

THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

**INTERLOCAL AGREEMENT FOR FIRE PROTECTION SERVICES
BETWEEN THE TOWN OF LITTLE ELM, TEXAS, AND ELM RIDGE
WATER CONTROL AND IMPROVEMENT DISTRICT OF DENTON
COUNTY, TEXAS**

This Fire Protection Agreement ("Agreement") is made as of the Effective Date by and between the Town of Little Elm (the "Town"), a Texas home rule municipality and Elm Ridge Water Control and Improvement District of Denton County (the "District"). The Town and District are referred to herein collectively as "the Parties" and separately as "Party."

WHEREAS, District is a political subdivision of the State of Texas operating under the provisions of Article XVI, Section 59 and Article III, Section 52 of the Texas Constitution and Chapters 49, 51, and, for limited purposes, 53, Texas Water Code, as amended; and

WHEREAS, District is seeking to secure firefighting services for the benefit of the residents and property owners within the boundaries of the ArrowBrooke and Savannah developments located within the District, as described in the attached Exhibit "A"; and

WHEREAS, Section 49.351(e) of the Texas Water Code authorizes District to contract with any other person to perform firefighting services within the District; and

WHEREAS, Sections 49.212 and 49.351 of the Texas Water Code authorize District to adopt and enforce all necessary charges or mandatory fees for providing or making available any district facility or service (including firefighting services); and

WHEREAS, pursuant to an election held on November 7, 2000, a majority of District electors voting at such election authorized the levy of an operation and maintenance tax unlimited as to rate or amount for operation and maintenance purposes, including paying costs of proper services; and

WHEREAS, District's Board of Directors has determined that it is in the best interests of District and residents of ArrowBrooke and Savannah developments (the "Area") to enter into a long-term contract with Town to provide firefighting services to the Area and to secure approval of such contract by the Town, Texas Commission on Environmental Quality (the "TCEQ"), and the voters of the District at an election pursuant to Section 49.351 of the Texas Water Code (collectively, the "Approvals"); and

WHEREAS, this Agreement is made pursuant to the authority of Section 49.213(c)(7) of the Texas Water Code and Texas Government Code, Chapter 791 as amended, more commonly known as the "Interlocal Cooperation Act," which allows governmental entities to contract with each other to perform governmental functions for each other that they are each authorized to perform for themselves.

NOW, THEREFORE, IN CONSIDERATION OF MUTUAL PROMISES AND CONSIDERATION PROVIDED FOR HEREIN, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY CONFIRMED, THE PARTIES AGREE AS FOLLOWS:

Section 1

Definitions

In addition to other capitalized terms defined herein, when used in this Agreement the following capitalized terms shall have the meaning set forth below:

“Approval Date” means the date on which the last of the Approvals is obtained.

“Firefighting Services” means all of the customary and usual services of a fire department, including, but not limited to, fire suppression, fire prevention, training, safety education, maintenance, communications, emergency rescue, emergency medical services, photography, and administration services of the type and at the level of service regularly provided by Town’s Fire Department to persons and property located within Town’s incorporated limits on the Approval Date. This term shall also include fire inspections, fire code enforcement services that are typically performed by Town’s Fire Department personnel, or arson investigation services, to the extent the same are performed within Town’s incorporated limits.

“TCEQ” means the Texas Commission on Environmental Quality, a regulatory body and administrative agency of the State of Texas, or its successor agency.

Section 2

Term

2.1 Conditions Precedent to District Obligations. The Parties understand that, pursuant to applicable law and the rules of the TCEQ, before this Agreement may become effective, the District must (i) develop a fire plan (the “Plan”) in accordance with the provisions of Section 49.351, Texas Water Code, and the rules of the TCEQ, (ii) obtain TCEQ’s approval of the Plan and this Agreement, and (iii) obtain the approval of the Plan and this Agreement by the majority of District voters voting in an election (an “Election”) properly called and held by District for such purpose. The foregoing shall constitute conditions precedent to this Agreement becoming effective as to the District. If such conditions precedent are not satisfied on or before <insert date>, this Agreement shall automatically terminate as of <insert date>.

2.2 Initial Term. Unless sooner terminated in accordance with this Agreement, this Agreement shall be for a term commencing on November 1, 2024 and ending five years later (said period being the “Initial Term”). The Parties agree that the satisfaction of the conditions precedent detailed in Section 2.1 supra could occur after November 1, 2024. Should the conditions precedent be satisfied on a date after November 1, 2024, then such date shall be deemed the commencement date of the Initial Term.

2.3 Renewal Terms. This Agreement shall automatically renew for additional fire (5) year renewal terms (the “Renewal Term(s)”), without the need for further action by the Parties, until the Areas are annexed for full purposes by a municipality and the municipality takes on the obligation to provide firefighting services. However, any Party shall have the right to terminate this Agreement upon the conclusion of the Initial Term or any Renewal Term, by providing written notice of its election to terminate to the other Party on or before twelve (12) months preceding the scheduled date of expiration of the Initial Term or any Renewal Term.

2.4 Transfer of Service. The Parties acknowledge that the District is surrounded by the extra-territorial jurisdictions of multiple municipalities. The Parties agree that any time in the future should another municipality or other entity offer Firefighting Services to the District at an

amount agreeable to the District, the District shall have the option of terminating this Agreement on twelve (12) months written notice to the Town. This option is available to the District regardless of the time remaining in the Initial Term or any Renewal Term.

