property Located at the Southwest Corner of US-389 and Spiritas Parkway.**
 - C. Consider Action to Approve **Resolution No. 0418202302 Approving Submission of the Grant Application for Bullet Resistant Shield Program to the Office of the Governor.**
 - D. Consider Action to Approve **Ordinance No. 1706 Amending the FY 2022-2023 Annual Budget in Accordance with Existing Statutory Requirements; Appropriating the Various Amounts Herein; Repealing all prior Ordinances and Actions in Conflict Herewith; and Providing for an Effective Date.**
 - E. Consider Action to Approve **Ordinance No. 1707 Regarding the Abandonment of a Certain Portion of Crestwood Place, Authorizing the Transfer of Ownership to the Abutting Landowner, and Providing an Effective Date.**
 - F. Consider Action to Award a **Professional Services Contract to Brown Reynolds Watford Architects, Inc. (BRW) in an Amount not to Exceed \$1,462,250 for the Design of the Little Elm Public Safety Annex Project.**
 - G. Consider Action to Approve a **Development Agreement Associated with the Lakefront Residential Overlay District, between the Town of Little Elm and Ana Carbajal, Property Owner of 209 Alice Drive.**
 - H. Consider Action to Approve a **Development Agreement associated with the Lakefront Residential Overlay District, between the Town of Little Elm, and Charles Conrad Rogers and Laura Abarbanel, Property Owners of 113 West Park Drive.**
6. **Regular Items.**

- A. Present, Discuss, and Consider Action to Approve a **Development Agreement Amendment between the Town of Little Elm and Denton Independent School District.**

Director of Development Services Fred Gibbs gave an update on the development agreement in the attached presentation.

Motion by Council Member Neil Blais, seconded by Council Member Michael McClellan ***to approve a Development Agreement Amendment between the Town of Little Elm and Denton Independent School District.***

Vote: 6 - 0 - Unanimously

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.

Council convened in Executive Session at 7:05 p.m.

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.

Council reconvened into Open Session at 8:13 p.m. No action was taken as a result of Executive Session.

9. Adjourn.

Meeting was adjourned at 8:13 p.m.

Respectfully,

Caitlan Biggs

Town Secretary

Passed and Approved this _____ day of _____ 2023.



Date: 05/02/2023
Agenda Item #: 7. B.
Department: Development Services
Strategic Goal: Ensure excellence in public services while keeping up with the growth in the community
Staff Contact: Wesley Brandon, Town Engineer

AGENDA ITEM:

Consider Action to Approve an **Amendment to the Engineering Services Contract with Teague Nall and Perkins, Inc. for the Design of the King Road Expansion Project.**

DESCRIPTION:

In December 2020, the Town Council approved an Engineering Services contract with Teague Nall and Perkins, Inc. to provide design and construction administration services for the King Road Expansion Project. This original contract included the effort necessary to complete the design of roadway and utility improvements to King Road between Witt Road and Rose Lane. The project design was split into multiple task orders that reflected the Town's obligations to complete initial segments of the roadway expansion and utility improvements, which were based on previously executed development agreements.

Since the original design contract was approved in 2020, The Town has executed cost-sharing agreements with the City of Frisco and Denton County to provide additional funding for the design and construction of the project. Denton County has committed up to \$4,500,000 in design and construction funding, and the City of Frisco has committed to fund up to twenty-five percent (25%) of the remaining design and construction costs once the funding from Denton County has been exhausted. The City of Frisco has also committed to managing the construction of the project, as well as covering costs for additional project elements added at their request.

This proposed contract amendment includes the additional design tasks required to complete the full buildout of King Road, beginning near its intersection with Witt Road and extending to the intersection of Rose Lane (approximately 0.7 miles). The roadway will be expanded to a four-lane divided thoroughfare between Witt Road and Anthem Drive, and a three-lane undivided roadway between Anthem Drive and Rose Lane. The three-lane roadway is required due to existing right-of-way constraints. The project will also include concrete sidewalks, street lighting, landscaping, irrigation, and underground utility improvements.

BUDGET IMPACT:

Funding for the Town's share of the project costs has been identified and allocated within the Town of Little Elm Capital Improvement Program.

Original Contract Amount	\$236,320	
Proposed Contract Amendment	\$350,000	
Contingency/Reimbursable Expenses	\$50,000	
Total Proposed Contract Amount	\$636,320	

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Original Design Contract
Proposed Contract Amendment
Project Layout Exhibit

Town of Little Elm, Texas

Standard Professional Services Agreement

This Agreement is made by and between the Town of Little Elm, Texas, a Texas home-rule municipality (hereinafter referred to as the "Owner") and Teague Nall and Perkins, Inc., (hereinafter referred to as the "Consultant") for Roadway and Drainage Improvements for King Road, (hereinafter referred to as the "Project"). In consideration of the premises, covenants and mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Consultant hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

1.1 THE CONTRACT

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

1.2. THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Exhibits A through D, any other amendments hereto executed by the parties hereafter, together with the following (if any):

Documents not enumerated in this Paragraph 1.2. are not Contract Documents and do not form part of this Agreement.

ARTICLE 2: RECITALS

- 2.1 The Town desires to have the Consultant develop the construction plans and provide necessary services to develop the same ("PROJECT"); and
- 2.2 The Consultant has the knowledge, ability and expertise to provide such services; and
- 2.3 The Town desires to engage the services of Consultant, as an independent Consultant and not as an employee, to provide services as set forth herein and in Exhibit A: Scope of Services and Exhibit B: Time Line/Milestone which is attached hereto and incorporated herein.

ARTICLE 3: TERM / TERMINATION

3.1 TERM

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

3.2 TERMINATION

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

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

ARTICLE 4: SCOPE OF SERVICES

4.1 SCOPE

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

King Road Reconstruction - West

If there is a conflict between the above quoted subjects and Exhibit A or B, then such conflict shall be resolved pursuant to the provisions of Section 10.9, below.

4.2 AUTHORIZED AGENT

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

ARTICLE 5: COMPENSATION / PAYMENT TERMS AND CONDITIONS

5.1 Compensation for the performance of Professional Services described herein shall be paid to Consultant by the Town in a total amount not to exceed Two hundred thirty-nine thousand one hundred twenty dollars (\$239,120) which shall accrue and be payable as provided in Sections 5.1 and 5.2 hereof.

5.2 Work will be performed at the rates set forth in Exhibit C – Fee Schedule, which is attached hereto and incorporated herein by reference, or as otherwise provided in negotiated fee schedules approved within this Agreement, if any.

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

ARTICLE 6: TIME FOR COMPLETION

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

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

ARTICLE 7: INDEMNIFICATION

7.1 THE CONSULTANT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS THE TOWN, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "INDEMNITEES") FROM AND AGAINST SUITS, ACTIONS, CLAIMS, LOSSES, ANY DAMAGE, LIABILITY, AND FROM AND AGAINST ANY COSTS AND EXPENSES, INCLUDING, IN PART, ATTORNEY'S FEES INCIDENTAL TO THE DEFENSE OF SUCH SUITS, ACTIONS CLAIMS, LOSSES, DAMAGES OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON OR DAMAGE TO PROPERTY INCLUDING, IN PART, THE LOSS OF USE RESULTING THEREFROM, ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF

THE CONSULTANT, ITS OFFICERS, EMPLOYEES, SERVANTS, AGENTS OR SUBCONTRACTORS, OR ANYONE ELSE UNDER THE CONSULTANT'S DIRECTION AND CONTROL, AND ARISING OUT OF, RESULTING FROM, OR CAUSED BY THE PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY WORK OR SERVICES UNDER THIS AGREEMENT, OR FROM CONDITIONS CREATED BY THE PERFORMANCE OR NON-PERFORMANCE OF SAID WORK OR SERVICES. IN THE EVENT ONE OR MORE OF THE INDEMNITEES IS DETERMINED BY A COURT OF LAW TO BE JOINTLY OR DERIVATIVELY NEGLIGENT OR LIABLE FOR SUCH DAMAGE OR INJURY, THE CONSULTANT SHALL BE OBLIGATED TO INDEMNIFY INDEMNITEES AS PROVIDED HEREIN ON A PROPORTIONATE BASIS IN ACCORDANCE WITH THE FINAL JUDGMENT, AFTER ALL APPEALS ARE EXHAUSTED, DETERMINING SUCH JOINT OR DERIVATIVE NEGLIGENCE OR LIABILITY. THIS INDEMNIFICATION IS SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE, § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002(B), AS SAME MAY BE APPLICABLE TO CONSULTANT AS A MATTER OF LAW.

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

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

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

ARTICLE 8: INSURANCE

8.1 Insurance

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

ARTICLE 9: DEFAULT

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

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

ARTICLE 10: MISCELLANEOUS

10.1 Reuse of Documents:

All documents including Maps, Plans and Specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service; and Consultant shall retain ownership and property interest therein whether or not the work is completed. The Town may make and retain copies of any plans or specifications provided under this Agreement for the use by Town and others; such documents are not intended or suitable for reuse by Town or others on extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the Town's sole risk and without liability to the Consultant.

10.2 Entire Agreement.

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

10.3 Assignment.

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

10.4 Adjustments in Services/Amendment.

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

10.5 Governing law.

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

10.6 Notices.

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

Town of Little Elm

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

Teague Nall and Perkins, Inc.

3200 S. Interstate 35E, Suite 1129
Denton, TX 76210
940-383-4177
chartke@tnpinc.com

10.7 Legal construction.

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

10.8 Successors and Assigns.

- (a) The Town and Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of Town and Consultant are hereby bound to the other Party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other Party in respect of all covenants and obligations of this Agreement.
- (b) Neither the Town nor the Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other Party, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- (c) Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Consultant, subcontractor, supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than the Town and the Consultant.

10.9 Conflict.

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

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

10.10 Severability

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

10.11 Captions

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

10.12 Counterparts

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on this the ____ day of _____, 2020.

TOWN OF LITTLE ELM

CONSULTANT

Matt Mueller
Town Manager

Christopher Hartke, P.E.
Director of Engineering Services

Exhibit A: Scope of Work
Exhibit B: Time Line / Milestones
Exhibit C: Rate Schedule
Exhibit D: Project Limits

EXHIBIT A – SCOPE OF SERVICES

Roadway and Drainage Improvements for King Road

Original design of this project was completed by the Consultant under a separate contract (Task Order No. 09-03) in 2012, but the project was not constructed. The purpose of this agreement is to update the plans to reflect changes in existing conditions at the site, most notably the construction of Frisco Lakes North. The major changes include a significant redesign of the storm drain to reflect flow captured in Frisco Lakes North, and changes in median openings and turn lanes to coincide with entrances to that development, as well as possible extension of the roadway improvements to connect to the four-lane divided roadway section west of Rose Lane. Other changes include elimination of street lighting and landscaping.

The Agreement includes two alternate selections for the scope of work. Segment A is that portion of the work necessary for the Town to comply with the Impact Fee and Development Agreement between CTMGT Frisco I22, the Town of Little Elm and the City of Frisco and as delineated on Exhibit D. Segment B consists of design to reconstruct King Road the rest of the way to the 4-lane improvements just west of Rose Lane. The Town may elect to engage the Consultant to update the construction plans for Segment A only or for both Segment A and B as depicted on Exhibit D.

General

Provide specific design services, which consist of revising the previously completed design as follows:

1. Revise construction plans to show modified turn lanes to accommodate proposed Frisco Lakes development on the south side of King Road;
2. Revise construction plans to add a transition from 4-lane to the existing 2-lane section at approximately Station 31+50 (if only Segment A is selected), or to extend the improvements to match the four-lane divided section west of Rose Lane (if both Segments A & B are selected);
3. Revise roadway plans to add a sidewalk on the south side of King Road;
4. Revise the drainage design to reflect the new Frisco Lakes development drainage patterns;
5. Provide Level B Subsurface Utility Engineering, along with up to four Level A test holes;
6. Provide support services to include construction administration services as needed;

Project Limits

The total project limits (Segments A and B) are from the end of the existing four-lane section just west of Witt Road to the existing four-lane section just west of Rose Lane. The overall improvements, if selected, will consist of a four-lane divided section from the east end of the project to just west of the Anthem Drive intersection. From there west to Rose Lane a three-lane undivided section will be used.

Construction Plan Revisions

All design criteria will be as used in the previously completed design. Landscape and irrigation will be eliminated from the project, though irrigation sleeves will be installed to accommodate possible future irrigation. Landscaping will consist of turf only. Street lighting will also be eliminated from the project.

The Consultant will meet as necessary with Town staff, both for coordination and to review submittals and comments. The Consultant will also coordinate as necessary with the consultant representing the Frisco Lakes development.

Paving plans and other appropriate sheets will be modified to reflect turn lanes to accommodate the Frisco Lakes development. The location of those streets will be based on plan information to be provided by the developer of Frisco Lakes.

Revisions to storm drain Line A will be based on drainage area information provided by the design consultant for Frisco Lakes. Since the runoff to King Road will be reduced by the Frisco Lakes development, the storm drain line will be redesigned to accommodate only the reduced flow.

The combined modifications will impact virtually every sheet in the plans, including the cover sheet, typical sections, demolition sheets, paving plan & profiles, paving cross sections, drainage area map, Storm Drain Line A, erosion control, traffic control, and signing and striping plans.

Specifications and bid documents will be updated to reflect the revised design and current Town standards.

Construction plans will be submitted to a Registered Accessibility Specialist (RAS) for review subject to Texas Department of Licensing and Regulation (TDLR) for the pedestrian elements of the project. TDLR inspection and review fees will be paid by TNP and charged to the Client at cost plus 10%.

Topographic Design Survey Update

The Consultant will recover and verify original survey control monuments where possible. Additional control will be established as needed. The Consultant will update the original survey by tying existing improvements as needed to reflect current conditions at the site. This work will be accomplished only in areas that appear to have changed since the original survey was completed, including the new four-lane roadway section west of Rose Lane, and the new streets that have been added adjacent to King Road.

Right of Way Documents and Easements

Right-of-way documents and easements needed for Segment A of the project were prepared by the Consultant in 2012. It is our understanding that those easements and rights-of-way have not yet been acquired. It is also our understanding, from limited research, that only one property is now under different ownership. For those acquisitions where the owner has not changed, the exhibits provided in 2012 can still be used. The tract for which ownership has changed (DeLatorre) will require that the easement be updated. The Consultant will update that easement document consisting of an Exhibit "A" (Legal Description) and Exhibit "B" (Right-of-Way Dedication Plat). These documents will be signed and sealed by a Texas Registered

Professional Land Surveyor. It is intended that the design of the portion of the project between Anthem Drive and Rose Lane will require no right-of-way acquisition. However, if such right-of-way is needed the Consultant will prepare Right-of-Way Dedication documents consisting of an Exhibit "A" (Legal Description) and Exhibit "B" (Right-of-Way Dedication Plat) for up to six parcels and six easements. These documents shall be signed and sealed by a Texas Registered Professional Land Surveyor.

Subsurface Utility Engineering (SUE)

The Consultant will provide subsurface utility identification and locating as outlined below.

1. These services will be conducted and provided in general compliance with CI/ASCE 38-02 (Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data). This standard establishes and defines four quality levels for data collection that are briefly described as:
 - Quality Level D (QL-"D") – Generally QL-"D" indicates information collected or derived from research of existing records and/or oral discussions.
 - Quality Level C (QL-"C") - Generally QL-"C" indicates information obtained by surveying and plotting visible above-ground utility features and by using professional judgment in correlating this information to QL-"D" information. Incorporates QL-"D" information. (Limited in this scope, this scope is to cover underground utility crossings)
 - Quality Level B (QL-"B") – Generally QL-"B", also known as "designating" indicates information obtained through the application of appropriate surface geophysical methods to determine the existence and approximate horizontal position of subsurface utilities. Quality level B data should be reproducible by surface geophysics at any point of their depiction. This information is surveyed to applicable tolerances defined by the project and reduced onto plan documents. Incorporates QL-"D" & QL-"C" information.
 - Quality Level A (QL-"A") - Generally QL-"A", also known as "locating", indicates the precise horizontal and vertical location of utilities obtained by the actual exposure (or verification of previously exposed and surveyed utilities) and subsequent measurement of subsurface utilities, at a specific point. Incorporates QL-"D" QL-"C" & QL-"B" information.
2. These services are for the purpose of aiding the design of the subject project by providing information related to subsurface utilities in order to allow potential utility conflicts to be minimized or eliminated.
3. The Engineer will provide services that meet the standard of care for existing subsurface utility location and mapping as established in CI/ASCE 38-02 by exercising due diligence with regard to records research and acquisition of utility information, including visually inspecting the work area for evidence of utilities and reviewing the available utility record information from the various utility owners. However, the Engineer makes no guarantee that all utilities can or will be identified and shown as there still may be utilities within the project area that are undetectable or unknown.
4. Facilities that are discovered through field investigative efforts by the Engineer but no plan records or ownership data can be identified will be hereafter referred to as "unknown" utilities. As part of these services, the Engineer will provide QL-C information in the project deliverables for all unknown utilities that may be identified in the field investigation of the project. Designating and/or locating unknown utilities will typically not be part of the

initial scope of work but depending on the client's needs can be added as additional work to address concerns of the project impacts of "unknown" facilities.

5. Ground penetrating radar will not be used as a part of the field investigation of the project site unless that use has been specifically addressed with the scope of services described herein.
6. Test holes are very limited in size or diameter (typically 12 inches by 12 inches, or approximately 144 square inches). Given this limited size, some subsurface conditions may prevent the completion of test holes, including rock(s), groundwater, large roots, other utilities and structures, etc. Test hole attempts which cannot be completed due to site conditions will be documented and noted on the plans.
7. When test holes are used to locate utilities, the nominal pipe sizes of the targeted utility will be documented and reported by using field measurements of the outside diameter (OD) of the pipe to the nearest inch. Based upon this field measured OD, the nominal pipe size will be determined using typical pipe wall thickness data and other available data including record information. Pipe diameters that are too large for measurement, encased or non-encased conduit duct banks and other concrete encased systems which cannot be adequately measured will be reported based upon the best available information.
8. The documented results produced by these services represent a professional opinion and interpretation based upon record information and/or field evidence. These results may be affected by a variety of existing site conditions, including soil content, depth of the utility, density of utility clusters, and electro-magnetic characteristics of the targeted utilities. Also, the lack of and/or poor condition of a trace wire for non-conductive materials such as PVC, HDPE, etc. in most cases will make the successful detection and location of the utility unlikely.
9. The Engineer will apply professional judgment to determine which utilities require additional field effort and/or methods to properly designate and/or locate, most commonly when record drawings are not available. In such cases, the Engineer will provide a recommendation or request for additional services to the Client. Among other methods, a detectable duct rodder or other conductor may be introduced into the line to enable the designation of the utility. This method is dependent upon approval by the utility owner, as well as access to, size and condition of the utility.
10. None of these services are intended to and should not be understood to relieve the Client or others from the responsibility to comply with the statutory requirements related to notifying the proper one-call system(s) in advance of any and all excavation, grading and/or construction within the project site.

The scope of subsurface utility designating and/or locating services for this project is described below. Survey services to tie utility crossing marks and/or identifiers placed during the subsurface utility designating and/or locating effort will be provided in this contract. The project area will consist of the entire project limits for the full width of the right-of-way. A Quality Level B investigation will be conducted for the entire width of the King Road right-of-way, from just west of Rose Lane to 315' west of Witt Road. Based on our reconnaissance, we anticipate two telephone lines, two fiber optic lines and a gas line the entire length of the project, in addition to water lines, sewer lines and overhead utilities.

This work includes:

Quality Level B Utility Information and Designation

1. Requesting utility records on all crossing utilities from the Client, public utilities and private utility companies known to provide service within the project area, as well as other sources, to develop a comprehensive inventory of utility systems likely to be encountered. Record documents may include construction plans, system diagrams, distribution maps, transmission maps, geographic information system data, as well as oral descriptions of the existing systems. Record information will not be used as a substitute for field location methods unless it is determined to be the most appropriate method for depicting the utilities at the site. The depiction of utilities from records (QL-"C" or "D") will be based on thorough field and office activities and shall be based on the most reliable indication of position available.
2. Investigating all utility systems shown on the record drawings that are included within the project site. Visible surface features and appurtenances of subsurface utilities found within the project site will also be evaluated. Using appropriate surface geophysical methods, TNP will search for detectible indications of the location of anticipated subsurface utilities.
3. Marking all locations that can be validated, using paint, flags or other devices.
4. Preparing documentation of the utilities encountered and marked, including their general location, orientation, type & size, if known.
5. Deliverables, based on ASCE Standard 38-02, will be signed and sealed by a Professional Engineer registered in the State of Texas, and will consist of an AutoCad DWG 2d (DGN) file depicting all Subsurface Utilities Designated, with a PDF of the same signed and sealed by a Professional Engineer registered in the State of Texas and ACSII Point List.

Quality Level A Utility Test Hole – TNP will excavate by air-vacuum or other minimally invasive methods up to **4 test holes**, at locations yet to be determined within the project limits in order to identify the exact horizontal & vertical locations of crucial utility. Unless specified otherwise in this scope, the location of the tests hole will be outside of any paved area. Also, if locating the end of casing is requested the cost will be based on an hourly charge based on the fee schedule below. This work includes:

1. Providing all necessary personnel, equipment, supplies, management and supervision needed for the test hole excavation, backfill and restoration.
2. Coordinating with Client, property owner, and/or permitting authorities as needed, permission or rights- of-entry with help from The Client
3. Contacting the appropriate one-call system to request utilities to be marked on-the-ground prior to beginning excavation of test hole.
4. Providing and utilizing appropriate traffic control devices, as necessary, in conformance with the MUTCD, including any state or locally adopted supplements. (if closures or additional traffic control equipment is needed other than signs and cones additional direct expenses will be charged)
5. Preparing documentation for each test hole attempted. This documentation will include the horizontal and vertical position of the targeted utility or structure, a general description of the target utility, with condition, material and general orientation noted, a generalized description of the material encountered in the test hole, and any other field observations noted during the excavation.

Utility Coordination

1. Utility coordination services are intended to expand upon the efforts outlined in the Basic Services, which are to provide construction plans to utility companies for their use in identifying, planning and designing any necessary relocations; assisting the utility companies in identifying necessary relocations; and keeping those utilities apprised of the project letting schedule.
2. Utility coordination services will generally consist of efforts to ensure utilities are properly relocated in advance of construction. Specifically, the Engineer will:
 - a. Request location information from utilities.
 - b. Coordinate with utility companies to establish a relocation schedule.
 - c. Keep City updated regarding progress of relocations.
 - d. Contact utilities based on their schedule to verify work was done.
 - e. Perform a site visit to verify that utilities have been relocated.
 - f. Notify the City that the project area is clear so that advertising and bidding can proceed.
3. Because the effort required for this item is heavily dependent upon the cooperation and effort of the utility companies, the fee indicated for this service is only an estimate and will be billed at standard hourly TNP rates. Unusual circumstances could cause this fee to exceed the estimate shown.

Bid Support

1. The Consultant will assist the Town during the Bidding or Negotiating of the project. The Consultant will provide up to 5 sets of plans and bid documents, along with plans and bid documents in electronic form (pdf files) for use in obtaining bids, and plans will be distributed from the office of the Consultant, and the Consultant will retain any deposits or fees associated with the distribution of the plans. The Consultant will provide the Town up to 10 hard copies of the bid documents, and a pdf copy of the bid documents for the Town's use.
2. The Town will be responsible for placing the bid advertisements and for all costs associated with those advertisements.

Construction Support

3. Once the contract for construction has been awarded, the Consultant will provide the following services.
 - a. Attend the Pre-Construction Meeting to support Town staff.
 - b. Review shop drawings and make recommendations to the Town.
 - c. Make site visits to the project at appropriate intervals (generally monthly) for Consultant to be familiar with the general course of construction and to observe the progress and quality of the work. Consultant will rely upon Town staff to identify appropriate times for such site visits. For these purposes, a construction duration of 14 months is assumed.
 - d. Review monthly pay requests from the Contractor and advise the Town regarding payment of those pay requests. Quantity verification will be by the Town inspector.

- e. Participate in a final inspection for the purposes of preparing a punch list of items to be completed by the Contractor.
- f. Consultant will not be responsible for construction inspection or construction management services under this agreement. Day to day construction inspection will be conducted by the Town. Any construction services beyond those specifically identified above will be performed as requested at hourly billing rates.
- g. Prepare record drawings based on information provided by the contractor and the Town. This fee is based on construction being generally consistent with the construction plans. Significant variations from the plans will require adjustment of this fee.

Deliverables

Deliverables will include:

- 1. If both Segments A and B are selected by the Town, preliminary plans (approximately 30%) will be submitted for review by the Town.
- 2. At approximately 95% completion, three sets of construction plan sheets (2-11"x17" and 1-22"x34"), unbound specifications, a pdf copy of plans and specs, and opinion of the probable cost of construction will be submitted for review by the Town.
- 3. After necessary revisions (if any), the Consultant will provide the Town up to 5 hard copies of the final bid documents, and a pdf copy of the bid documents for the Town's use in bidding.

Assumptions & Clarifications

- It is assumed that the Town will determine whether to proceed with Segment A only, or both Segments A and B prior to issuing a notice to proceed.
- It is assumed that electronic Cad files (AutoCad drawing files) will be made available depicting the required location of median openings for use in design of turn lanes.
- It is assumed that no public meetings will be necessary.
- The scope of this agreement does not include construction staking, construction inspection or materials testing.
- It is assumed that up to six parcels will require right-of-way dedication documents along with six easement documents if Segment B is included in the scope. The fee for right-of-way and easement documents is \$1,300 per parcel and includes setting iron rods at the corners of the right-of-way dedication.
- Easement acquisition is not a part of the scope of this agreement, but that service can be provided as an Additional Service.
- It is assumed that hard copy plans will be made available that represent the widened portion of King Road west of Rose Lane. If possible, electronic Cad files (AutoCad drawing files) would also be helpful.

SCHEDULE OF FEES

The Town may elect to proceed with Segment A only, or with both Segments A and B, or with all three segments. The options below are not additive but stand separately. Fees are fixed fees except as noted.

Segment A Only

Construction Plan Revisions	\$ 37,000
Topographic Design Survey Update	\$ 3,000
Level B Subsurface Utility Engineering	\$ 9,000
Level A SUE Test Holes (4 at \$2,200 each)	\$ 8,800
Utility Coordination (Hourly, Est.)	\$ 5,000
Easement Documents Update (1)	\$ 500
Bid Support (Hourly, Est.)	\$ 6,000
Construction Support (Hourly, Est.)	<u>\$ 22,000</u>
Total Segment A Only	\$ 91,300
TDLR Review & Inspection	\$ 1,100
Total Segment A	\$ 92,400

Segment A and B

Construction Plan Revisions	\$122,000
Topographic Design Survey Update	\$ 5,000
Level B Subsurface Utility Engineering (SUE)	\$ 35,820
Level A SUE Test Holes (4 at \$2,200 each)	\$ 8,800
Utility Coordination (Hourly, Est.)	\$ 8,000
ROW & Easement Documents (12 @ \$1,300 each)	\$ 15,600
Bid Support (Hourly, Est.)	\$ 6,000
Construction Support (Hourly, Est.)	<u>\$ 36,800</u>
Subtotal A and B	\$ 238,020
TDLR Review & Inspection	\$ 1,100
Total A and B	\$ 239,120

Permit fees, filing fees, or other fees related to the project and paid on behalf of the Client by TNP to other entities will be invoiced at 1.10 times actual cost. That will include the TDLR

review fee for compliance with the Texas Accessibility Standards. That fee is expected to be \$1,000 and will be invoiced at \$1,100.

Direct Cost Reimbursables

A fee equal to 3% of labor billings shall be included on each monthly invoice for prints, plats, photocopies, plans or documents on CD, DVD or memory devices, and mileage. No individual or separate accounting of these items will be performed by TNP. That charge is included in the fees listed above.

EXHIBIT B – PROJECT TIMELINE

Roadway and Drainage Improvements for King Road

SCHEDULE: The proposed services shall begin upon receipt of written authorization to proceed, and receipt of necessary background information. Design survey update will be concurrent with preparation of the revised construction plans, as will the updated easement and right-of-way exhibits. Bid support and construction support will proceed with the Town's advertising and construction schedule.

Segment A Only

95% Submittal	8 weeks
Plan Review (TOLE)	3 weeks (assumed)
Final Submittal	3 weeks

Segment A and B

30% Segment B Submittal	6 weeks
95% Submittal	20 weeks
Plan Review (TOLE)	3 weeks (assumed)
Final Submittal	5 weeks

Exhibit C

Teague Nall and Perkins, Inc.

2019 - 2020 Standard Hourly Rates

Effective January 1, 2019 to December 31, 2020

Engineering/Landscape Architecture/ROW	Hourly Billing Rate
Principal or Director	\$250
Team Leader	\$230
Senior Project Manager	\$220
Project Manager	\$175
Senior Engineer	\$230
Project Engineer	\$160
Engineer III/IV	\$135
Engineer I/II	\$125
Landscape Architect / Planner	\$160
Landscape Designer	\$120
Senior Designer	\$140
Designer	\$130
Senior CAD Technician	\$125
CAD Technician	\$110
IT Technician	\$170
Clerical	\$80
ROW Manager	\$190
Senior ROW Agent	\$160
ROW Agent	\$125
Relocation Agent	\$160
ROW Admin	\$70
Intern	\$70

Surveying	Hourly Billing Rate
Survey Manager	\$230
Registered Professional Land Surveyor (RPLS)	\$195
Field Coordinator	\$140
S.I.T. or Senior Survey Technician	\$140
Survey Technician	\$110
1-Person Field Crew w/Equipment**	\$145
2-Person Field Crew w/Equipment**	\$175
3-Person Field Crew w/Equipment**	\$200
4-Person Field Crew w/Equipment**	\$220
Flagger	\$50
Abstractor (Property Deed Research)	\$90
Small Unmanned Aerial Systems (sUAS) Equipment & Crew	\$400
Terrestrial Scanning Equipment & Crew	\$250

Utility Management, Utility Coordination, and SUE	Hourly Billing Rate
Senior Utility Coordinator	\$165
Utility Coordinator	\$150
SUE Project Manager	\$190

SUE Engineer	\$170
Field Coordinator	\$140
Sr. Utility Location Specialist	\$140
Utility Location Specialist	\$90
1-Person Designator Crew w/Equipment***	\$145
2-Person Designator Crew w/Equipment***	\$170
2-Person Vac Excavator Crew w/Equip (Exposing Utility Only)	\$275 (4 hr. min.)
Core Drill (equipment only)	\$750 per day
SUE QL-A Test Hole (0 < 4 ft)	\$1,250 each
SUE QL-A Test Hole (> 4 < 6 ft)	\$1,500 each
SUE QL-A Test Hole (> 6 < 8 ft)	\$1,750 each
SUE QL-A Test Hole (> 8 < 10 ft)	\$2,000 each
SUE QL-A Test Hole (> 10 < 12 ft)	\$2,250 each
SUE QL-A Test Hole (> 12 < 14 ft)	\$2,500 each

Construction Management, Construction Engineering and Inspection (CEI)	Hourly Billing Rate
Construction Inspector II	\$100
Construction Inspector III	\$110
Senior Construction Inspector	\$130
Construction Superintendent	\$180
Senior Project Manager	\$220

Direct Cost Reimbursables

A fee equal to 3% of labor billings shall be included on each monthly invoice for prints, plots, photocopies, plans or documents on CD, DVD or memory devices, and mileage. No individual or separate accounting of these items will be performed by TNP.

Any permit fees, filing fees, or other fees related to the project and paid on behalf of the client by TNP to other entities shall be invoiced at 1.10 times actual cost.

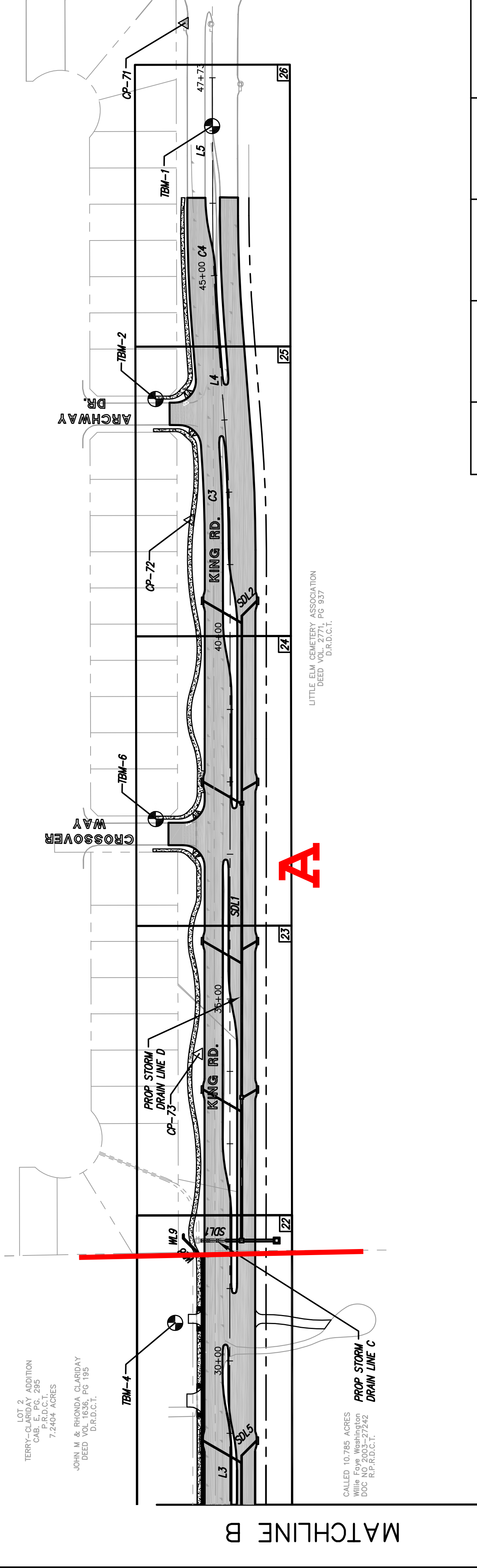
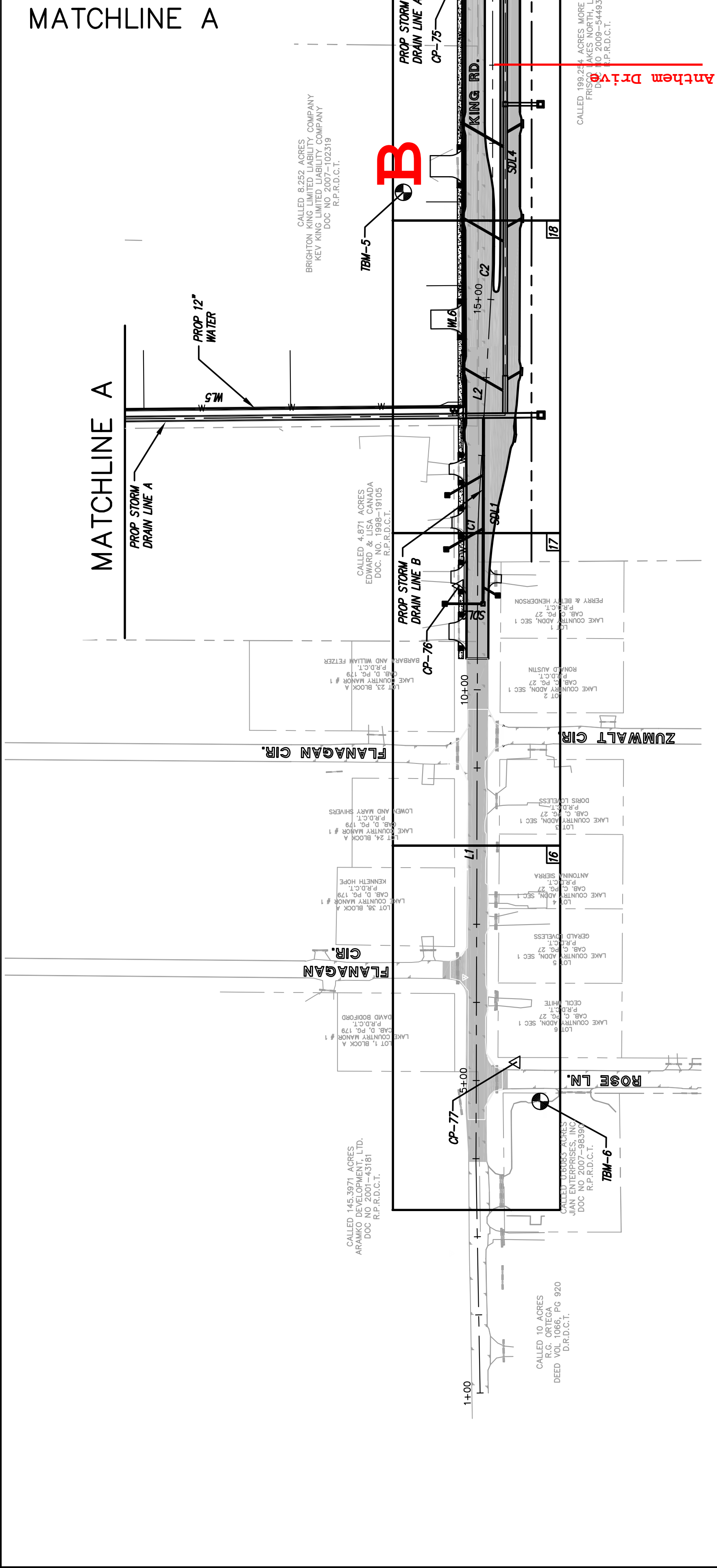
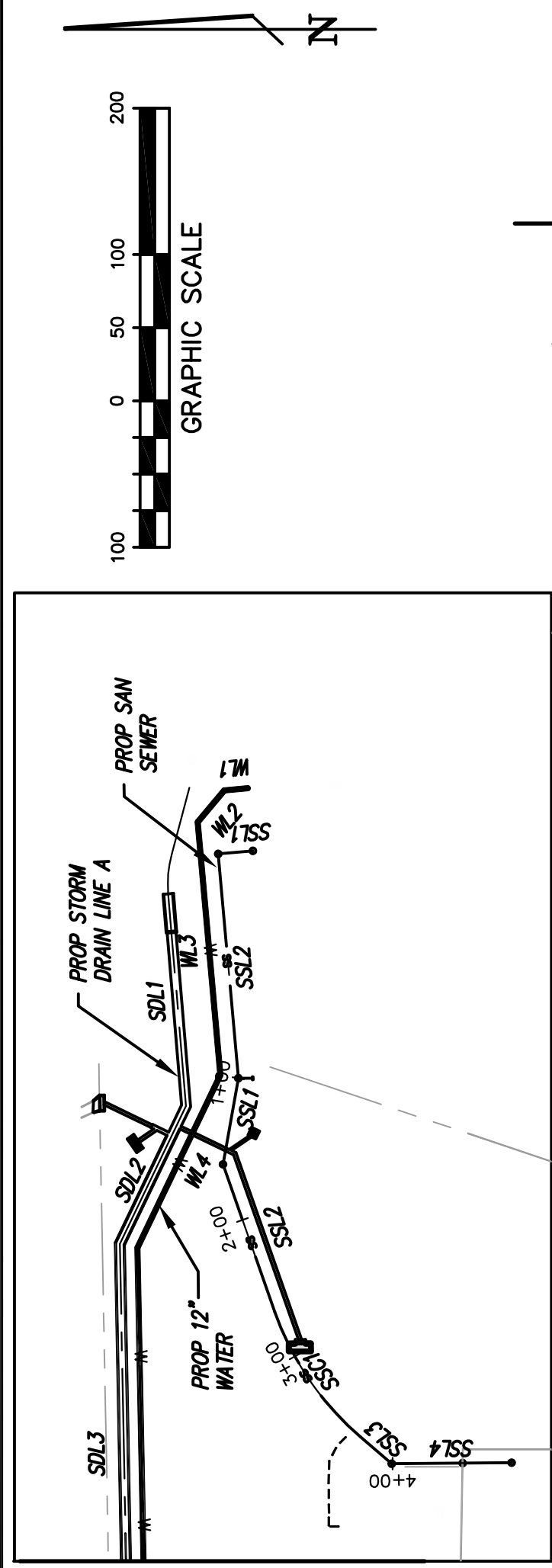
Notes:

All subcontracted and outsourced services shall be billed at rates comparable to TNP's billing rates above or cost times a multiplier of 1.10.

* Rates shown are for 2019 and 2020 and are subject to change in subsequent years.

** Survey equipment may include truck, ATV, Robotic Total Station, GPS Units and Digital Level.

*** Includes crew labor, vehicle costs, and field supplies.




POINT #	NORTHING	EASTING	ELEVATION	DESCRIPTION
71	7107826.980	2458561.157	565.48	5/8" CRS "RANDOM"
72	7107812.253	2457874.895	567.94	5/8" CRS "RANDOM"
73	7107792.906	2457137.621	563.45	5/8" CRS "RANDOM"
74	7107782.854	2456445.390	562.56	5/8" CRS "RANDOM"
75	7107779.269	2455634.890	558.50	5/8" CRS "RANDOM"
76	7107770.181	2454847.004	558.14	5/8" CRS "RANDOM"
77	7107691.072	2454238.215	555.38	5/8" CRS "RANDOM"

Exhibit D

BM LIST:	
TM#1 - BOX CUT IN THE BACK OF CURB ON THE NORTH SIDE OF THE EAST BOUND LANES, 200' +/- WEST OF THE INTERSECTION OF KING ROAD AND WITT ROAD.	ELEVATION = 567.19
TM#2 - BOX CUT AT THE SOUTHWEST CORNER OF THE END OF A SIDEWALK LOCATED 115' +/- SOUTH OF CENTERLINE OF ROYAL ARCHES TRAIL, AND 20' +/- EAST OF THE CENTERLINE OF ARCHWAY DRIVE.	ELEVATION = 567.53
TM#3 - BOX CUT AT THE SOUTHWEST CORNER OF THE END OF A SIDEWALK LOCATED 115' +/- SOUTH OF CENTERLINE OF ROYAL ARCHES TRAIL, AND 20' +/- EAST OF THE CENTERLINE OF CROSSOVER WAY.	ELEVATION = 565.81
TM#4 - BOX CUT IN THE WEST SIDE OF A CONCRETE DRIVE KNOWN AS DENNING DRIVE, AT THE EAST ENTRANCE AND 60' +/- NORTH OF THE CENTERLINE OF KING ROAD.	ELEVATION = 562.87
TM#5 - BOX CUT AT THE SOUTHEAST CORNER OF A SIDEWALK, IN FRONT OF CROSSROADS WINERY AND TASTING ROOM, LOCATED IN THE BUSINESS PARK 1100' +/- EAST OF ROSE LANE, ON THE NORTH SIDE OF KING ROAD.	ELEVATION = 559.83
TM#6 - BOX CUT IN THE BACK OF CURB OF WITT GROCERY PARKING LOT 80' +/- SOUTH OF THE CENTERLINE OF KING ROAD, AND 30' +/- WEST OF THE CENTERLINE OF ROSE LANE	ELEVATION = 558.50

[illegible]

	SCALE 1" = 100' <small>VERT</small> N/A DATE JULY 2012	 INC. TEBP Registration No. F-230	TEAGUE NALL AND PERKINS <hr/> 235 W. Hickory Street, Suite 100 Denton, Texas 76201 Phone: (940) 383-4177 • Fax: (940) 383-8026 www.tnp-online.com


 _____, P.E.
 Date: JULY 24, 2012

January 5, 2023

Mr. Wesley Brandon, P.E.
Town Engineer
Town of Little Elm
100 West Eldorado Pkwy
Little Elm, Texas 75068

Re: **King Road Expansion Project**
Contract Revisions and Amendment 2 – LIT 21071
Water/Sanitary Sewer Packages and Paving Packages

Mr. Brandon:

This letter agreement serves as an amendment to the original contract for the King Road Project. This additional service will be provided under the terms of the original agreement. The Purpose of this contract amendment is to expand the scope of services to include additional elements resulting from the agreement between the town of Little Elm and the City of Frisco. Following is a detailed scope of the additional work included in this amendment:

Section I - Scope of services

Task 1: West End Improvements

The scope of the west end of the project ending at Rose Lane will be expanded from the planned overlay of the existing 2-lane section to a 3-lane section with a continuous left turn lane and sidewalk on one side. This expansion will require additional efforts including roadway profile and section design, drainage design, sidewalk design, topographic survey, and expanded construction support.

The existing ditches are relatively shallow and flat, and the roadway is elevated above the ROW. The existing storm drain system is shallow and cannot accommodate storm drains necessary for the desired curb and gutter section. TNP recommends extending a storm drain line up the west leg of Flanagan Circle and obtaining an easement across the property at the northwest corner of the intersection between Flanagan and King Road and an easement from the City of Hackberry in order to connect to the existing storm drain along the east side of the water tower property. Additionally, lowering the road to allow drainage to reach the curbs will require replacing longer sections of Flanagan Circle and Zumwalt

More specifically, the scope will include the following Items:

Task 1a: Street Design - This task will include revising the plans to incorporate the design of the three-lane section into the construction plans. This will include roadway plan, profile, and section design; signage and striping design; traffic control design; and updates to the general plan sheet as necessary to incorporate the widened section into the plans. This item will also include required additional specifications and coordination meetings.

January 5, 2023

King Road Expansion Project – Contract Amendment

Task 1b: Storm Drainage Design – This task includes addition of storm drainage system design and construction plan preparation as required to provide drainage for the revised three-lane section. This task is based on the assumption that drainage will be routed up Flanagan Circle and across private property as described above. Design of the storm drainage along this route requires some additional survey and SUE, which is described in Task 3.

TNP will revise the construction plans to include the design of the widened section, including updated profile and paving sections, sidewalks, striping, and storm drainage design. The proposed sidewalks will require some re-routing of drainage and some regrading of the existing ditches.

Task 2: Update Design to Frisco Standards

The plans will be updated to the City of Frisco standards except for minimum street slopes. Drainage design and calculations will be revised to Frisco standards along with sidewalks, ramps, driveways, lighting, landscaping, and irrigation. The revised designs will be incorporated into the construction plans. This item also includes updating the contract documents and specifications to meet City of Frisco requirements.

Task 3: Right Turn Lanes at King Road and Witt Road

TNP will provide design services for two right turn lanes, one eastbound to southbound and one westbound to northbound from King Road onto Witt Road. Refer to the attached schematic exhibit for the proposed turn lanes scope and limits. The design will include:

- Turn lane layout and vertical design, assuming the existing cross slopes and roadway profiles will remain unchanged
- Median nose adjustments as shown in the exhibit
- New crosswalks
- Sidewalks along the turn lanes and ramps at each corner of the intersection
- Pedestrian pole relocations each corner of the intersection
- Storm drain inlet adjustments in turn lanes
- Franchise utility coordination
- Traffic signal pull box relocations

This task does not include relocation of any traffic signals.

Task 4: Additional Surveying Services

TNP will provide all office and field work necessary to perform surveying services as described below.

Task 4a: Zumwalt Circle and Flanagan Circle - CONSULTANT will provide all office and field work necessary to perform Topographic Surveys in (3) three areas adjacent to King Road.

Area 1: Approximately 150- LF of Zumwalt Circle extending south from the approximate south right of way of King Road. The limits of the additional survey will extend to the apparent right of way on each side of Zumwalt Circle.

Area 2: Approximately 150- LF of Flanagan Circle (east) extending north from the approximate north right of way of King Road. The limits of the additional survey will extend to the apparent right of way on each side of Flanagan Circle (east).

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King Road Expansion Project – Contract Amendment

Area 3: Approximately 150- LF of Flanagan Circle (west) extending north from the approximate north right of way of King Road. The limits of the additional survey will extend to the apparent right of way on each side of Flanagan Circle (west). In addition, area 3 will include an approximate 30' x 150' corridor along the north line of 22011 Flanagan Circle (west) and will extend approximately 30' west into a tract of land owned by the City of Hackberry. Up to (2) two Right of Entry letters will be prepared and mailed by TNP in order to access said corridor.

Task 4b: Witt Road Turn Lanes - CONSULTANT will provide all office and field work necessary to perform approximately 700 LF of Topographic Survey along King Road east and west of its intersection with Witt Road. The survey limits will include the area depicted on Exhibit 'A' attached hereto.

All of the above Topographic Design Surveys will identify topography (one foot contours), visible features and above ground improvements including pavement, curbs, structures, fences, trees (6"dbh and greater), sidewalks, utilities, valves, manholes, hydrants, inverts, and other pertinent features within the project area as necessary for engineering design.

Task 4c: Easement Documents - CONSULTANT will provide all office and field work necessary to prepare up to (2) two Drainage Easement documents as determined by engineering design. The exact number and location of said documents will be as directed by the Town of Little Elm and the Project Engineer. Sufficient property corners will be located and reviewed by a Registered Professional Land Surveyor to determine property lines and rights-of-way as necessary to develop the limits of the easement parcels.

Task 4d: Right-of-way Documents - CONSULTANT will provide all office and field work necessary to prepare (2) two Right-of-way (ROW) documents, one adjacent to the Villages of Creekwood development and one for The Rose Place development. The ROW geometry will be based on data and CAD files from the approved plats obtained from the developers' consultants. This item will include additional coordination with the developers' consultants as needed to ensure the accuracy of the proposed ROW documents with respect to the approved plat documents. Sufficient property corners will be located and reviewed by a Registered Professional Land Surveyor to determine property lines and rights-of-way as necessary to develop the limits of the ROW parcels. Right of Way corners will be monumented on the ground with 5/8-inch iron rods with plastic cap stamped "TNP" where applicable.

All survey information provided by the CONSULTANT will be referenced to Grid North of the Texas Coordinate System of 1983 {North Central Zone No. 4202; NAD83(2011) Epoch 2010} as derived locally from Allterra Central's continuously operating reference stations via real time kinematic survey methods. Elevations will be referenced to NAVD88 datum as derived from RTK observations. Orthometric heights will be calculated by applying the Geoid 12B model to ellipsoid heights.

CONSULTANT will perform all surveying services in accordance with the General Rules and Procedures of Practice, and the Professional and Technical Standards established by the Texas Board of Professional Engineers and Land Surveyors.

Task 5: Subsurface Utility Investigation

The scope of subsurface utility designating and/or locating services for this project is described below. Survey services to tie utility crossing marks and/or identifiers placed during the subsurface utility designating and/or locating effort will be provided in this contract.

January 5, 2023

King Road Expansion Project – Contract Amendment

Quality Level ‘B’ through ‘D’ Utility Information & Designation – TNP will provide utility information, up to QL ‘B’, for the following areas:

Task 5a. Flanagan and Zumwalt: This task will include the existing ROW of Flanagan Circle West, Flanagan Circle East, and Zumwalt Circle for a distance of 50’ starting at the nearest King Rd edge of pavement.

Task 5b. Witt Turn Lanes: area between the existing back of curb and existing ROW line for a distance of 300’ along the westbound lanes of King Rd, east of Witt Rd and along the eastbound lanes of King Road, west of Witt Rd

This work includes:

- Requesting utility records on all crossing utilities from the Client, public utilities and private utility companies known to provide service within the project area, as well as other sources, in an effort to develop a comprehensive inventory of utility systems likely to be encountered. Record documents may include construction plans, system diagrams, distribution maps, transmission maps, geographic information system data, as well as oral descriptions of the existing systems. The depiction of utilities from records (QL-‘C’ or ‘D’) will be based on thorough field and office activities and shall be based on the most reliable indication of position available.
- Visible surface features and appurtenances of subsurface utilities found within the project site will also be evaluated. Using appropriate surface geophysical methods, TNP will search for detectable indications of the location of anticipated subsurface utilities.
- Marking all locations that can be validated, using paint, flags, or other devices.
- Preparing documentation of the utilities encountered and marked, including their general location, orientation, type & size, if known.

Task 6: Lighting plans

TNP will evaluate the lighting plans previously prepared by 3rd Generation Engineering and redesign the lighting for King Road to account for the revised median geometry and update the lighting to meet City of Frisco requirements.

- Site Plans showing proposed electrical service including distribution equipment for Street lighting along King Road between Rose Lane and Witt Road
- Coordinate new services with utility company
- Power wiring and controls for Pole Mounted LED lighting
- Coordinate fixture and pole types with City standards
- Street lighting photometric plans
- Lighting foundation design and controls
- Electrical risers, schedules, and details
- Specifications

Task 7: Landscaping and Irrigation

Task 7a: Landscape & Irrigation Plans - Consultant will provide Landscape Architecture Design services that consist of minimum requirements to meet the applicable landscape ordinance of the governing municipality. The scope of the Landscaping and Irrigation improvements shall include all medians along King Road from just west of Anthem

Included in this item:

- Coordination of City review and approval of plans prepared as part of this item.

January 5, 2023

King Road Expansion Project – Contract Amendment

- Up to three (3) team design meetings at the office of the architect, developer or owner to coordinate ground plane design elements, and verify owner expectations for the level of finish.
- City Landscape Plan Submittal: If required, Consultant will submit a Landscape Compliance Plan demonstrating code compliance for City review and approval.
- Construction Documents: Plans to include planting and irrigation with applicable details to a level sufficient to demonstrate design intent and allow the construction thereof, including materials and quantity schedules. Technical specifications to be included.
- Coordination with the Civil Engineer to provide dedicated irrigation meter.

Not included in this item:

- Hardscape design, signage, site furnishings, lighting, fences, or water features.
- Enhanced landscape design beyond primary pedestrian entrance locations.
- Irrigation systems utilizing reclaimed water that require pumps, filters and associated controls.
- 2D or 3D renderings, graphics or applications required to pursue a variance or special exception to the ordinance.
- LEED pursuit.
- Green roofs or terraces over structure.
- All these services can be provided upon request for an additional fee.

Task 7b: Landscape Construction Administration - Consultant will provide limited Construction Administration services by processing shop drawings and product submittals, responding to RFIs, and issuing supplemental instructions if required related to the work shown on the Landscape Architecture Plans. Submittals not required by the contract documents or not related to plans developed by the Landscape Architect will not be reviewed.

At the Client's request, a representative will attend up to three (3) Owner/Architect/Contractor (OAC) project coordination meetings during construction. At the request of the Owner, and in conjunction with the OAC meetings, Consultant will visit the site at critical junctures during the course of site construction up to five (5) times. Recommended times for site visits could include:

- Paving mockups and site formwork/reinforcing.
- Testing of the irrigation main line and landscape drainage structures.
- Upon completion of soil preparation and finish grade, after plant material has been laid out, but prior to actual planting.
- Substantial Completion Walk-Through.
- Final Completion Walk-Through.

This shall not be construed as performing continuous construction inspection.

Please note the following:

- Consultant shall not at any time supervise or have authority over any Contractor work or jobsite management procedures, nor shall Consultant have authority over or be responsible for the means and methods, or procedures of construction selected or used by the Contractor.
- Consultant neither guarantees the performance of the Contractor nor assumes responsibility for the Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

January 5, 2023

King Road Expansion Project – Contract Amendment

- Consultant shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- Consultant shall not be responsible for the acts or omissions of the Contractor or for any decision or interpretation of the Contract Documents made by the Contractor.
- While at the Site, Consultant's employees and representatives shall comply with the specific applicable requirements of the Contractor's and Owner's safety programs of which Consultant has been informed in writing.

REIMBURSABLE EXPENSES: Included in this item are usual and customary expenses normally incurred during this type of project. These could include travel expenses, courier delivery charges, overnight delivery charges, copies of deeds, copies of existing plans and/or maps, photocopies, printing and reproduction (either in-house or by reproduction company). Application, review and filing fees are not included in this item. A copy of our “Standard Billing Rates for In-House Reimbursable Charges” is attached for your reference.

RECORD DRAWINGS: Based on project construction records, maintained and provided by the Contractor, Consultant will prepare final Record Drawings of the referenced project in conformance with City requirements. These drawings will rely solely on the information provided by the Contractor. Field verification of actual construction is not included in this item. In the event the Contractor claims no changes were made to the plans during construction, Contractor will provide a letter on their letterhead positively stating that all construction was done per the construction documents.

Task 9: Bid Support

TNP will provide bid support according to the original contract documents. This is to reinstate the budget items for bid support that were reduced in the previous amendment to expedite services for the redesign of segments A and B

Task 9: Construction Support Services

TNP will provide construction support according to the original contract documents. This is to reinstate the budget items for construction support that were reduced in the previous amendment to expedite services for the redesign of segments A and B

January 5, 2023

King Road Expansion Project – Contract Amendment

Section II - Fee Schedule

Item	Fee type	Total:
Task 1: West End Improvements		
Task 1a: Street Design	Fixed Fee	\$ 24,800.00
Task 1b: Storm Drainage Design	Fixed Fee	\$ 20,500.00
Task 2: Update to Frisco Standards	Fixed Fee	\$ 15,500.00
Task 3: Right Turn Lanes at King Road and Witt Road	Fixed Fee	\$ 30,900.00
Task 4: Additional Surveying Services		
Task 4a: Zumwalt and Flanagan	Fixed Fee	\$ 6,800.00
Task 4b: Witt Road Turn Lanes	Fixed Fee	\$ 6,800.00
Task 4c: Easement Documents (2 @ \$2,600/ea)	Per Each	\$ 5,400.00
Task 4d: Two Right-of-Way Documents	Fixed Fee	\$ 12,400.00
Task 5: Subsurface Utility Investigation		
Task 5a: Zumwalt and Flanagan	Fixed Fee	\$ 6,700.00
Task 5c: Witt Road Turn Lanes	Fixed Fee	\$ 7,200.00
Task 6: Lighting plans	Fixed Fee	\$ 25,750.00
Task 7: Landscaping and Irrigation		
Task 7a: Landscaping and Irrigation Plans	Fixed Fee	\$ 51,500.00
Task 7b: Landscaping and Irrigation Construction Administration	Fixed Fee	\$ 5,150.00
Task 8: Geotechnical Engineering Services		
Task 8a: Witt Road Turn Lanes	Fixed Fee	\$ 15,000.00
Task 8b: King Road from Archway to Rose Lane	Fixed Fee	\$ 45,800.00
Task 9: Bid Support		
Task 9b: Segment A	Fixed Fee	\$ 5,150.00
Task 9c: Segment B	Fixed Fee	\$ 6,200.00
Task 10: Construction Support		
Task 10a: Water / Sanitary Sewer Package	Fixed Fee	\$ 3,200.00
Task 10b: Segment A	Fixed Fee	\$ 22,500.00
Task 10c: Segment B	Fixed Fee	\$ 32,750.00
Total Fees:		\$ 350,000.00
Summary of Amended Contract:		
Current Contract:		\$ 236,320.00
Total Amendment #2:		\$ 350,000.00
Total Amended Contract:		\$ 586,320.00

January 5, 2023

King Road Expansion Project – Contract Amendment

Sincerely,

tnp
teague nall & perkins

A handwritten signature in blue ink, appearing to read "Scott A. Gibson".

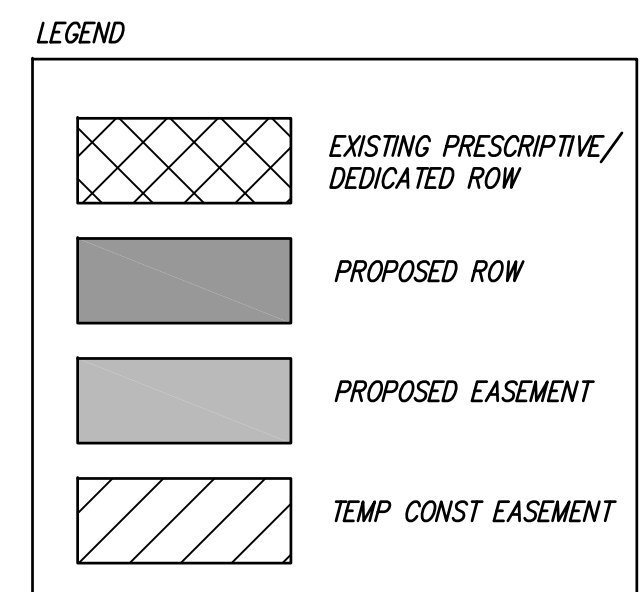
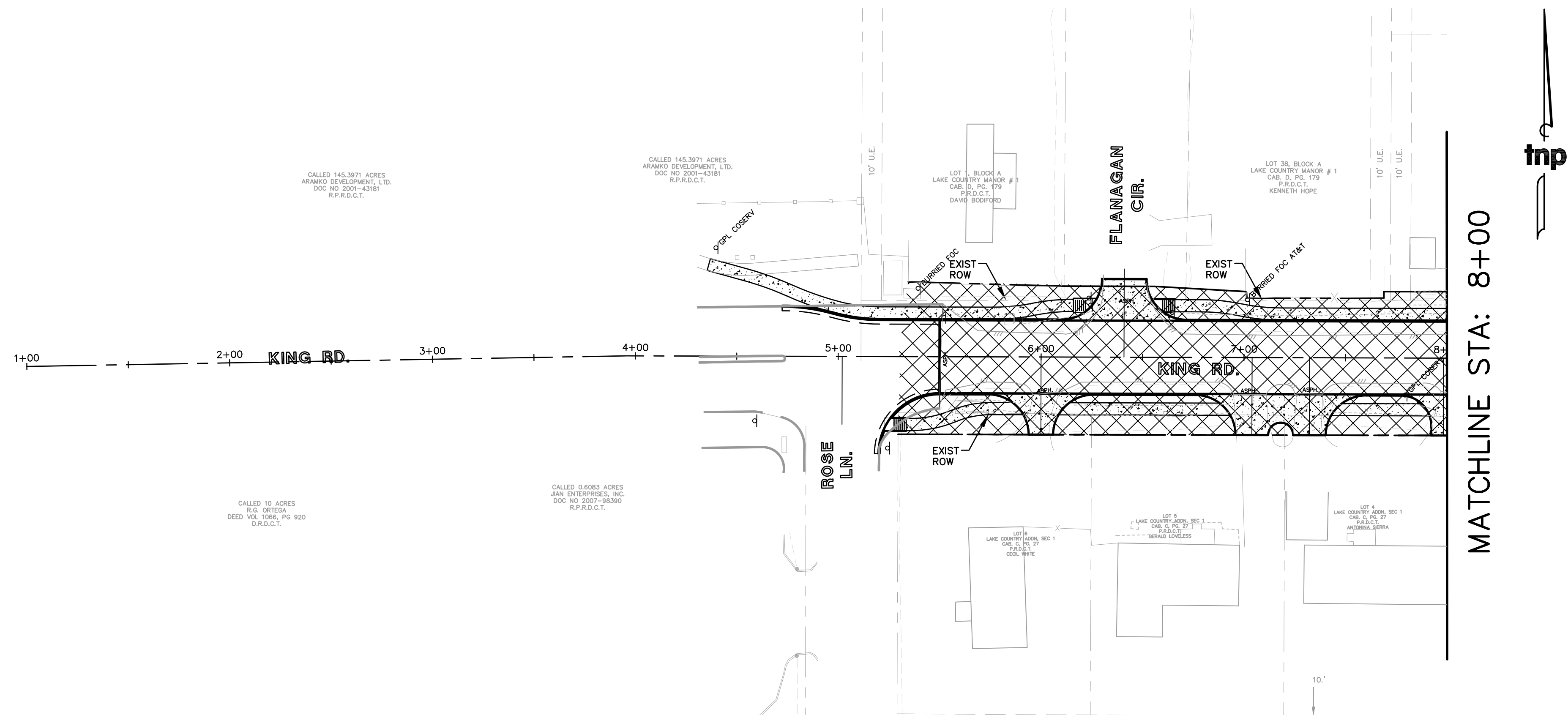
Scott A. Gibson, P.E.
Team Leader

A handwritten signature in blue ink, appearing to read "Christopher Hartke".

Christopher Hartke, P.E.
Director of Engineering Services


Approved by:



Date



no.	revision	by	date

teague nall and perkins, inc
3200 S. Interstate 35E, Suite 1129
Denton, Texas 76210
940.383.4177 ph 940.383.8026 fx
www.tnppinc.com
TBPE: F-230; TBPLS: 10011600, 10011601, 10194381
GBPE No. PEF007431; TBAE No. BR 2673



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horiz 1"=40'
vert N/A
date
Oct 2022



This document is for interim review and is not intended for construction, bidding or permit purposes.

JEFF C. SEARS, P.E. Date: October 7, 2022

Tx. Reg. # 107717

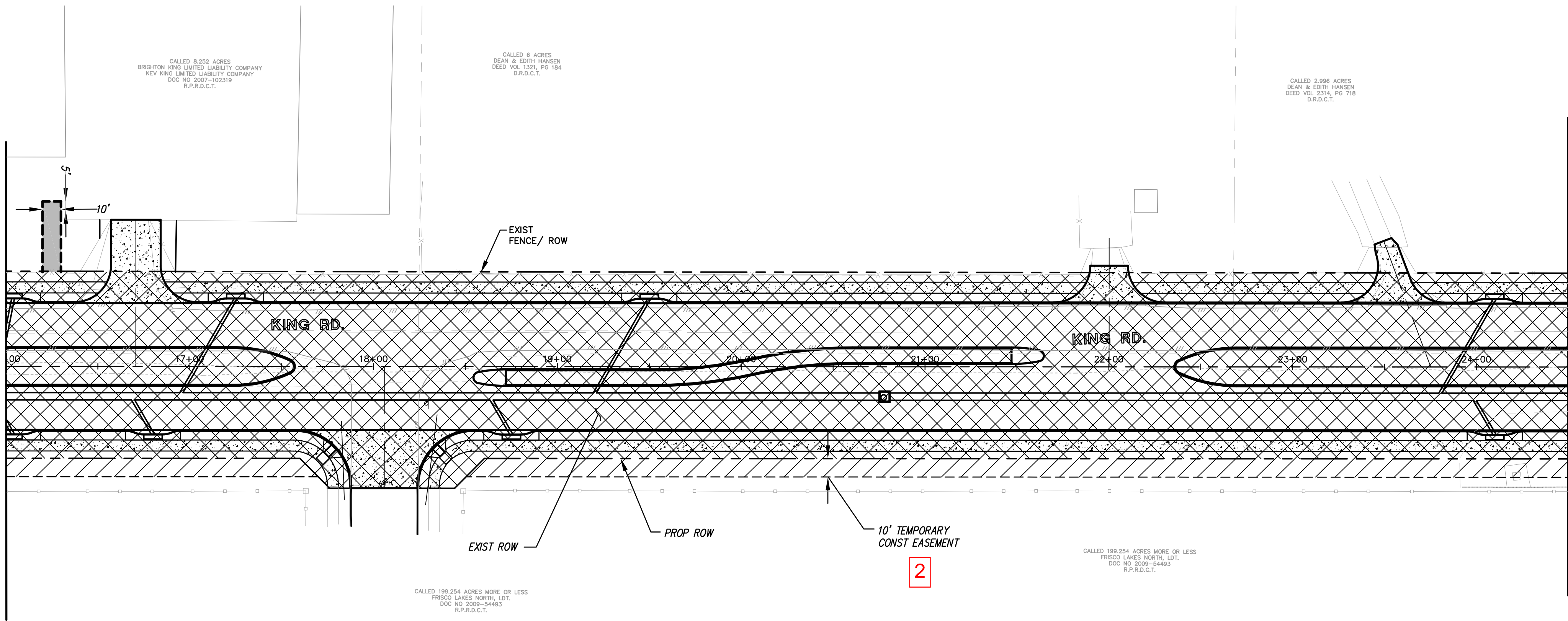
Town of Little Elm, Texas
Paving and Storm Drain improvements
King Road
RIGHT OF WAY
BEGIN TO STA 16+00

tnp project
LIT21071
sheet
6

Drawing: T:\Projects\U121071\Eng-C30\CAD\construction_plans\05 - ROW CONTROL.dwg at Oct 07, 2022-12:37pm by jcadenhead
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Layout: BEGIN TO STA 16+00

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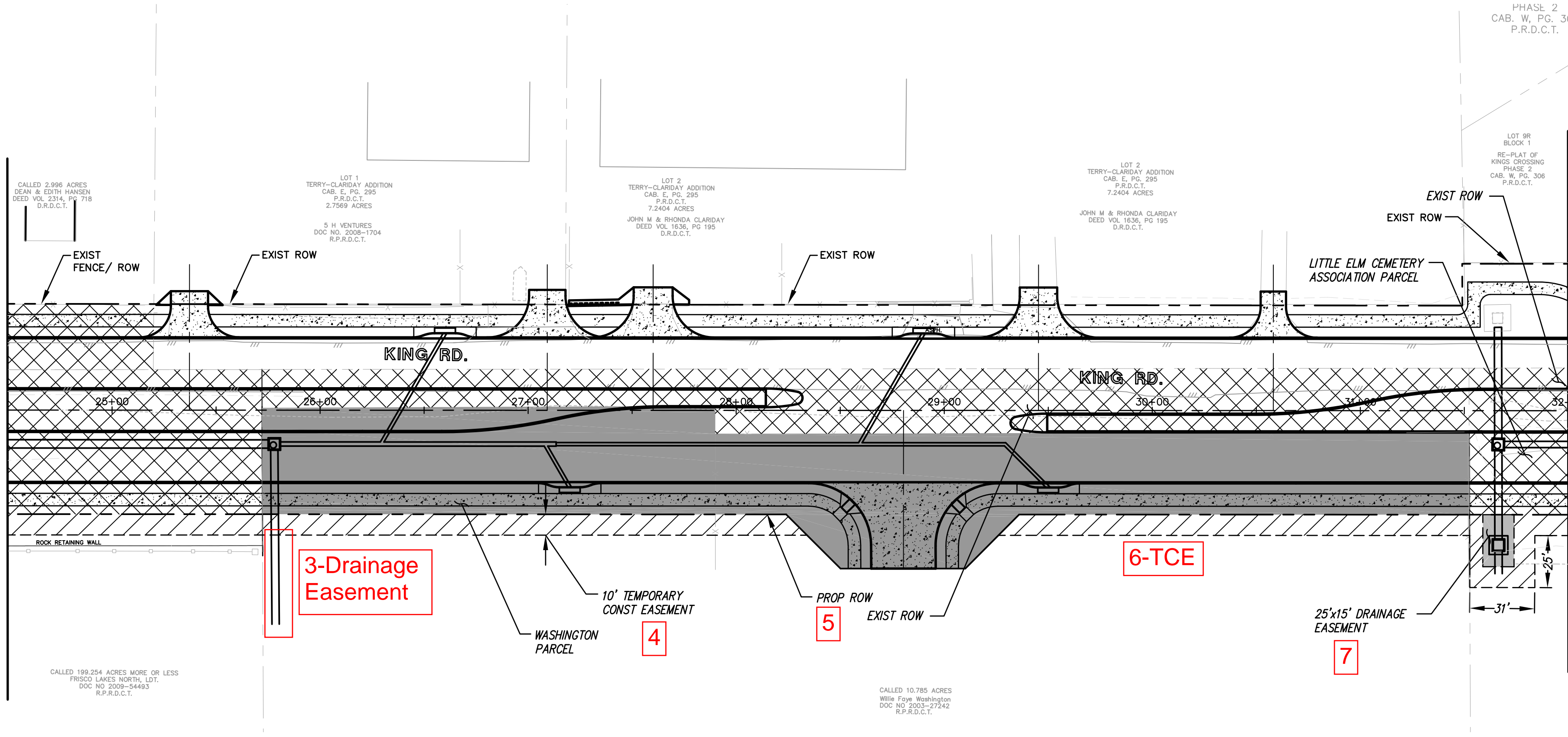
MATCHLINE STA: 16+00



MATCHLINE STA: 24+50

tnp

MATCHLINE STA: 24+50



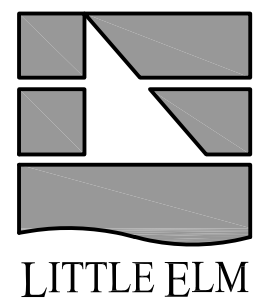
MATCHLINE STA: 32+00

tnp

LEGEND	
	EXISTING PRESCRIPTIVE/ DEDICATED ROW
	PROPOSED ROW
	PROPOSED EASEMENT
	TEMP CONST EASEMENT

no.	revision	by	date

teague nall and perkins, inc	
3200 S. Interstate 35E, Suite 1129	
Denton, Texas 76210	
940.383.4177 ph 940.383.8026 fx	
www.tnppinc.com	
TBPE: F-230; TBPLS: 10011600, 10011601, 10194381	
GBPE No. PEF007431; TBAE No. BR 2673	



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date
Oct 2022



This document is for interim review and is not intended for construction, bidding or permit purposes.	
JEFF C. SEARS, P.E.	Date: October 7, 2022
Tx. Reg. # 107717	

Town of Little Elm, Texas	
Paving and Storm Drain improvements	
King Road	
RIGHT OF WAY	
STA 16+00 TO STA 32+00	

tnp project LIT21071
sheet 7

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no.	revision	by	date

teague nall and perkins, inc

3200 S. Interstate 35E, Suite 1129
Denton, Texas 76210
940.383.4177 ph 940.383.8026 fx
www.tnpinc.com

TBPE: F-230; TBPLS: 10011600, 10011601, 10194381
GBPE No. PEF007431; TBAE No. BR 2673



LITTLE ELM



scale

horiz
1"=40'

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N/A

date
Oct 2022



This document is for interim review and is not intended for construction, bidding or permit purposes.

JEFF C. SEARS, P.E. Date:October 7, 2022

Tx. Reg. # 107717

Town of Little Elm, Texas

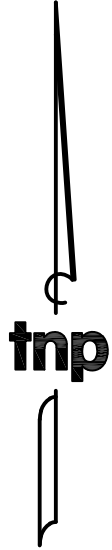
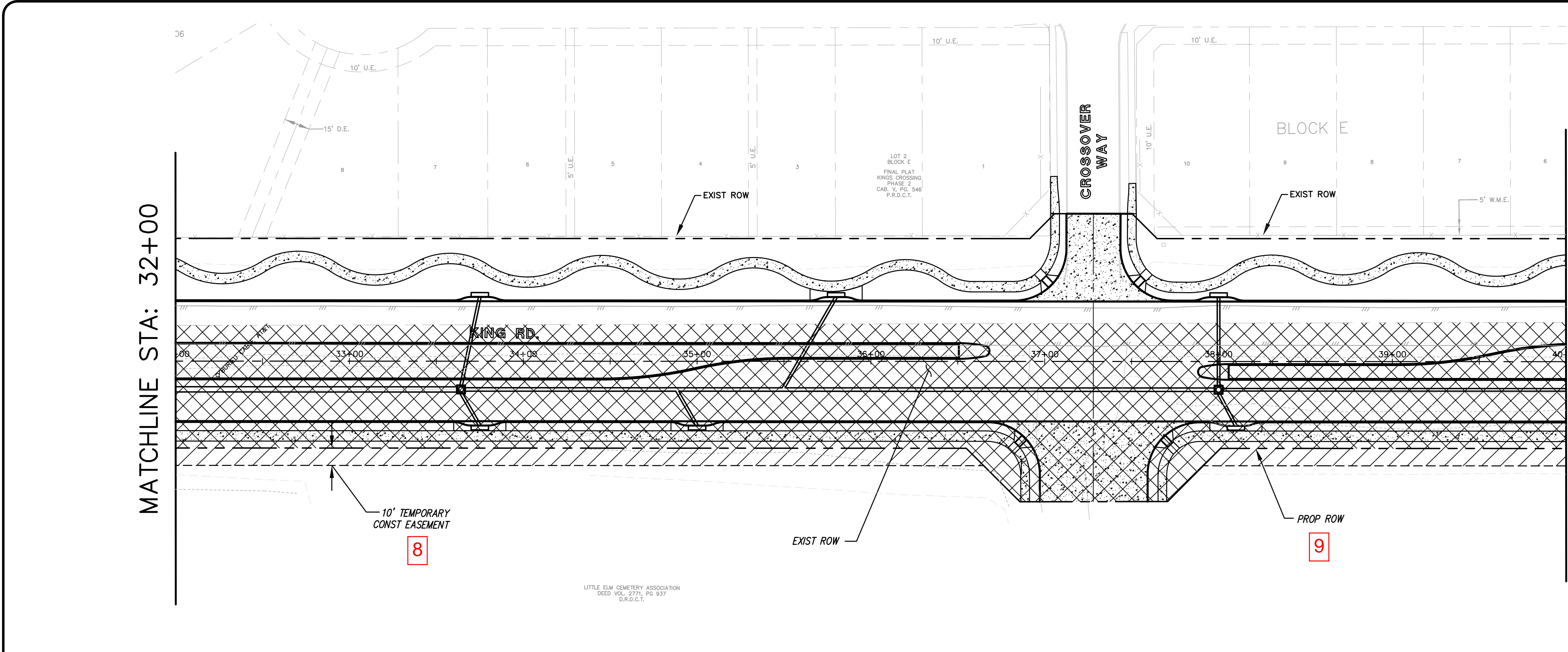
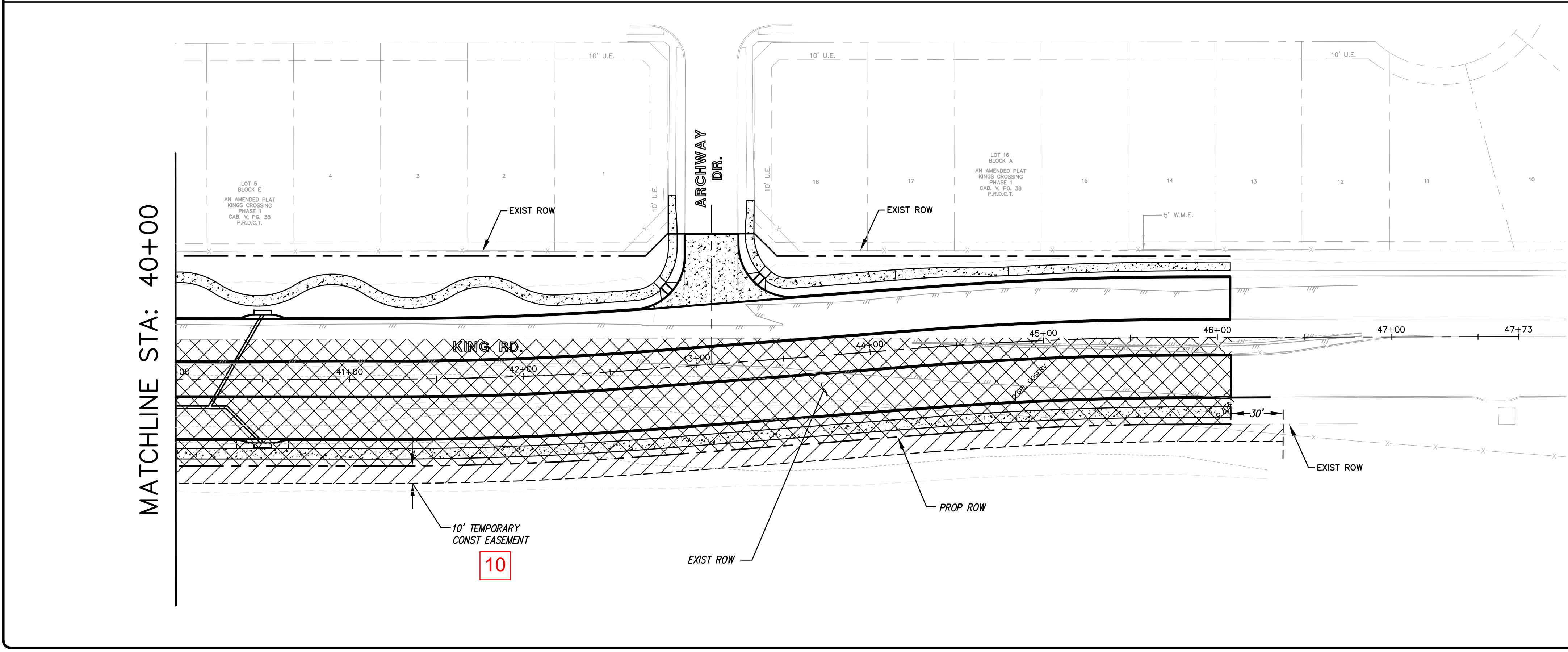
Paving and Storm Drain improvements

King Road


RIGHT OF WAY
STA 32+00 TO END

tnp project
LIT21071


sheet
8




LEGEND




EXISTING PRESCRIPTIVE/
DEDICATED ROW



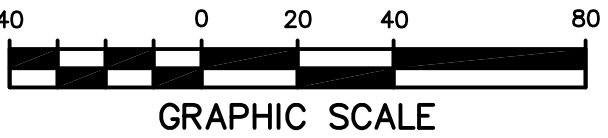
PROPOSED ROW



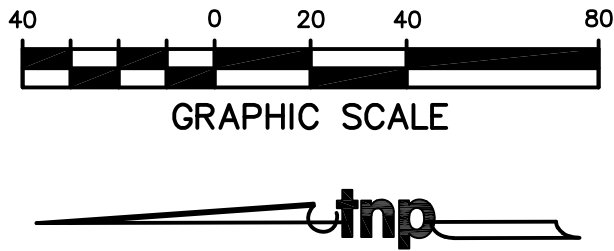
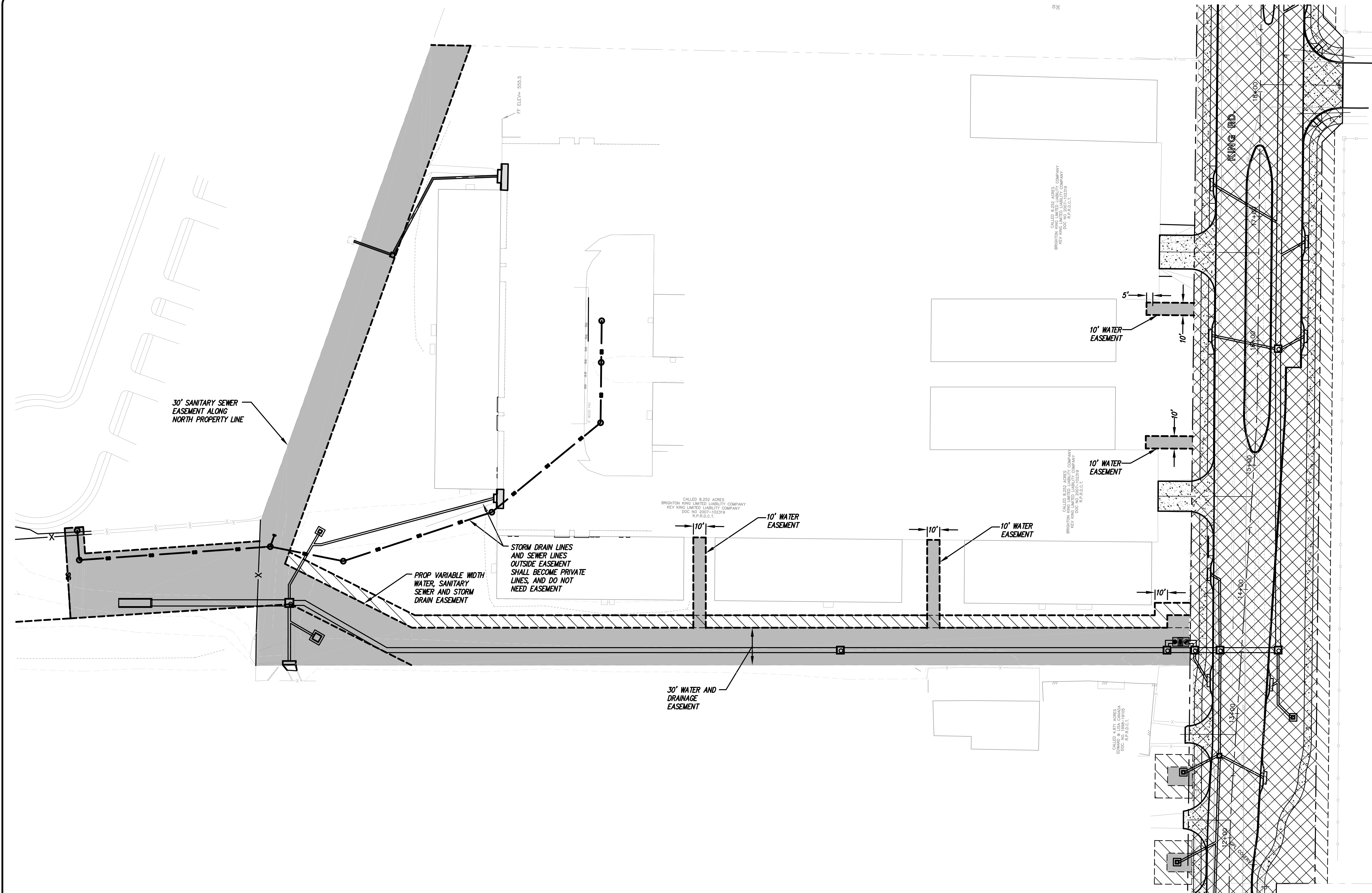
PROPOSED EASEMENT



TEMP CONST EASEMENT



Drawing: T:\Projects\LIT21071\Files\GIS\CAD\construction_plans\05 - ROW CONTROL.dwg at Oct 07, 2022, 12:38pm by jadenhead
Project: RIGHT OF WAY STORM DRAIN LINE A - Pkgs: A-220-34-TBL-2021PA7.dwg - User: jadenhead



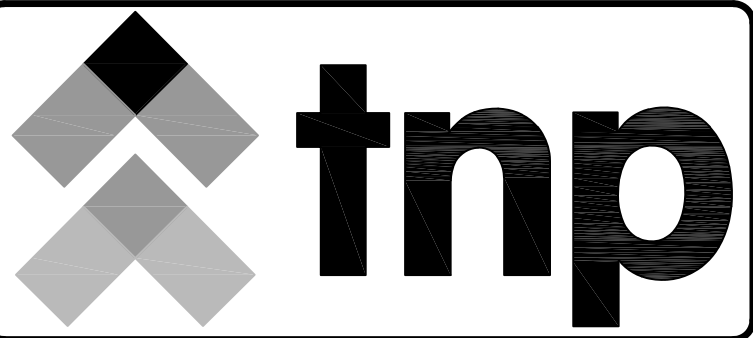
LEGEND	
	EXISTING PRESCRIPTIVE/ DEDICATED ROW
	PROPOSED ROW
	PROPOSED EASEMENT
	TEMP CONST EASEMENT

no.	revision	by	date

teague nall and perkins, inc
3200 S. Interstate 35E, Suite 1129
Denton, Texas 76210
940.383.4177 ph 940.383.8026 fx
www.tnppinc.com
TBPE: F-230; TBPLS: 10011600, 10011601, 10194381
GBPE No. PEF007431; TBAE No. BR 2673



scale
horiz
1"=40'
vert
N/A
date
Oct 2022



This document is for interim review and is not intended for construction, bidding or permit purposes.
JEFF C. SEARS, P.E. Date: October 7, 2022
Tx. Reg. # 107717

Town of Little Elm, Texas
Paving and Storm Drain improvements
King Road
RIGHT OF WAY
STORM DRAIN LINE A

tnp project
LIT21071
sheet
9



Date: 05/02/2023
Agenda Item #: 7. C.
Department: Development Services
Strategic Goal: Ensure excellence in public services while keeping up with the growth in the community
Staff Contact: Wesley Brandon, Town Engineer

AGENDA ITEM:

Consider Action to Approve a **Professional Services Design Contract with Pacheco-Koch Consulting Engineers, Inc. (a Westwood Company) for the Main Street Traffic Signal Project.**

DESCRIPTION:

The Town has a current Master Service Agreement to Furnish Consulting Services with Pacheco-Koch Consulting Engineers, Inc. as part of a previous Request for Qualifications (RFQ) for professional engineering services. This Work Order proposes to hire them to provide design and contract administration services required to construct proposed traffic signal improvements at the intersection of Main Street and Eldorado Parkway. The current estimated cost of the project is approximately \$614,000. The project has been approved as part of the Denton County TRIP 2022 bond program, which is anticipated to provide funding to cover the cost of the project.

The general scope of work will include field surveying and the preparation of design drawings, specifications, and contract documents required to complete the project. The consultant will also provide as-needed bidding and construction administration services.

BUDGET IMPACT:

Funding for the project is identified in the current Denton County TRIP 2022 Bond Program. Additional funding to cover costs that exceed funding provided by Denton County has been identified in the Town's Capital Improvement Program, as well as the South Roadway Impact Fee Fund.

\$	49,800.00	Proposed Contract Amount
\$	7,500.00	Contingency
<hr/>		
\$	57,300.00	Total Funding Request

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

- Master Agreement
- Proposed Scope of Services
- Cost Breakdown
- Preliminary Cost Estimate

TOWN OF LITTLE ELM, TEXAS
MASTER AGREEMENT FOR PROFESSIONAL SERVICES
AGREEMENT # 2016-1066

This Agreement is made by and between the Town of Little Elm, Texas, a Texas home-rule municipality (hereinafter referred to as the "Owner") and [Pacheco Koch, LLC](#), hereinafter referred to as the "Consultant") for On-Call Consulting Services to the Town of Little Elm for various projects located within Denton County, Texas in accordance with the provisions in this Master Agreement for Professional Services ("Agreement"). In consideration of the premises, covenants and mutual promises contained in this Agreement, and in consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Consultant hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

1.1 THE CONTRACT

1.1.1 The Contract between the Owner and the Consultant, of which this Agreement is a part, consists of the Contract Documents.

1.2. THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this Agreement, the Request for Qualifications, Requirements and Instructions to Respondents, Specifications, Terms and Conditions, and each Work Order issued under this Agreement, including all documents pertaining to each Work Order.

ARTICLE 2: TERM / TERMINATION

2.1 TERM

2.1 The term of this Agreement shall begin on or about January 20, 2017 and continue through January 19, 2022, a period of five years. This Agreement shall continue for the duration of the term, unless sooner terminated as provided herein.

2.2 TERMINATION

2.2.1 This Agreement may be suspended or terminated by either Party with or without cause at any time by giving a written 30 day notice to the other Party. In the event suspension or termination is without cause, payment to the Consultant, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by Town to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to Town.

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

ARTICLE 3. SCOPE OF SERVICES

3.1 WORK ORDERS

3.1 At Owner's request and in Owner's sole discretion, Owner may engage from time to time the Consultant to perform professional services in connection with a Project (as defined in Article 6, below). Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement and with any individual Work Order. Owner reserves the right, in its sole discretion, to hire other consultants for any reason and for any purpose. In performing its professional services hereunder and in connection with each Project and Work Order, Consultant shall follow the degree of professional standard of care and skill set forth in Section 6.3 of this Agreement.

3.2 SERVICES PROVIDED

- 3.2.1 The Services to be provided by Consultant to Owner shall be as mutually agreed to in a separate written Work Order executed by Owner and Consultant. A sample Work Order is attached hereto as Exhibit B. Accordingly, whenever used in this Agreement, the term Professional Services shall mean those services specified in this Agreement and in a Work Order issued pursuant to this Agreement and all related work. Each Work Order shall include, directly or by reference, appropriate cost and pricing data and such other documentation as required by the Owner. Each Work Order shall be subject to and integrated into this Agreement, and the terms of this Agreement are incorporated into and made a part of each Work Order by reference to this Agreement. All Professional Services shall be performed by the employees of Consultant or Consultant's officers, employees, agents, representatives, sub-contractors, or sub-consultants unless otherwise provided in a Work Order. Consultant shall be wholly and solely responsible for any Professional Services or subcontracted Professional Services provided by any officer, employee, agent, representative, sub-contractors or sub-consultants of Consultant (collectively, Consultant's Personnel').

ARTICLE 4. COMPENSATION

4.1 CONSULTANT FEES

- 4.1.1 Compensation by the Owner to Consultant for Professional Services shall be on a fixed fee or a time and materials basis as specified in the applicable Work Order. All time shall be billed at Consultant's labor billing rates agreed upon by Owner. Said rates shall only be adjusted in writing as may be agreed to between the Parties. The billing and labor rates in effect on the effective date of this Agreement are attached hereto as Exhibit C. Owner may also reimburse Consultant for any Direct Expenses (as defined in Article 7) reasonably and necessarily incurred by Consultant in performing Professional Services under this Agreement. This Agreement contemplates that alternate compensation may be proposed by either Party on a Work Order specific basis, including fixed price or time and materials tasks, or negotiated rates which, if applicable, shall be specified in the Work Order.

4.2 SUBCONTRACTED SERVICES

- 4.2.1 When necessary, subcontracted services shall be procured by Consultant in connection with the Professional Services provided pursuant to this Agreement, subject to Owner's prior written consent. Consultant shall issue subcontracts for such subcontracted services in Consultant's own name. Consultant shall be compensated for subcontracted services for the actual amount invoiced by the subcontractor. Except as set forth in this Agreement, neither Consultant nor Owner may assign, sublet, transfer, or otherwise convey (together, an "Assignment"), and neither Consultant nor Owner has the power to enter into an Assignment of any or all of the rights, duties and obligations or interest in this Agreement without the prior written consent of the other party. Unless specifically stated to the contrary in any written consent to an Assignment, no Assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

ARTICLE 5. TERMS OF PAYMENT

5.1 PAYMENT

- 5.1.1 Consultant shall submit to Owner monthly invoices for Professional Services and any compensation due under Article 5. Each invoice shall be accompanied by such documentation as Owner may reasonably require to verify the accuracy of the invoice, and the sum of all prior payments made under this Agreement in connection with each Work Order. Payment to Consultant shall be made within thirty (30) days of receipt of such invoice and accompanying documentation, subject to Owner's right to withhold payment pursuant to Article 2 of this Agreement. Consultant shall not be entitled to any compensation for any services or work not actually performed or for any lost profits as a result of any abandonment or suspension of any work by the Owner.
- 5.1.2 Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make

payment to Consultant hereunder if:

- 5.1.2.1 Consultant is in default of any of Consultant's obligations under this Agreement or any Work Order or any other documents in connection with a Project (and payment may be withheld to the extent of any such default);
- 5.1.2.2 Any part of such payment is attributable to any services of Consultant which are not performed in accordance with this Agreement;
- 5.1.2.3 Consultant has failed to make payment promptly to subcontractors or sub-consultants or other third parties used by Consultant in connection with Consultant's services hereunder for which the Owner has made payment to Consultant; or
- 5.1.2.4 If Owner, in its good faith judgment and after consultation with Consultant, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Professional Services in connection with a Work Order, no additional payments will be due Consultant hereunder unless and until Consultant performs a sufficient portion of the Professional Services so that such portion of the compensation remaining unpaid is determined by Owner to be sufficient to complete the Professional Services.

5.2 DISPUTED BILLING

- 5.2.1 In the event Owner disputes or contests any invoice submitted by Consultant under this Agreement, Owner shall nevertheless pay any undisputed amounts in accordance with Section 5.1. Any dispute shall be resolved by dispute resolution procedures set forth in Article 8.

5.3 BILLING ADDRESS

- 5.3.1 Consultant shall submit monthly invoice and necessary and reasonable accompanying documentation to the following address.

Physical Address:

Town of Little Elm
Accounts Payable
100 West Eldorado Parkway
Little Elm, Texas 75068

Electronic Submittal:

accounts.payable@littleelm.org

- 5.3.2 Invoices shall include the project name, purchase order number, work order number and be individually numbered.
- 5.3.3 Billing Period shall be for a calendar month and all work submitted shall be for the entire month ending on the 30th or 31st respectfully.
- 5.3.4 All Payments shall be made via ACH.

5.4 ACCOUNTING RECORDS

- 5.4.1 Consultant shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; Consultant's accounting and control systems shall be reasonably satisfactory to Owner. Owner and Owner's accountants shall be afforded reasonable access to the Consultant's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, memoranda, and other data relating to this Agreement and any Work Order issued pursuant to this Agreement, during normal business hours at the location where such documents are stored by Consultant, including the ability of Owner to audit or inspect the same. Consultant shall preserve all such documentation related to this Agreement and any Work Order issued pursuant to this Agreement for a period of five (5) years after final payment is made under each Work Order.

5.5 UNSATISFACTORY WORK

- 5.5.1 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 Consultant is in default, including the right to bring legal action for damages or for specific performance of this Agreement.

ARTICLE 6 OBLIGATIONS OF CONSULTANT

6.1 GENERAL

- 6.1.1 Consultant shall serve as Owner's professional consultant for all Professional Services or subcontracted services in connection with any Work Order between the Parties and shall provide professional consultation and advice and furnish customary services incidental thereto. Consultant shall perform all work hereunder in a manner satisfactory and acceptable to Owner in accordance with the terms and conditions of this Agreement, and in accordance with the professional standards applicable to Consultant applicable in the North Texas area. Consultant shall perform all Professional Services in a timely and professional manner, utilizing at all times an economical and expeditious manner for performing such Professional Services consistent with the standard of care defined in Section 6-3, below, and shall cause all subcontracted services to be similarly undertaken and performed. No less than monthly, Consultant shall keep Owner informed, in writing, as to the status and progress of all Professional Services and subcontracted services being provided under this Agreement and any Work Order issued pursuant to this Agreement. All oral information shall be subsequently confirmed in writing. Notwithstanding anything to the contrary in this Agreement, Consultant shall not be deemed to be an agent of Owner for any purpose but shall in all events be an independent contractor exercising control over its work and the manner in which it is performed. Except as specifically set forth in this Agreement or in a Work Order issued pursuant to this Agreement, (a) this Agreement shall not make Consultant a partner or agent of Owner for any purpose, and Owner shall not be deemed an agent for Consultant, and (b) neither Consultant nor Owner shall have the right or authority to assume, create, or enlarge any obligations or commitment on behalf of the other party and shall not represent itself as having the authority to bind the other party in any manner. Nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture or joint enterprise relationship, or to allow Owner to exercise discretion or control over the means or methods in which Consultant performs the Professional Services which are the subject of this Agreement or any Work Order issued pursuant to this Agreement; provided, however, that the Professional Services provided by Consultant pursuant to this Agreement and any Work Order issued pursuant to this Agreement shall be provided in a manner consistent with all applicable standards and regulations governing such Professional Services. The means and methods in which Consultant's Professional Services provided hereunder and under any Work Order issued pursuant to this Agreement shall be performed, shall be determined by the Consultant in its sole discretion. The employees, agents, and representatives of, and the methods, equipment and facilities used by, Consultant shall at all times be under Consultant's exclusive direction and control.
- 6.1.2 Upon completion of any documents, drawings, specifications, and information, Consultant shall provide to Owner three (3) sets of such documents for review and approval. Notwithstanding Owner's approval of any of such documents, drawings, specifications or information, Consultant warrants that such documents, drawings, specifications, and information, as the same may be amended or supplemented by Consultant, shall be sufficient and adequate for the Project for which they are prepared. Notwithstanding Owner's approval of any of the documents, drawings, specifications, and information, Consultant warrants and represents that the documents, drawings, specifications, and information, as the same may be amended or supplemented by Consultant, per the standard of care defined in Section 6-3, below, shall, to the best of Consultant's knowledge, information and belief as a professional performing in accordance with the standards, duties, and obligations set forth herein, be free from material error, and shall be satisfactory to the Owner. In accordance with

this standard of care, Consultant agrees that if it shall recommend unsuitable materials in connection with any Project and this Agreement or if the design of a Project should be defective in any way, Consultant will assume sole responsibility for any damages, loss, claims, or expenses to the extent caused by Consultant's recommendation of unsuitable materials or defective design. Approval by the Owner of any of Consultant's documents, drawings, specifications, and information or work pursuant to this Agreement shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, subcontractors, agents and consultants for the accuracy and competency of the same, nor shall such approval be deemed to be an assumption of or an indemnification for such responsibility or liability by the Owner for any defect, error or omission in such documents, drawings, specifications, and information or work, it being understood that the Owner at all times is relying on Consultant's skill and knowledge in preparing the documents, drawings, specifications, and information.

6.2 AUTHORIZATION TO PROCEED

6.2.1 Consultant shall not begin work on any Professional Services until the Owner directs Consultant in writing to proceed. Unless otherwise specified in a Work Order, each Work Order shall constitute notice and authorization to proceed in connection with the applicable Professional Services specified in such Work Order.

6.3 STANDARD OF CARE-REPRESENTATIONS

6.3.1 The standard of care applicable to Consultant, including Consultant's Personnel, in providing Professional Services or subcontracted services under this Agreement or any Work Order issued pursuant to this Agreement, shall be the standard of professional ethics and the degree of skill, care and diligence normally employed by Consultant's profession performing the same or similar Professional Services or subcontracted services in the North Texas area. Consultant shall re-perform and otherwise remedy any Professional Services, including subcontracted services, not meeting the standard of care set forth herein, without additional compensation. Further, Consultant and all subcontractors shall perform all Professional Services in accordance with any applicable law, rule, regulation or order of any federal, state or local agency having jurisdiction over any matter related to this Agreement that is in effect or effective at the time such Professional Services or subcontracted services are performed.

6.3.2 Consultant represents that it is authorized to practice its profession in the State of Texas and that any necessary licenses, permits or other authorization to practice its profession and to provide the Professional Services set forth herein have been heretofore acquired as required by law, rule or regulation. Consultant agrees and acknowledges that Owner is entering into this Agreement in reliance on Consultant's professional abilities with respect to performing the Professional Services set forth herein or in any Work Order issued pursuant to this Agreement.

6.4 INSURANCE

6.4.1 Consultant shall, at its own expense, procure, pay for and maintain during the term of this Agreement the insurance listed in the insurance requirements document included as [Exhibit A](#).

6.5 FEDERAL, STATE, AND LOCAL REGULATIONS

6.5.1 Consultant shall comply with all federal, state and local laws, standards, rules, and regulations applicable to this Agreement and to any Work Order issued pursuant to this Agreement.

6.6 CONFIDENTIALITY

6.6.1 Consultant acknowledges that Owner is a municipality and must comply with all the rules and regulations of the Texas Public Information Act, as the same may be amended. Consultant is not an employee of, but a contractor for, the Owner, however, and as such Consultant hereby agrees that it shall not use the Owner's insignia, logo, service mark, or other intellectual property of Owner,

but shall be allowed to use photographs of the Professional Services work, or any other publicity pertaining to the work, in any magazine, trade paper, newspaper, or other medium.

6.7 CONSULTANT'S PERSONNEL

- 6.7.1 If at any time after entering into this Agreement, Owner has any objection to Consultant's representative or to any of Consultant's Personnel, or any objection to any personnel of sub-consultants retained by Consultant and assigned to the Project, Consultant shall promptly propose substitutes to whom Owner has no objection.

ARTICLE 7 OBLIGATIONS OF THE OWNER

7.1 OWNER FURNISHED DATA AND ACCESS TO SITE

- 7.1.1 The Owner shall provide to Consultant available (*i.e.*, in the Owner's custody and control) technical data that Owner determines to be needed to perform the Professional Services on the Project. Subject to the standard of care, above, Consultant may reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the Owner. Consultant may be entitled to additional compensation and time to complete the Professional Services to the extent the cost or time to complete the Professional Services are increased due to inaccurate technical data or inaccurate information provided by the Owner.

7.2 PROMPT NOTICE

- 7.2.1 The Owner shall give prompt written notice to Consultant whenever Owner observes or becomes aware of any development that affects the scope or timing of Professional Services or any subcontracted services, or any defect in the Professional Services or subcontracted services of Consultant, including Consultant's Personnel; provided, however, that Owner's failure to comply with its obligations under this paragraph shall not be construed to adversely affect any liability, responsibility or obligation of Consultant to Owner under this Agreement. Consultant shall give prompt written notice to Owner whenever Consultant observes or becomes aware of any development or event that affects the scope or timing of Professional Services, or any defect in the Professional Services of Consultant, including Consultant's Personnel, provided under this Agreement or any Work Order issued pursuant to this Agreement.

7.3 CHANGES

- 7.3.1 No changes in the general scope of Professional Services or subcontracted services under this Agreement, and no amendment may be made to any Work Order issued pursuant to this Agreement, unless such changes are first agreed to by Owner and Consultant in writing. Consultant's personnel shall not be permitted to be changed or substituted unless first authorized in writing by the Owner. If any approved changes affect Consultant's cost of or time required for performance of the Professional Services, an equitable adjustment may be made through a written amendment to this Agreement or Work Order issued pursuant to this Agreement.

ARTICLE 8 GENERAL LEGAL PROVISIONS

8.1 FORCE MAJEURE

- 8.1.1 Consultant is not responsible to Owner for any damages to Owner or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of Consultant and not avoidable by the diligence of Consultant; in such event, Consultant shall give Owner prompt notice of such event and the cause of delay and the performance of this Agreement shall be excused for the period of such delay caused by a force majeure event. If such force majeure event necessitates a change in the time required for performance of the Professional Services or subcontracted services, the Parties may make an equitable adjustment to the schedule and contract amount; provided, however, that Consultant shall continue to promptly perform all of its obligations under this Agreement, while the Parties are determining the nature and extent of any such adjustments. This

Section shall not excuse Owner's obligation to make payment for Professional Services or subcontracted services in accordance with this Agreement; provided, however, that Owner's obligations under this Agreement, including Owner's obligation to pay Consultant, may be excused for such period of time as Owner is not able to perform as a result of acts of God, strikes, lockouts, accidents, or other events beyond the control of Owner and not avoidable by the diligence of Owner.

8.2 TERMINATION

8.2.1 This Agreement or any Work Order issued pursuant to this Agreement may be terminated by either Party for convenience through written notice to the other Party to be effective thirty (30) calendar days after the other Party's receipt of such notice; provided, however, that Owner shall be responsible to pay Consultant for all authorized Professional Services and subcontracted services properly performed up to the termination date. Upon receipt of notice of termination for any reason, Consultant shall cause to be promptly delivered to Owner a copy of all confidential information and Work Product. In the event of a termination for convenience by either Party, Consultant shall have no recourse against Owner except as stated in the preceding sentence; additionally, in the event of a termination for convenience by the City, Consultant may also be entitled to receive reimbursement from Owner of an amount equal to the sum of: (i) the reasonable out-of-pocket costs actually and necessarily incurred by Consultant in withdrawing its equipment and personnel from the Project and otherwise demobilizing; and (ii) the actual, reasonable and necessary costs incurred by Consultant in terminating those contracts, not assumed by Owner, for subcontractors services. Consultant shall document any cost claimed by it to Owner's reasonable satisfaction and shall supply Owner with copies of all invoices for subcontracted services covering the amounts claimed as costs for such purpose. Consultant shall submit an invoice to Owner for the amount of reimbursement claimed by Consultant with all supporting information and requisite documents. Payment by Owner of such invoice shall be based upon Owner's determination of the reasonableness of said costs.

8.2.2 Either Party may terminate this Agreement or any Work Order issued pursuant to this Agreement, because of default of the other Party, to be effective fifteen (15) days after receipt by the breaching Party of a written notice specifying such default, unless the breaching Party corrects such default or presents a mutually agreeable plan to cure such default within such time.

8.2.3 Notwithstanding any termination of this Agreement, unless otherwise agreed to by Owner, Consultant shall complete all Work Orders executed prior to the effective date of termination. Owner shall pay for such work in accordance with Article 4. Upon termination of this Agreement for any reason, if Owner has compensated Consultant for work not yet performed, Consultant shall promptly return such compensation to Owner.

8.3 SUSPENSION, DELAY, OR INTERRUPTION OF WORK

8.3.1 Upon five (5) days prior written notice, the Owner may suspend, delay, or interrupt for up to six (6) months the services of Consultant for the convenience of the Owner. Nothing in this Section shall be construed to apply to any such suspension, delay or interruption caused by an event identified in Section 6-1. A suspension may be withdrawn by Owner upon five (5) days written notice to Consultant. Any suspension, delay or interruption that exceeds six (6) months shall be deemed to be a termination by Owner for convenience, and Consultant may be compensated by Owner as if this Agreement were a termination for convenience.

8.4 INDEMNIFICATION

8.4.1 Notwithstanding any other provision in the Contract Documents to the contrary:

8.4.1.1 **CONSULTANT 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 PROFESSIONAL SERVICES OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR**

OMISSIONS OF CONSULTANT OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONSULTANT 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.

8.4.1.2 THE OBLIGATIONS SET FORTH IN THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

8.4.1.3 CONSULTANT SHALL CAUSE ALL CONTRACTS FOR SUBCONTRACTED SERVICES TO INCLUDE A LIKE INDEMNITY THAT SHALL COVER BOTH THE OWNER AND CONSULTANT. NOTHING HEREIN SHALL LIMIT THE INSURANCE REQUIREMENTS OR APPLICABILITY OF SAME SET FORTH IN THIS AGREEMENT AND THE CONTRACT DOCUMENTS.

8.4.2 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.

8.5 JURISDICTION

8.5.1 The law of the State of Texas shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement. In the event of any legal action under this Agreement, venue for all causes of action shall be instituted and maintained in courts of competent jurisdiction located in Denton County, Texas.

8.6 SEVERABILITY

8.6.1 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.

8.7 ASSIGNMENT

8.7.1 Neither Party may sell, transfer or assign any or all of its respective rights nor obligations under this Agreement to a third party without the prior written consent of the other Party.

8.8 SURVIVAL

8.8.1 Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration. Without limiting the foregoing, Articles 6 and 8 shall survive termination of this Agreement.

8.9 NO THIRD PARTY RIGHTS

8.9.1 Except as provided, this Agreement shall not create any rights or benefits to parties other than Consultant, Owner, and any Owner-affiliated entity including, but not limited to, an entity formed for purposes of developing and/or owning the Project.

8.10 USE OF WORK PRODUCT

8.10.1 All materials, documents and Work Product prepared or assembled by Consultant under this Agreement shall become the sole property of the Owner and shall be delivered to the Owner without restriction on future use. Consultant may retain in its files copies of all drawings, specifications and other pertinent information for the work. Consultant shall have no liability for changes made to any materials or other documents by others subsequent to the completion of this Agreement.

8.11 NOTICE

- 8.11.1 Except as otherwise provided herein, all notices and other communications required or permitted to be given under this Agreement, including Exhibits and Work Orders, 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 address of each Party is as follows:

IFTO OWNER: Town of Little Elm Town Manager
100 West Eldorado Parkway
Little Elm, Texas 75068
Contracts@littleelm.org

IFTO CONSULTANT: Pacheco Koch, LLC
Brian O'Neill, PE, Principal
6100 Western Place
Suite 1001
Fort Worth, TX 76107
boneill@pkce.com

- 8.11.2 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 documents bearing the original signatures.

8.12 RIGHT OF ENTRY

- 8.12.1 Owner shall permit Consultant reasonable access to a Project as may be required to permit Consultant to perform the Professional Services under this Agreement; provided, however, Consultant shall coordinate all Professional Services so as not to interfere with any of Owner's operations at a Project site.

8.13 INTERPRETATION AND FAIR CONSTRUCTION OF AGREEMENT

- 8.13.1 This Agreement has been reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to the fair meaning of the provision.

8.14 NON-WAIVER

- 8.14.1 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 such Party's right to assert or rely upon any such provision or right in that or any other instance, rather, the same rights shall be and remain in full force and effect.

8.15 OPINIONS OF PROBABLE COST (COST ESTIMATES)

- 8.15.1 Any opinions provided by Consultant concerning probable project cost or probable construction cost are made on the basis of information available to Consultant and on the basis of Consultant's experience and qualifications, and represents Consultant's best judgment as an experienced and qualified professional. Since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions, however, Consultant does not guarantee that proposals,

bids or actual project or construction costs shall not vary from the opinions of probable cost that Consultant prepares. Consultant shall advise the Owner if it appears that construction costs may exceed the latest approved Project budget and make recommendations for corrective action.

8.16 CONSTRUCTION PROCEDURES

- 8.16.1 For construction work contracted directly to or with Owner, Consultant's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. Consultant shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the construction work and shall not manage, supervise, control or have charge of construction. Further, Consultant shall not be responsible for the acts or omissions of the contractor or other parties on a Project.
- 8.16.2 Consultant's visits to a Project site during the construction phase of a Project are to allow Consultant to become generally familiar with and to observe the progress and quality of the construction work, and to determine in general if the work is being performed and is proceeding in a manner indicating that the work, when completed, will be in accordance with the Work Product prepared by or for Consultant hereunder. Consultant shall attend all pre-construction and construction meetings, and such other meetings as set forth in this Agreement or requested by Owner. It is understood, however, that the contractor, not Consultant, is solely responsible for the construction of the Project, for safety programs and procedures at the site, and for its own acts or omissions and those of any subcontractor with whom contractor has a contract. Consultant shall recommend to Owner that contractor's work be disapproved and rejected while it is in progress if, on the basis of such on-site visits and observations, Consultant believes that such work will not produce a completed Project that conforms generally to the contract documents and Work Product or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the contract documents and Work Product.
- 8.16.3 On the basis of on-site visits and observations, Consultant shall keep the Owner informed of the progress and quality of the construction work, and shall endeavor to guard the Owner against defects and deficiencies in the work. To the extent Consultant observes or is made aware of such defects and deficiencies, Consultant will report any such defects and deficiencies to the Owner. Consultant shall require such special inspections or tests of contractor's work as Consultant deems appropriate, and shall receive and review certificates of or other documents regarding inspections, tests and approvals as requested by the Owner and as required by laws, rules, regulations, ordinances, codes, orders or the contract documents and Work Product; Consultant's review of such certificates will be for the purpose of determining that the results certified indicate compliance with applicable laws, rules, regulations, ordinances, codes, orders or the contract documents and Work Product.
- 8.16.4 Consultant shall promptly correct any defective Work Product or other information furnished by Consultant at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of Consultant services hereunder, including, without limitation, the Work Product or any portion thereof, or of the Project itself, shall in no way alter Consultant's obligations or the Owner's rights hereunder. If requested by Owner, Consultant shall review and take appropriate action on the contractor's submittals and application for payment (including, without limitation, certifying any amounts due the contractor based upon Consultant's visits to and observations at the site, and such certification shall constitute a representation to the Owner, based on Consultant's visits and observations at the site and on the data comprising the contractor's applications for payment, that, to the best of Consultant's knowledge, information and belief, the work has progressed to the point indicated and the quality of the work is in accordance with the Work Product. Consultant shall furnish to the contractor such additional details, interpretations, and clarifications as are customary during

the Construction Phase of the Project. All changes, substitutions, and deviations from the Work Product shall be subject to Owner's approval.

- 8.16.5 Consultant shall review and approve or take other appropriate action upon contractor's submittals such as shop drawings, product data and samples for the purpose of checking such submittals for conformance with the design concept expressed in the requirements of the contract documents and Work Product. Consultant's action shall be taken with such reasonable promptness as to cause no delay in the contractor's work on in construction by the Owner's own forces (if any), while allowing sufficient time in Consultant's professional judgment to permit adequate review. Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Consultant, of construction means, methods, techniques, sequences or procedures. Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the contract documents and Work Product, Consultant shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the contract documents and Work Product.
- 8.16.6 At Owner's request, Consultant shall review or take other appropriate action on construction change orders and construction change directives. Consultant shall also issue necessary clarifications and interpretations (and report the same to Owner) of the contract documents and Work Product as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the contract documents and Work Product.
- 8.16.7 Based on Consultant's observations and on its review of applications for payment and accompanying supporting documentation from the contractor (if Owner has requested such review), Consultant shall, at Owner's request, determine the amounts that Consultant recommends the contractor be paid. Such recommendations of payment (if requested by Owner) will be in writing and will constitute Consultant's representation to Owner, based on such observations and review, that, to the best of Consultant's knowledge, information and belief, (i) the contractor's work has progressed to the point indicated, (ii) such work is generally in accordance with the contract documents and Work Product (subject to an evaluation of the work as a functioning whole upon substantial completion, to the results of any subsequent tests called for in the contract documents and Work Product and to any other qualifications stated in the recommendation), and (iii) the conditions precedent to contractor's being entitled to such payment appear to have been fulfilled in so far as it is Consultant's responsibility to observe contractor's work. In the case of unit price work, Consultant's recommendations of payment will include final determinations of quantities and classifications of contractor's work, based on observations and measurements of quantities provided by the contractor with contractor's pay requests.
- 8.16.8 Consultant shall secure, review, and transmit to Owner all original documents Consultant receives from the contractor, including without limitation any required lien waivers, releases, bonds, affidavits, certificates of inspection, tests and approvals, warranties and similar submittals, and deliver all keys, manuals, record drawings and maintenance books to Owner, as required by the contract documents which are to be assembled by contractor in order to obtain final payment.
- 8.16.9 Promptly after notice from the contractor that the contractor considers the work ready for its intended use, Consultant, accompanied by Owner and the contractor, shall conduct a visit and observation to determine if the work is substantially complete. If after considering any objections of Owner, Consultant considers the work on the Project substantially complete, Consultant shall notify the Owner and contractor and shall issue a certificate of substantial completion to Owner and the contractor. Simultaneous with Consultant's determination that the Project is substantially complete and the issuance of a certificate of substantial completion, Consultant shall, jointly with the contractor, prepare for Owner a list of incomplete or unsatisfactory items and a schedule for their completion (the "punch list"). If requested by Owner, Consultant shall observe and monitor the

correction and final completion of the work. Following issuance of a certificate of substantial completion of the work, if requested by Owner, Consultant shall evaluate the completion of the work of the contractor and make recommendations to Owner when the work is ready for final inspection. Promptly after notice from the contractor that the contractor considers the entire work finally complete and all items on the punch list completed, Consultant, accompanied by Owner and the contractor, shall conduct an inspection of the Project to determine if the work is finally complete.

8.16.10 When Consultant determines that work of the contractor has been finally completed, is acceptable, and is generally in accordance with the contract documents and Work Product, Consultant will recommend, in writing, final payment to the contractor. Accompanying the recommendation for final payment, Consultant shall also provide a notice that the work meets the intent of Consultant's design, is acceptable, and is generally in accordance with the contract documents and Work Product to the best of Consultant's knowledge, information, and belief and based on the extent of the Services provided by Consultant under this Agreement.

8.16.11 Consultant shall assemble and deliver to the Owner (i) one full size Mylar set and one full size black line set, (ii) one half size bond set, and (iii) a CD in AutoCAD format and PDF format, of reproducible Record Construction Drawings as prepared by Consultant showing changes in the construction work during the construction process, including the final location of all buried utilities, based on marked up prints and drawings and other data furnished by the contractor.

8.16.12 Consultant shall advise and consult with the Owner during construction until final payment to the contractor is made and during any maintenance bond period and warranty by the contractor for a Project.

8.17 HAZARDOUS WASTES

8.17.1 Owner represents to Consultant that, to its actual knowledge, no hazardous wastes (as hereinafter defined) are present at a Project site, except as may be specifically disclosed to Consultant or set forth in a Work Order. In the event hazardous wastes are known to Owner to be present, however, Owner represents that it shall disclose to Consultant the existence, including type, quantity and location, of such hazardous wastes. In the event Consultant or any other party encounters undisclosed hazardous wastes, Consultant shall have the obligation to notify Owner and, to the extent required by law or regulation, the appropriate governmental officials, and Consultant may, at its option and without liability for consequential or any other damages to Owner, suspend performance of professional services on that portion of a Project affected by such hazardous wastes. For purposes of this section, "hazardous wastes" has the same meaning as such term is defined in the Resource Conservation and Recovery Act or any applicable state law, rule or regulation then in effect.

8.18 CONSULTANT'S LIABILITY

8.18.1 Acceptance of the final plans, instruments of service, or other deliverable documents and products by Owner shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or sub-consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by Owner for any defect in the designs, working drawings, specifications or other documents and work prepared by Consultant, its employees, associates, agents or sub-consultants.

8.18.2 If at any time during the term of this Agreement, Consultant shall fail to commence the Work in accordance with the provisions of this Agreement or any Work Order issued pursuant to this Agreement, or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Agreement or any Work Order issued pursuant to 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

Consultant 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 Consultant'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 Consultant hereunder, Consultant shall be liable for and shall reimburse Owner for such excess.

- 8.18.3 Owner may deduct from any amounts due or to become due to Consultant any sum or sums owing by Consultant to Owner. In the event of any breach by Consultant of any provision of this Agreement or in the event of any claim against Owner arising out of Consultant's performance under this Agreement, Owner shall have the right to retain out of any payment due or to become due to Consultant 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 Consultant.

8.19 DISPUTE RESOLUTION

- 8.19.1 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 any legal action. The Owner and Consultant 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 and delivered to the other Party to this Agreement. 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 non-binding. 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. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the Parties do not resolve a dispute through mediation pursuant to this section, then the Parties may pursue litigation in a court of competent jurisdiction as the agreed upon method of binding dispute resolution.

ARTICLE 9. DEFINITIONS; MISCELLANEOUS

9.1 DIRECT EXPENSES

- 9.1.1 Direct Expenses shall mean those out-of-pocket reasonable costs or expenses directly and necessarily incurred by Consultant, including its employees, for Professional Services including, but not limited to, transportation costs, including current rates for Consultant's vehicles; meals and lodging (however, in order to be reimbursed, any costs associated with out-of-town travel shall receive the prior approval of Owner), laboratory tests and analysis; and special Owner-requested and Project-related insurance, not including the insurance described in Exhibit A. Direct Expenses shall not include payroll costs and compensation, capital expenses, overhead, or costs incurred as a result of the application of this Agreement or otherwise as a result of the negligent act, error or omission or willful misconduct of Consultant or Consultant's Personnel. Reimbursement for Direct Expenses shall be on the basis of actual charges when furnished by commercial sources and, when furnished by Consultant, on the basis of current rates specified in the applicable Work Order, and all reimbursement for Direct Expenses shall be subject to Owner's approval and determination of reasonableness.

9.2 OTHER DEFINITIONS

- 9.2.1 Whenever used in this Agreement, the terms: (a) "including" shall mean "including without limitation," (b) "Party" shall mean Owner or Consultant, (c) "Parties" shall mean Owner and Consultant, collectively, (d) "Project" shall mean the project for which a Work Order has been issued

in accordance with Article 1, and (e) "Work Product" shall mean the Consultant's instruments of professional services.

9.3 MISCELLANEOUS

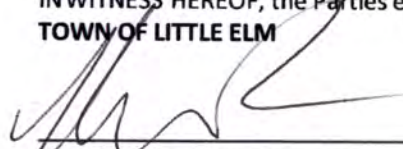
9.3.1 All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration. This Agreement and the Work Orders issued pursuant to this Agreement, and any Exhibits attached to this Agreement, constitute the entire Agreement, supersede all prior written or oral understandings, and may only be changed, amended or altered by a written amendment to this Agreement executed by both Parties.

ARTICLE 10 SIGNATURES

10.1 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



Matt Mueller, Town Manager

PACHECO KOCH, LLC.



Brian O'Neill, PE, Principal

2/2/17

Date

01/31/17

Date

Town Contact

100 W. Eldorado Pkwy
Little Elm, TX 75068
Contracts@littleelm.org

Consultant Contact

6100 Western Place
Suite 1001
Fort Worth, TX 76107
boneill@pkce.com

Exhibit A: Insurance Requirements
Exhibit B: Work Order
Exhibit C: Fee Schedule (current rates)

EXHIBIT C

**BASIC ENGINEERING SERVICES
FOR
ELDORADO PARKWAY TRAFFIC IMPROVMENTS
(MAIN STREET)**

The project will include the design of:

- a traffic signal design at the intersection at Eldorado Parkway and Main Street.

The scope of work for BASIC Engineering Services involves Survey and Traffic Signal Design.

I. TRAFFIC SIGNAL DESIGN SERVICES

A. Provide Traffic Signal Design Services for the intersection of Eldorado Parkway and Main Street in accordance with requirements of the approving agency. The design will accommodate the future pedestrian needs based on the traffic analysis provided by the OWNER, as well as current utility conflicts. The design will be in accordance with the Texas Manual of Uniform Traffic Control Devices (TxMUTCD), Texas Accessibility Standards (TAS) and Public Right Of Way Accessibility Guidelines (PROWAG).

B.

1. The CONSULTANT will conduct a field visit to the intersection once the utilities have been identified to photograph critical features and verify all utility locations. This site visit will also be coordinated with OWNER and City of Frisco to identify potential signal pole locations.
2. The CONSULTANT will coordinate with local electric service provider to obtain transformer location for proposed traffic signal.
3. The CONSULTANT will prepare preliminary signal layout plans for review by the OWNER. These sheets will include proposed traffic signal poles, mast arms, controller cabinet, and ADA ramp layouts. Once this has been approved by the City of Frisco, CONSULTANT will develop 90% signal plans.
4. 90% signal plans will include detection equipment, conduit runs, wiring, signal head types, pedestrian components, advanced warning signs, striping, and additional tables to construct necessary for a contractor to construct the signal.

5. The CONSULTANT will submit 90% plans for review and address all comments. Once reviewed, the CONSULTANT will receive comments from the OWNER and City of Frisco.
6. The CONSULTANT will incorporate review comments and develop 100% design plans containing the following:
 - Traffic Signal Layout Sheet
 - Charts and Details Sheets
 - Signing and Striping Layout Sheet
 - OWNER and/or TxDOT Standard Detail Sheets
7. A final 100% design package will be prepared when all review comments have been addressed. A summary of quantities and engineer's opinion of probable cost will be submitted along with the final design package.

III. BIDDING PHASE FOR TRAFFIC SIGNAL

- A. Assist the OWNER in the advertisement of the PROJECT for bid. The OWNER shall bear the cost of advertisement. The CONSULTANT shall provide all necessary of construction plans, specifications and contract documents for use in obtaining bids, awarding contracts, and constructing the PROJECT. The OWNER shall be responsible for dispersing all plans and specifications from its office to prospective bidders.
- B. Assist the OWNER in the opening and tabulation of the construction bids for the PROJECT and recommend to the OWNER as to the proper action on all proposals received.
- C. Assist in the preparation of formal Contract Documents and in coordinating their execution by the respective parties.

IV. CONSTRUCTION PHASE FOR TRAFFIC SIGNAL

- A. Represent the OWNER in the non-resident administration of the PROJECT. In this capacity, the CONSULTANT shall have the authority to exercise whatever rights the OWNER may have to disapprove work and materials that fail to conform to the Contract Documents when such failures are brought to the CONSULTANT's attention. (This function of CONSULTANT shall not be construed as supervision of the PROJECT and does not include on-site activities other than occasional site visits to observe overall PROJECT conditions or when specifically requested by OWNER to visit on site for a particular matter (limited to 4 trips). It particularly does not involve exhaustive or continuous on-site inspection to check the quality or quantity

of the work or material; nor does it place any responsibility on the CONSULTANT for the techniques and sequences of construction or the safety precaution incident thereto, and CONSULTANT will not be responsible or liable in any degree for the Contractor's failure to perform the construction work in accordance with the Contract Documents.)

- B. Consult and advise the OWNER; issue such instructions to the Contractor as in the judgment of the CONSULTANT are necessary; and prepare routine change orders as required.
- C. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment and other data which the Contractor is required to submit, only for conformance with the design concept of the PROJECT and compliance with the information given by the Contract Documents; and assemble written guarantees which are required by the Contract Documents.
- D. Prepare or review monthly and final estimates for payments to Contractor, and furnish to the OWNER any necessary certifications provided by the Contractor, as to payments to subcontractors and suppliers.
- E. The CONSULTANT will attend two coordination meetings.

V. PROJECT COMPLETION FOR TRAFFIC SIGNAL

- A. Conduct, in company with the Contractor, a final inspection of the PROJECT for conformance with the design concept of the PROJECT and compliance with the Contract Documents; and approve in writing final payment to the Contractor.
- B. Revise contract drawings, with the assistance of the OWNER's Resident PROJECT Representative to reflect available information as to how the work was constructed. The OWNER's Resident PROJECT Representative will provide the CONSULTANT a red-lined set of drawings depicting changes during construction. The CONSULTANT shall revise original design drawings, noting changes during construction, and submit three (3) sets of Record Drawings and one CD-ROM (pdf and dwg format) to the OWNER.

**SPECIAL ENGINEERING SERVICES
FOR
ELDORADO PARKWAY TRAFFIC IMPROVMENTS
(MAIN STREET)**

The scope of work for SPECIAL Engineering Services involves Surveys (Easements/Right-of-Way and Design). The scope of work for the Special Engineering Services is more generally described as follows:

I. SURVEYING

A. Design Surveys

1. Establish Survey Control

Establish survey control along each street or intersecting streets as necessary. These control points will be established based on and tied to established OWNER horizontal and vertical control points. The horizontal control for each street in the PROJECT will be established on the State Plane Coordinate System (NAD'83 Surface Coordinates) from OWNER monumentation. Control points will be established using 5/8" iron rods, 18" long. These control points will be established using GPS and conventional surveying methods.

2. Benchmark Loop

A benchmark circuit will be established, based on the vertical control points provided. These benchmarks will be located outside of the construction limits and put in such a place so that they may be easily found for future use. Benchmarks will be located at about 1,000' intervals and will be referenced. Benchmarks shall be looped in accordance with good surveying practice prior to field surveys. All control leveling work will be performed using appropriate modified second order procedures with closed loops into the PROJECT vertical control.

3. Existing Streets and Driveways

Existing streets and driveways will be profiled and cross-sectioned at 50' intervals and to a point at least 30' outside of the Right-Of-Way line. Low points, high points and other unique features will be noted. Pavement surfacing will be determined by visual inspection only. Intersecting streets will be profiled and cross-sectioned to a point at least 50' beyond the roadway being replaced.

4. Existing Drainage Channels and Drainage Area Verification

Existing drainage channels and swales will be profiled and cross sectioned within the immediate vicinity of the PROJECT, 100' upstream and downstream. Low points, high points and any other unique features will be noted. Additional surveying may be necessary to verify the limits of drainage areas.

5. Existing Underground and/or Overhead Utilities

Utility owner's will be contacted, on an as-needed basis, and requested to assist in locating existing utilities identified for the PROJECT. Above ground features of existing utilities within the proposed Right-Of-Way for the limits of the PROJECT will be field located, including elevations of sanitary and storm sewer manhole flowlines and water/gas valve stems. The location of utilities between above ground features will be determined from visual inspection, utility records, and/or from locations determined by the respective utility companies.

6. Right-Of-Way

Right-Of-Way lines along the PROJECT will be located. This information will be included on the PROJECT's plan sheets.

7. Existing Storm Sewers and Culverts

The size of existing culverts will be measured and tied along with existing headwalls, channels and aprons. The size, length, and flowline elevation of existing storm sewers will be surveyed. Drainage areas contributing to the PROJECT or conveying water from the PROJECT will be determined through field investigations and available topographic mapping.

8. Temporary Signs, Traffic Control, Flags, Safety Equipment, Etc.

The Surveyor will exercise care in completing this surveying assignment by using traffic control devices, flags and safety equipment when necessary.

EXHIBIT D

**COMPENSATION FOR ENGINEERING SERVICES
FOR
ELDORADO PARKWAY TRAFFIC IMPROVMENTS
(MAIN STREET)**

Consultant proposes to provide the services described above on a Fixed Fee basis for a total fee, inclusive of direct reimbursable costs, as follows:

Basic Engineering Services

Traffic Signal Design Services	\$ 29,700.00
Bidding Phase for Traffic Signal	\$ 3,300.00
Construction Phase for Traffic Signal	\$ 6,500.00
Project Completion for Traffic Signal	\$ 2,500.00
Direct Expense for Traffic Signal	<u>\$ 800.00</u>

TOTAL BASIC ENGINEERING SERVICES \$ 42,800.00

Special Engineering Services

Design Survey	<u>\$ 7,000.00</u>
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GRAND TOTAL \$ 49,800.00

Please note that the fees above are based on the assumption that Consultant will perform the above services all together for this project. In the event any item is deleted from the scope of work, Consultant reserves the right to adjust the fees for other items as appropriate.

ENGINEER'S PRE-DESIGN OPINION OF CONSTRUCTION COST

CLIENT: Town of Little Elm, Texas
 DATE: March 10, 2023
 PROJECT: Signal Design
 LIMITS: E Eldorado Pkwy & Main St
 DESIGN ASSUMPTIONS:
 For Eldorado Signal

Prepared By: Westwood Professional Services, Inc.
 4060 Bryant Irving Road
 Fort Worth, Texas 76109
 (817) 412-7155

- ◊ 1 year turnaround for project completion for inflation assumptions
- ◊ Permissive left turns for NB/SB
- ◊ 39' mast arms for NE and SW corners
- ◊ 65' mast arms for NW and SE corners
- ◊ Ped poles on NW and SE corners
- ◊ H5FYA signal head for EB and WB left turn approaches and WBR
- ◊ H3/V3 signal head used for all other approaches
- ◊ 1 ground box on each corner except for corner with cabinet which has 2
- ◊ Construct 8 wheelchair ramps for ADA Compliance
- ◊ Existing brick crosswalk pavers to remain, but may be adjusted during design.
- ◊ Service and transformer on NE corner

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL AMOUNT
Traffic Signal Improvements: E Eldorado Pkwy at Main St					
TS1	DRILL SHAFT (TRF SIG POLE) (24 IN) (FURNISH & INSTALL)*	LF	12	\$ -	\$ -
TS2	DRILL SHAFT (TRF SIG POLE) (36 IN) (FURNISH & INSTALL)	LF	28	\$ 460.00	\$ 12,880.00
TS3	DRILL SHAFT (TRF SIG POLE) (48 IN) (FURNISH & INSTALL)	LF	44	\$ 575.00	\$ 25,300.00
TS4	MOBILIZATION (Max 5%)	LS	1		\$ 25,425.00
TS 5	BARRICADES, SIGNS, AND TRAFFIC HANDLING	MMO	1.5	\$ 12,000.00	\$ 18,000.00
TS6	CONDT (PVC) (SCHD 40) (2") (FURNISH & INSTALL)	LF	200	\$ 18.00	\$ 3,600.00
TS7	CONDT (PVC) (SCHD 40) (2") BORED (FURNISH & INSTALL)	LF	450	\$ 30.00	\$ 13,500.00
TS8	CONDT (PVC) (SCHD 40) (3") (FURNISH & INSTALL)	LF	50	\$ 25.00	\$ 1,250.00
TS9	CONDT (PVC) (SCHD 40) (4") (FURNISH & INSTALL)	LF	150	\$ 35.00	\$ 5,250.00
TS10	CONDT (PVC) (SCHD 40) (4") BORED (FURNISH & INSTALL)	LF	450	\$ 45.00	\$ 20,250.00
TS11	ELEC CONDR (NO. 6) INSULATED (FURNISH & INSTALL)	LF	40	\$ 3.00	\$ 120.00
TS12	ELEC CONDR (NO. 6) BARE (FURNISH & INSTALL)	LF	1,500	\$ 3.00	\$ 4,500.00
TS13	ELEC CONDR (NO. 8) INSULATED (FURNISH & INSTALL)	LF	2,500	\$ 2.25	\$ 5,625.00
TS14	ELEC CONDR (NO. 12) INSULATED (FURNISH & INSTALL)	LF	600	\$ 2.00	\$ 1,200.00
TS15	GROUND BOX TY D (162911) W/APRON (FURNISH & INSTALL)	EA	6	\$ 2,000.00	\$ 12,000.00
TS16	ELC SRV TY D 120 / 240 060 (NS) AL (E) PS (U) (INSTALL ONLY)	EA	1	\$ 1,000.00	\$ 1,000.00
TS17	INSTALL HWY TRF SIG (ISOLATED)	EA	1	\$ 40,000.00	\$ 40,000.00
	FURNISH & INSTALL OF SIGNAL RELATED SIGNS (FURNISH & INSTALL)	EA	12		\$ -
	CABINET PAD AND CABINET BASE (FURNISH & INSTALL)**	EA	1		\$ -
	PEDESTRIAN PUSH BUTTONS SIGNS ONLY**	EA	8		\$ -
	RED-INDICATION CONFIRMATION LIGHTS**	EA	4		\$ -
TS16	TRF SIG CBL (TY A) (12 AWG) (2 CONDR)	LF	1,500	\$ 3.50	\$ 5,250.00
TS17	TRF SIG CBL (TY A) (14 AWG) (5 CONDR)	LF	500	\$ 4.25	\$ 2,125.00
TS18	TRF SIG CBL (TY A) (14 AWG) (7 CONDR)	LF	250	\$ 5.00	\$ 1,250.00
TS19	TRF SIG CBL (TY A) (14 AWG) (10 CONDR)	LF	400	\$ 7.00	\$ 2,800.00
TS20	TRF SIG CBL (TY A) (14 AWG) (20 CONDR)	LF	600	\$ 8.00	\$ 4,800.00
TS21	PED DETECTOR CONTROLLER UNIT	EA	1	\$ 3,500.00	\$ 3,500.00
TS22	PED POLE ASSEMBLY (20')	EA	2	\$ 3,000.00	\$ 6,000.00
TS23	APS PUSH BUTTONS AND SIGN ASSEMBLIES	EA	8	\$ 1,100.00	\$ 8,800.00
TS24	WHEELCHAIR RAMP	EA	8	\$ 2,000.00	\$ 16,000.00
TS25	24" STOP BAR	LF	200	\$ 4.00	\$ 800.00
* SUBSIDIARY TO TS22, **SUBSIDIARY TO TS17					
	ITEMS PROVIDED BY TOWN AND INSTALLED BY CONTRACTOR				
TS26	30' TRAFFIC SIGNAL POLE WITH 39' MAST ARM	EA	2	\$ 20,000.00	\$ 40,000.00
TS27	30' TRAFFIC SIGNAL POLE WITH 65' MAST ARM	EA	2	\$ 35,000.00	\$ 70,000.00
TS28	VEH HEAD 3 SEC	EA	13	\$ 1,800.00	\$ 23,400.00
TS29	VEH HEAD 5 SEC FYA	EA	3	\$ 3,000.00	\$ 9,000.00
TS30	PED HEAD	EA	8	\$ 1,500.00	\$ 12,000.00
TS31	TRAFFIC SIGNAL CONTROLLER AND CABINET**	EA	1		\$ -
TS32	VIVDS CAMERA	EA	4	\$ 2,000.00	\$ 8,000.00
TS33	OPTICOM DETECTORS	EA	4	\$ 2,000.00	\$ 8,000.00
TS34	OPTICOM CABLE	LF	500	\$ 4.00	\$ 2,000.00
TS35	ILSN	EA	4	\$ 5,000.00	\$ 20,000.00
TS36	COUNT-DOWN PED DISPLAY	EA	8	\$ 2,000.00	\$ 16,000.00
TS37	ELECTRICAL PEDESTAL SERVICE PANEL	EA	1	\$ 7,500.00	\$ 7,500.00
TS38	ETHERNET CABLE FOR COMMUNICATION EQUIPMENT, VIDEO, AND PT	LF	900	\$ 4.00	\$ 3,600.00
TS39	RADAR UNITS	EA	8	\$ 8,000.00	\$ 64,000.00
TS40	RADAR CABLE	LF	1,500	\$ 4.00	\$ 6,000.00
TS41	BROADBAND ANTENNA	EA	1	\$ 1,200.00	\$ 1,200.00
TS42	PTZ CAMERA	EA	1	\$ 2,000.00	\$ 2,000.00
TS43	LED LUMINAIRE FIXTURES (240V)**	EA	4	\$ -	\$ -
**SUBSIDIARY TO TS15					
	Traffic Signal Subtotal				\$ 533,925.00
	Contingencies (15%)				\$ 80,090.00
	Traffic Signal Total				\$ 614,015.00



Date: 05/02/2023
Agenda Item #: 7. D.
Department: Development Services
Strategic Goal: Maximize community recreation and leisure activities
Staff Contact: Wesley Brandon, Town Engineer

AGENDA ITEM:

Consider Action to Approve **Change Order #2 to the Construction Contract with AUI Partners Regarding the Lakeside Sports Complex Project.**

DESCRIPTION:

In June 2022, Town Council approved a construction contract to AUI Partners for the Lakeside Youth Sports Complex Project. The project includes the construction of ballfield improvements at the existing Lakeside Middle School property located on Lobo Lane. The key project improvements include:

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

In December 2022, Change Order #1 was approved to provide funding for the following additional improvements around the complex:

- Tennis/Pickleball Courts (resurface existing tennis courts)
- New Outdoor Basketball Court
- Improved Practice Field (natural turf, irrigation)
- Concrete Loop Trail

In January 2023, the contractor submitted a proposal to provide lighting and turf upgrades to the practice field that were not included in the original scope of work. Two options were provided and included pricing to install a higher quality sod, or alternatively a synthetic turf playing surface similar to the adjacent softball fields. Both options include lighting around the practice field. Town staff have reviewed the proposal and recommend approval of the synthetic turf option. This option will provide the highest quality playing surface, require the least long-term maintenance effort and

cost, and minimize weather-related downtime.

BUDGET IMPACT:

Funding for the project has been identified and allocated in the Capital Improvement Program.

\$	4,196,948	Initial Contract Amount
\$	837,113	Change Order #1
\$	1,065,372	Proposed Change Order #2
<hr/>		
\$	6,099,433	Proposed Contract Amount
\$	150,000	Project Contingency
\$	(5,084,061)	Previously Approved Funding
<hr/>		
\$	1,165,372	Additional Funding Request

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Practice Field Upgrade Proposal

Project Layout Exhibit



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

January 17, 2023

Mr. Wesley Brandon, P.E.
City of Little Elm
100 West Eldorado Parkway
Little Elm, TX 75068

Re: Lakeside Ballfield Sports Complex – Practice Field Options

Mr. Brandon;

AUI Partners LLC. is pleased to offer the following pricing for the paving replacement at Lakeside Ballfield Sport Complex.

Option #1 – TIF 419 Sod: \$406,365.00

Earthwork/Laser Grading	\$28,350.00
Topsoil/Sod	\$89,500.00
Hydromulch Credit	(\$7,200.00)
Lighting	\$243,496.00
Ins/OH/Fee	\$21,249.00
Bond	\$30,970.00
Proposal Total	\$406,365.00

1. Laser Grade site
2. Import and install 2 inches of Topsoil
3. Furnish and install approx. 60,000 SF of TIF 419 Sod
4. Furnish and install 4 non-painted Musco Poles and Fixtures
5. Irrigation to remain as currently designed.
6. Credit for hydromulch

Exclusions:

1. Tax.
2. 3rd Party testing.
3. Permits.
4. Disposal of hazardous materials.
5. Soccer goal posts and markings

Option #2 – Synthetic Turf: \$1,065,372.00

Earthwork/Grading	\$66,700.00
Turf System	\$714,278.00
Alt #3 Credit	(\$32,794.00)
Lighting	\$243,496.00
Ins/OH/Fee	\$59,501.00
Bond	\$14,191.00
Proposal Total	\$1,065,372.00

1. Required excavation and haul off.
2. Lime stabilize and laser grade subgrade
3. Install perimeter concrete curb
4. Furnish and install HDPE liner, collector pipe, outfall pipe and junction boxes
5. Furnish and install 6 inch layer of drainage stone
6. Furnish and install artificial turf
7. Soccer goals and field markers included
8. 8 yr Warranty on Turf surface
9. Furnish and install 4 non-painted Musco Poles and Fixtures
10. Credit for work included in Alt #3

Exclusions:

6. Tax.
7. 3rd Party testing.
8. Permits.
9. Disposal of hazardous materials.
10. GMAX Testing

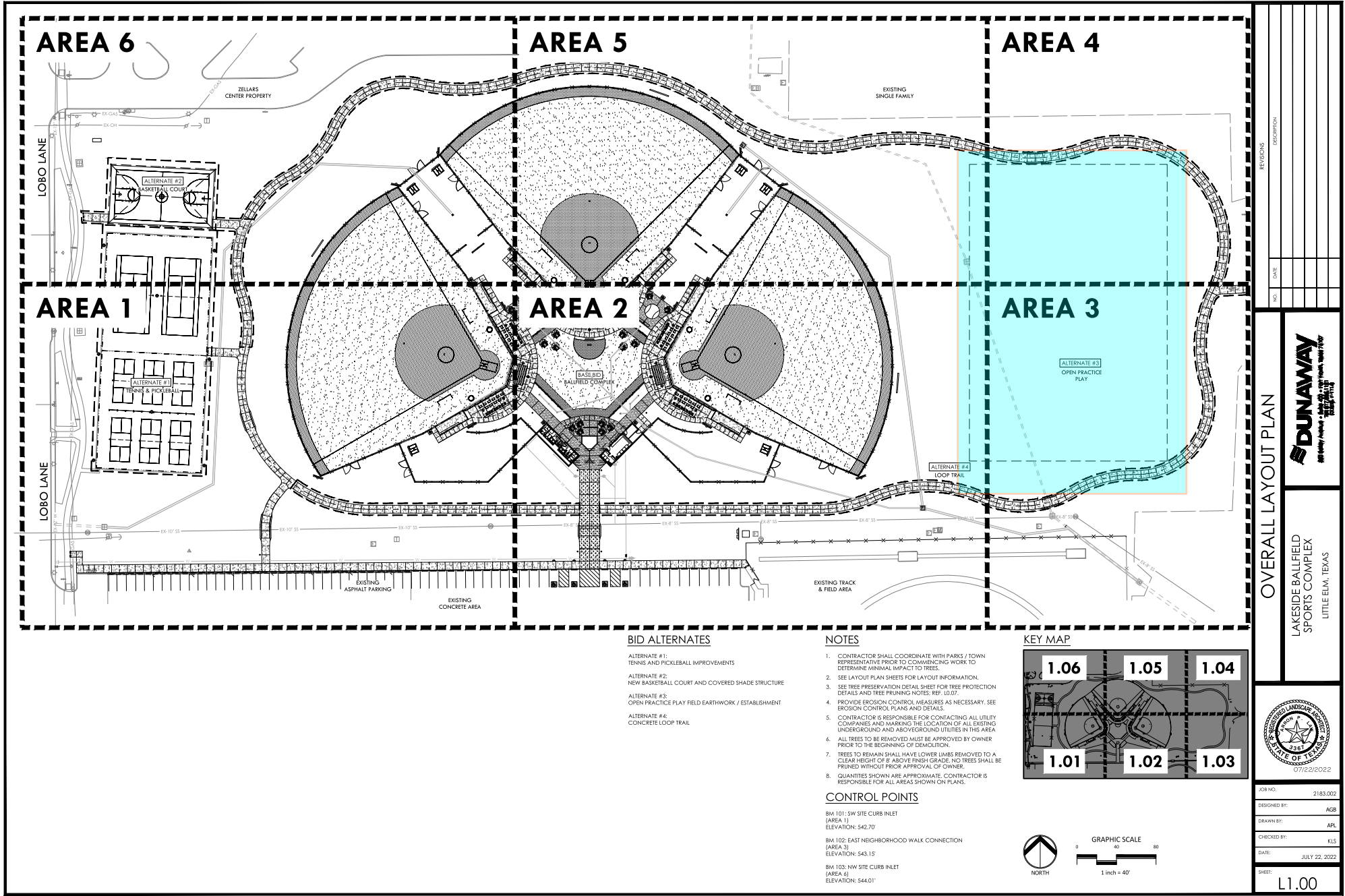
Please do not hesitate to contact me should you have any questions.

Sincerely,
AUI Partners, LLC.



Dustin Stiffler

President





Date: 05/02/2023
Agenda Item #: 8. A.
Department: Development Services
Strategic Goal: Promote and expand Little Elm's identity
Staff Contact: Fred Gibbs, Director of Development Services

AGENDA ITEM:

Hold a Public Hearing, Present, Discuss, and Consider Action on **Ordinance No. 1708 Regarding a Request Amend a Specific Use Permit at 25691 Smotherman Road, Suite 120, Currently Zoned as Planned Development - Light Commercial (PD-LC) Through Ordinance No. 1539, with a Specific Use Permit Through Ordinance No. 1703, in Order to Allow for a New Smoking Establishment, Not to Exceed 1,479 Square Feet, for the Purposes of On-Premise Retail Sales Only.**

Open Public Hearing:
Receive Public Comments:
Close Public Hearing:
Take Action on Ordinance No. 1708:

DESCRIPTION:

Location. Generally located on the northeast corner of the intersection of FM423 and Smotherman Road, within Little Elm's Town limits.

Background.

Subject property is zoned Planned Development through Ordinance #1539, with a Light Commercial base and currently houses a total of two newly constructed, single-story commercial buildings. The two buildings are currently vacant but are primarily intended for retail purposes.

The original Specific Use Permit (Ordinance #1703) was approved by the Town Council on the March 7th, however, that Ordinance was only for an SUP area of 1,250 square feet. After Council approval, the applicant notified Staff that the suite size was changed to 1,479 square feet. Such a change is viewed as an expansion of the use and requires an SUP Amendment to increase the total SUP area of the proposed smoking establishment, for retail purposes only.

Commission Findings.

At their regular meeting on April 6, 2023, the Planning and Zoning Commission unanimously, with five in favor and zero against, recommended **approval** of the request with the conditions as

listed.

BUDGET IMPACT:

This item has no budget impact.

RECOMMENDED ACTION:

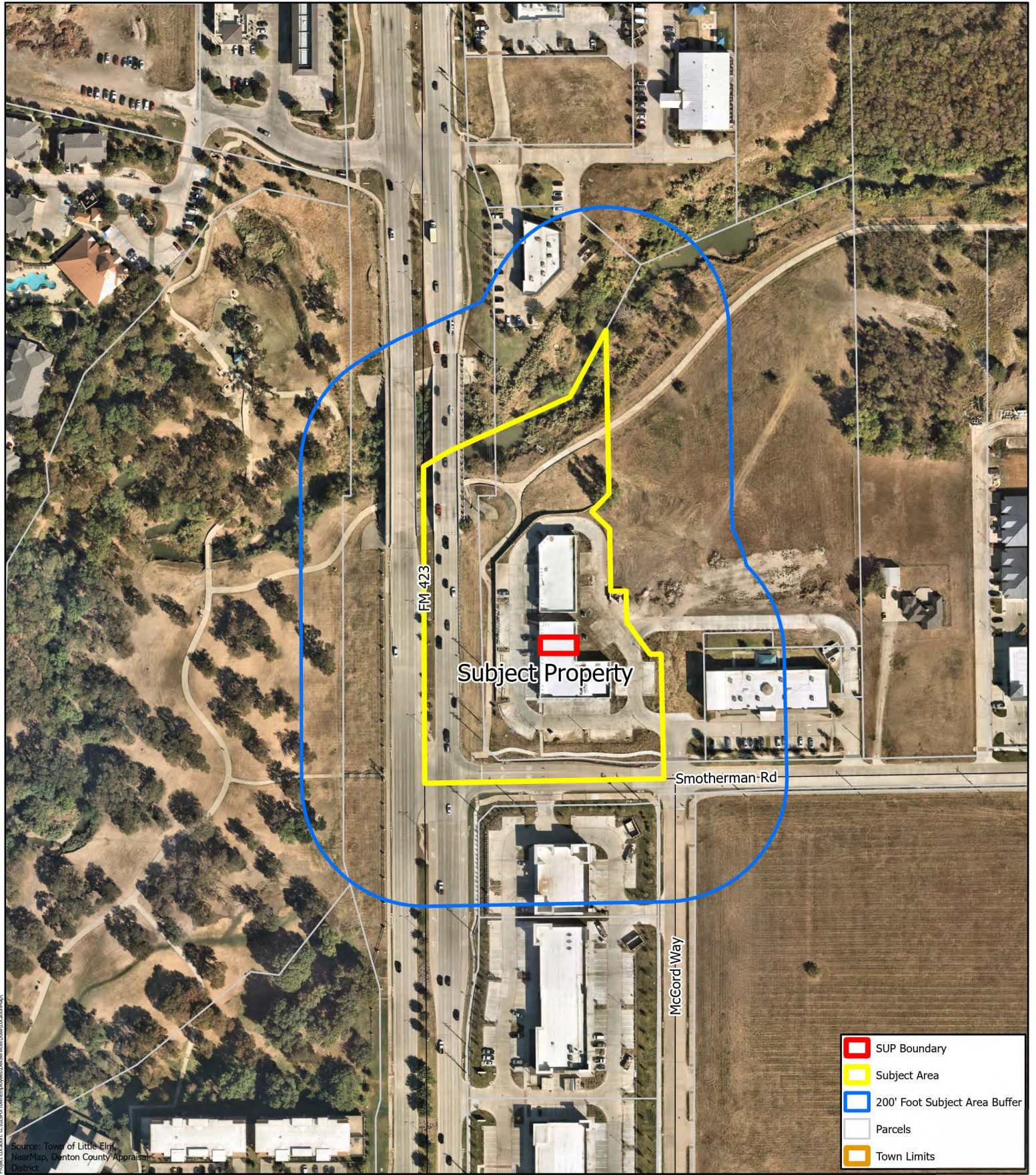
Planning and Zoning Commission recommends **approval** of the requested SUP Amendment, maintaining the previously approved conditions on the proposed use, but revising the total SUP area:

1. The Specific Use Permit granted herein specifically for a smoking establishment, with retail only, on-premise smoking prohibited, shall be limited to that particular area designated on the approved site plan, as Suite 120, within Building 1, encompassing a total area not to exceed 1,479 square feet.
2. All windows shall remain clear, especially from shelving and product display, and maintain and active storefront.
3. Hours of Operation shall not exceed 11pm on any given day.

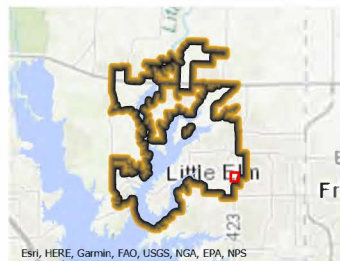
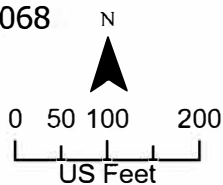
Attachments

Location Map

Ordinance No. 1708 - Puff Love SUP



Specific Use Permit: 22-04014
25691 Smotherman Rd,
Suite 120, Frisco, TX, 75068



Town of Little Elm
Denton County, Tx
Date: 1/6/2023

This product is to be used for graphical representation only. The accuracy is not to be taken/used as data produced for engineering purposes or by a Registered Professional Land Surveyor for the State of Texas. For this level of detail, supervision and certification of the produced data by a Registered Professional Land Surveyor for the State of Texas would have to be performed. Town of Little Elm and its members assume no responsibility for the accuracy of said data.

TOWN OF LITTLE ELM

ORDINANCE NO. 1708

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AMENDING SPECIFIC USE PERMIT THROUGH ORDINANCE NO. 1703 FOR A SMOKING ESTABLISHMENT WITH RETAIL SALES ONLY, LOCATED AT 25691 SMOTHERMAN ROAD, SUITE 120; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Little Elm ("Town") is a home rule municipal corporation organized and existing by virtue of the Constitution and laws of the State of Texas and by its Charter adopted on May 1, 2001; and

WHEREAS, the Town possesses all the rights, powers, and authorities possessed by all home rule municipalities, including the authority to regulate land uses under Chapter 211 of the Texas Local Government Code; and

WHEREAS, Chapter 106 (Zoning) of the Little Elm Code of Ordinances, requires a Specific Use Permit be granted by Town Council in order to legally operate and occupy the subject property as a smoking establishment use while it is zoned Planned Development - Light Commercial (PD-LC) through Ordinance No. 1539; and

WHEREAS, a request to amend existing Specific Use Permit, through Ordinance No. 1703, for a smoking establishment has been submitted by Puff Love Smoke Shop, located at 25691 Smotherman Road, Suite 120, generally on the northeast corner of the intersection of FM 423 and Smotherman Road; and

WHEREAS, Section 106.02.17 of the Little Elm Code of Ordinances provides that Town Council may impose such additional development standards and safeguards as the conditions and locations indicate important to the welfare and protection of adjacent property from noise, vibration, dust, dirt, smoke, fumes, odor, gas, explosion, glare, offensive view, or other undesirable or hazardous conditions; and

WHEREAS, Town Council and the Planning & Zoning Commission of the Town of Little Elm, in compliance with the laws of the State of Texas and the ordinances of the Town of Little Elm, have given the required notices and held the required public hearings and afforded a full and fair hearing to all property owners generally and to all persons interested in and situated in the affected area and in the vicinity thereof regarding the requested planned development amendment described herein; and

WHEREAS, at its regular meeting held on April 6, 2023 the Planning & Zoning Commission considered and made a recommendation to approve the request granting a Specific Use

Permit for a smoking establishment with retail only located at 25691 Smotherman Road, Suite 120, revising total area to 1,479 square-feet (Case No. SUP-23-01039); and

WHEREAS, after due deliberations and consideration of the recommendation of the Planning & Zoning Commission and any other information and materials received at the public hearing, the Town Council of the Town of Little Elm, Texas, has determined that the request would be in the interest of public health, safety and welfare of the citizens of the Town of Little Elm.

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

SECTION 1. INCORPORATION OF PREMISES. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. AMENDMENT. That Ordinance No. 226 of the Town of Little Elm, Texas, the same being the Comprehensive Zoning Ordinance of the Town, as amended, is hereby amended by the following:

- A. Granting a Specific Use Permit authorizing a smoking establishment at 25691 Smotherman Road, Suite 120, subject to the following conditions:
1. Prior to the issuance of a Certificate of Occupancy, said Property shall be improved in accordance with the site plan and floor plan, which are attached hereto as Exhibit A and made a part hereof for all purposes.
 2. The Specific Use Permit granted herein specifically for a smoking establishment, with retail only, shall be limited to that particular area designated on the approved site plan, as Suite 120, within Building 1, encompassing a total area not to exceed 1,479 square feet.
 3. All windows shall remain clear, especially from shelving and product display, and maintain and active storefront.
 4. Hours of Operation shall not exceed 11pm on any given day.

SECTION 3. SAVINGS. This Ordinance (which includes the New Zoning Ordinance) shall be cumulative of all other ordinances of the Town, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that any complaint, notice, action, cause of action, or claim which prior to the effective date of this Ordinance has been initiated or has arisen under or pursuant to such other ordinance(s) shall continue to be governed by the provisions of that ordinance or those ordinances, and for that purpose that ordinance or those ordinances shall be deemed to remain and shall continue in full force and effect.

SECTION 4. PENALTY. Any person, firm, or corporation violating any of the provision of this Ordinance shall be punished by a penalty of a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense and each and every day such offense shall continue shall be deemed to constitute a separate offense.

SECTION 5. SEVERABILITY. The sections, paragraphs, sentences, phrases, and words of this Ordinance are severable, and if any section or provision of this ordinance or the application of that section or provision to any person, firm, corporation, situation or circumstance is for any reason judged invalid or unconstitutional, the adjudication shall not affect any other section or provision of this Ordinance or the application of any other section or provision to any person, firm, corporation, situation or circumstance, nor shall adjudication affect any other section or provision of the New Zoning Ordinance of the Town of Little Elm, Texas, and the Town Council hereby declares that it would have adopted the valid portions and applications of this Ordinance (which includes the New Zoning Ordinance) without the invalid parts and to this end the provisions of this Ordinance shall remain in full force and effect.

SECTION 6. REPEALER. That all ordinances of the Town of Little Elm in conflict with the provisions of this Ordinance are hereby repealed to the extent of that conflict.

SECTION 7. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption 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 on the 2nd day of May, 2023.

The Town of Little Elm, Texas

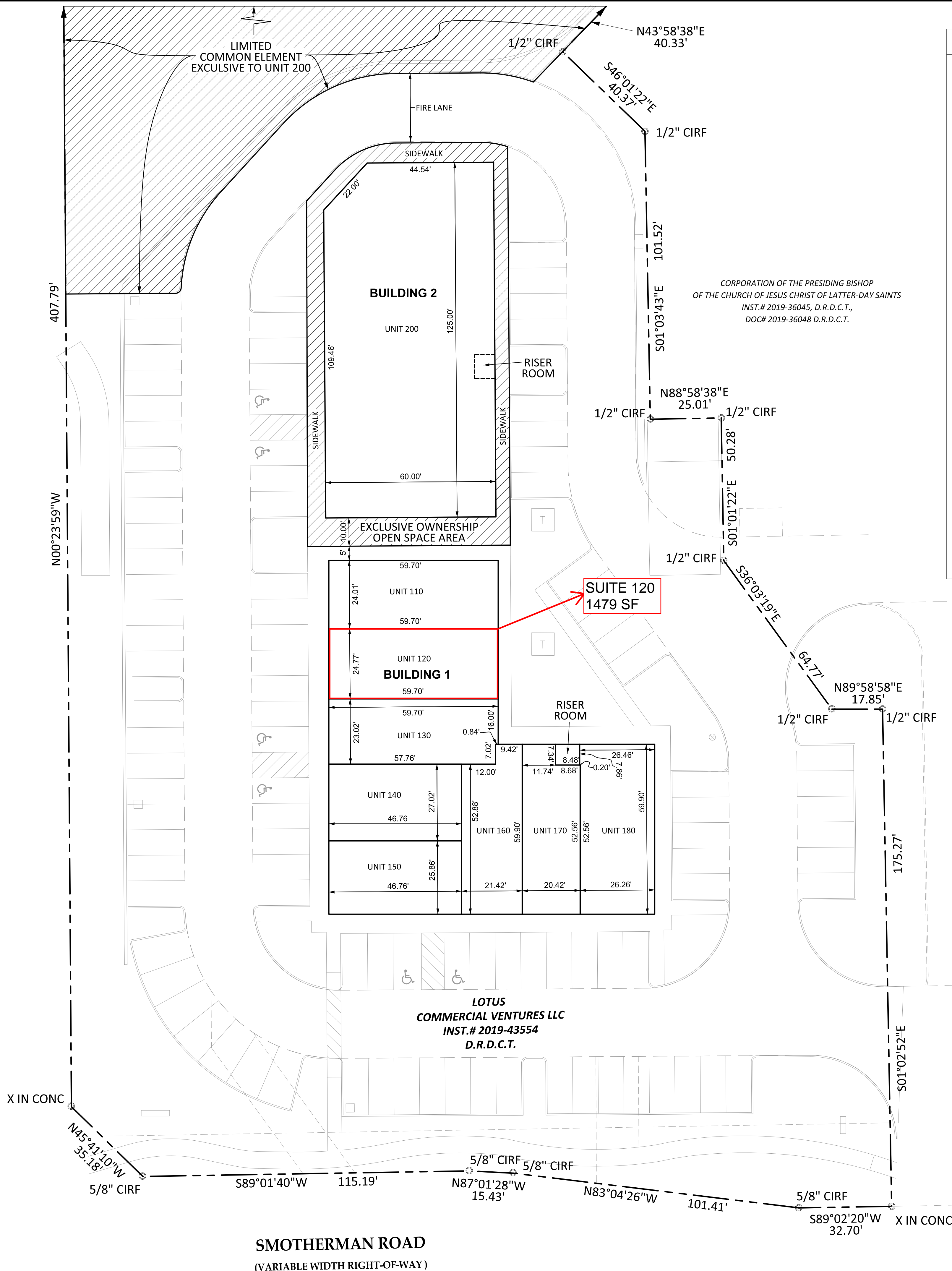
Curtis J. Cornelious, Mayor

ATTEST:

Caitlan Biggs, Town Secretary

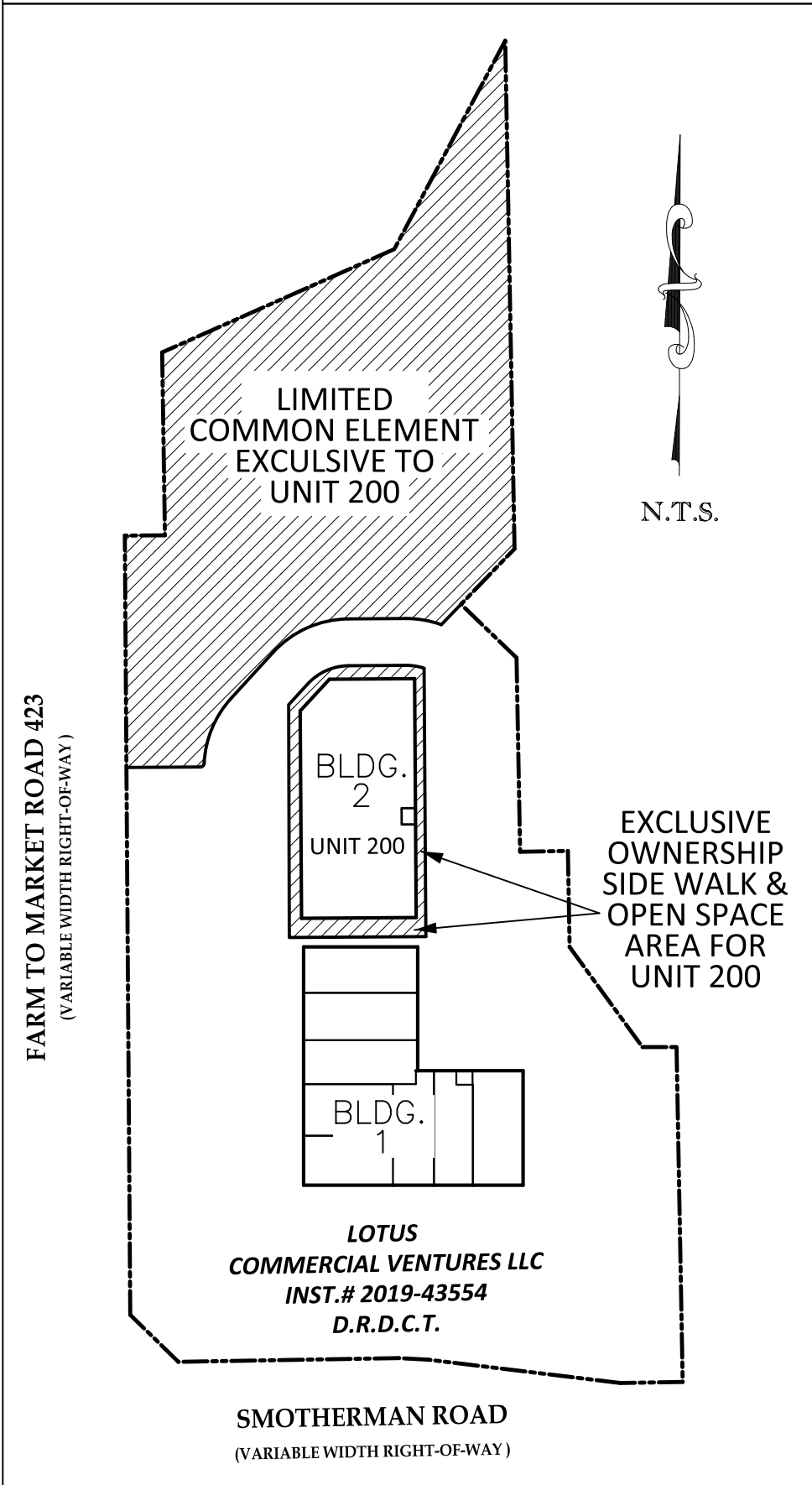
ATTACHMENT – EXHIBIT A

FARM TO MARKET ROAD 423
(VARIABLE WIDTH RIGHT-OF-WAY)



CORPORATION OF THE PRESIDING BISHOP
OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS
INST.# 2019-36045, D.R.D.C.T.,
DOC# 2019-36048 D.R.D.C.T.

BUILDING 1, BUILDING 2/EXCLUSIVE SPACES,
& OVERALL PROPERTY MAP



BUILDING 1 AREA STATEMENT
8 UNITS: ALL SQUARE FOOTAGE STATED BELOW INCLUDES UNIT AREA, AND WALL THICKNESS
- UNIT 110 = 1,433 S.F.
- UNIT 120 = 1,479 S.F.
- UNIT 130 = 1,368 S.F.
- UNIT 140 = 1,263 S.F.
- UNIT 150 = 1,209 S.F.
- UNIT 160 = 1,198 S.F.
- UNIT 170 = 1,159 S.F.
- UNIT 180 = 1,574 S.F.
- RISER ROOM = 62 S.F.
TOTAL= 10,745 S.F. FFE=558.00'

BUILDING 2 AREA STATEMENT
- UNIT 200 = 7,334 S.F.
- EXCLUSIVE OWNERSHIP/SIDE WALK & OPEN SPACE AREA = 2,522 S.F.
- LIMITED COMMON ELEMENT EXCLUSIVE AREA = 40,384 S.F.
TOTAL= 42,906 S.F. FFE=557.00'

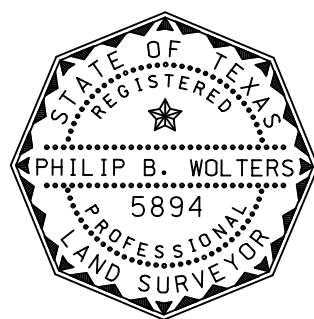
NOTES:

Subject property shown hereon being a called 3.080 acres tract of land as described to Lotus Commercial Ventures LLC, recorded under Document No. 2019-43554, Deed Records, Denton County, Texas (DRDCT), is subject to the following developmental rights:
(a) The right to add additional property to the condominium;
(b) The right to create units, Common Elements and Limited Common Elements in addition to such matters as are enunciated or depicted in the Declaration for this Site Plan;
(c) The right to subdivide Units or convert Units to Common Elements;
(d) The right to withdraw any portion of the Property from the Condominium; and
(e) The right to increase or decrease the perimeter and/or boundary of one or more Units.

LEGAL DESCRIPTION:

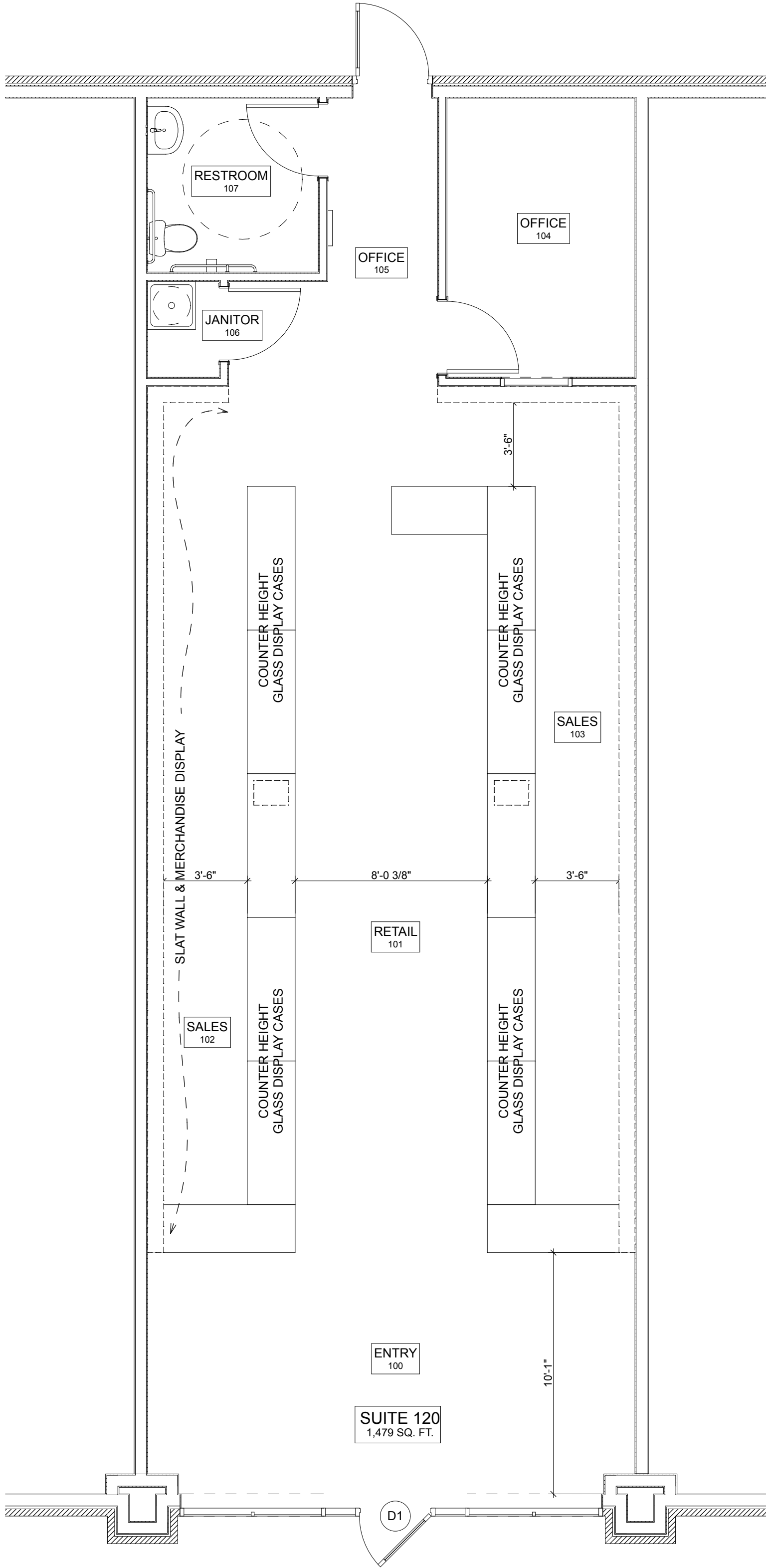
Being a called 3.080 acres tract of land as described to Lotus Commercial Ventures LLC, recorded under Document No. 2019-43554, Deed Records, Denton County, Texas (DRDCT),

CONDOMINIUM EXHIBIT
OF
3.080 ACRES
TRACT OF LAND DESCRIBED IN DEED TO
LOTUS COMMERCIAL VENTURES LLC
AS RECORDED IN
DOCUMENT NUMBER 2019-43554
OFFICIAL PROPERTY RECORDS, DENTON COUNTY, TEXAS
NOVEMBER 2022



I, Philip B. Wolters, of Neel-Schaffer Inc., a Registered Professional Land Surveyor of the State of Texas, do hereby certify that the dimensions shown hereon were obtained from an actual on the ground survey of Building 1 on 11/11/2022 and Floor Plan, sheet number A2-2, by Design Associates & Consultants signed by AQM M. Rahman dated 11-22-2020 for Building 2.
Philip B. Wolters, RPLS No. 5894
1/19/2023

NEEL-SCHAFER
Solutions you can build upon
NEEL-SCHAFER, INC.
2501 Avenue J, Suite 120, Arlington, Texas 76006
CONTACT: Philip B. Wolters, RPLS No. 5894
PHONE: 817-548-0696
EMAIL: phil.wolters@neel-schaffer.com
TBPLS FIRM REGISTRATION NO. 10021800



1 FLOOR PLAN
SCALE: 1/4" = 1'-0"

THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF WILLIAM PECK & ASSOCIATES. ON THIS PLOT DATE AND IS NOT TO BE USED BY AUTHORITIES HAVING JURISDICTION FOR THE PURPOSE OF ISSUING CONSTRUCTION PERMITS

Scale:REF. PLAN

Drawn:JB

Job:22-188-001

Sheet Number:

A-101

FLOOR PLAN

ISSUE DATE:

REVISIONS

WILLIAM PECK & ASSOCIATES, INC. DBA
1025 W. MIMM ST.
DUNWILLE, TEXAS 75057
WWW.PECKARCHITECTS.COM
972.921.1424

P E C K
ARCHITECTS

PUFF LOVE
25691 Snotherman Road
Frisco, Texas

These plans are intended to provide the basic construction information necessary to substantially complete this structure. These construction documents must be verified and checked by the builder or person in authority of this project. Any discrepancy, error, and/or omission shall be the responsibility of the owner. The owner shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities. The owner shall be responsible for obtaining all necessary engineering services for foundation, HVAC, and structural, prior to construction of any kind. NOT A PROFESSIONAL ENGINEERING DESIGN. ANY CHANGES, ADDITIONS, OR DELETIONS TO THESE CONSTRUCTION DOCUMENTS WITHOUT THE WRITTEN PERMISSION OF WILLIAM PECK & ASSOCIATES, INC. ALL RIGHTS RESERVED.