Should the District determine that another municipality or other entity offering Firefighting Services is available to serve only Arrowbrooke, then the District shall have the option of removing Arrowbrooke from this Agreement upon thirty (30) days written notice to the Town.

Section 3 **Scope of Services**

3.1 Current Staffing, Equipment and Stations. As of the Effective Date, Town owns, staffs, equips and operates three (3) fire stations as well as firefighting vehicles and other equipment which Town uses for the provision of Firefighting Services within Town's incorporated limits and will be used in providing Firefighting Services to the Area. In providing Firefighting Services to the Area, Town solely shall be responsible for the operation of all Fire Stations and all associated fire personnel, stations, vehicles, and equipment.

3.2 Use of Water System. The Parties acknowledge that in providing Firefighting Services to the Area, Town will use the fire hydrants, connections and water supply and distribution systems (the "Water System") available in the District, but the Town will not be responsible for inspecting and maintaining any part of the Water System within the District. In addition, the Town will not be liable to the District for any deficiency or malfunction of the Water System located within the Area except to the extent such deficiency or malfunction is the result of the negligent or intentional acts or omissions of the Town, its employees, agents, and/or contractors. On request by the District, the Town will provide, at cost to the District, inspection services for the fire hydrants and associated appurtenances located within the Area.

3.3 Provision of Firefighting Services. During the term of this Agreement, and for so long as all payments are timely made to the Town as required by Section 5, below, Town agrees to provide Firefighting Services to all persons, buildings and property located within the Area, including any land added to the Area by annexation, to the same extent and the same level of service as it would within Town. In providing Firefighting Services to the Area, Town shall follow its adopted standard operating procedures, as they may be amended from time to time, in order to determine, the Town's sole discretion: (i) whether Firefighting Services are required in a particular case, (ii) the order in which to respond to a particular request for Firefighting Services. It is understood and acknowledged, that response times, priority of calls and the services provided will be managed by the Town for the Area in the same manner as within the Town.

3.4 Call and Response Data. Town shall maintain records of responses to emergency calls, including, but not limited to date, time, location of emergency, type of emergency, time to respond, and results. The Town shall prepare and provide monthly reports (the "Reports") to the District that shall include call sheets/run cards from the Town's records management system (to the extent permitted by HIPAA) to show the number and type of emergency calls answered within the boundaries of the District and the general action taken by the Town in response to each emergency call. The Town shall use reasonable efforts to deliver the Report for the previous month to the District no later than the 10th day of every month.

3.5 Insurance. Town shall be responsible for providing all general and personal liability coverage necessary for the adequate protection of Town employees providing Firefighting Services at the same level of protection afforded officers and employees while performing the same or similar duties in Town's incorporated limits.

3.6 Governmental Functions. The Parties each acknowledge and agree that the Firefighting Services to be performed by the Town are a governmental function.

Section 4
Employees, Independent Contractors and Volunteers

Town's employees, independent contractors and/or volunteers shall meet at least the minimum State qualifications with respect to their performance of Firefighting Services required under this Agreement. The District (i) does not assume responsibility for the actions of Town's employees, independent contractors and/or volunteers in performing Firefighting Services pursuant to this Agreement, and (ii) will make no recommendations regarding, and are in no way responsible for, the selection, sufficiency or qualification of Town's employees, independent contractors and/or volunteers.

Section 5
Compensation for Firefighting Services

5.1 Compensation.

(a) Calculation of Costs.

- (i) The Parties have agreed upon a methodology to determine the costs of providing Firefighting Services (the "Costs") to the Area. The Costs shall be determined by multiplying the number of existing water connections in the Area by the rate per connection for that year of the Agreement. The first year will begin at the start date of the Initial Term and each subsequent year will begin on the anniversary of the Initial Term's start date. The Parties agree that the rate per connection for each year shall be:

- i. Year 1- \$16.75
- ii. Year 2- \$18.09
- iii. Year 3- \$19.54
- iv. Year 4- \$20.11
- v. Year 5- \$22.80

The Costs for the Renewal Terms, Year 6 and beyond, will be adjusted annually by 100% of the increase, if any, of the most recently published CPI. "CPI" as used herein shall mean the revised Consumer Price Index for All Urban Consumers for Dallas-Fort Worth, all items, as published by the United States Department of Labor, Bureau of Labor Statistics.

- (ii) For the purposes of calculating the Costs, the number of existing water connections will be evaluated once every quarter, beginning on the Initial Term's start date, and the Cost adjusted accordingly should the number of water connections increase from the previous quarter. The Parties agree to make reasonable and good faith efforts to resolve any issues regarding such calculation. The Town shall then send monthly invoices to the District representing the calculated Costs for the rest of the quarter. On or before the first day of the subsequent quarter, the District shall provide the number of existing water connections as of the date of the subsequent quarter. The Town shall again make the calculation of Costs as
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previously made and invoice the District on a monthly basis for the rest of the quarter. This method of determining the Costs shall then continue for the duration of the Agreement.

- (b) **Payment of Monthly Invoice.** The District shall remit payment to the Town within 30 days following the receipt of the monthly invoice from the Town.

Section 6

Notices

All notices given pursuant to this Agreement shall be in writing and given by overnight courier or certified mail with return receipt requested, in either case with receipt being deemed the date of the signed receipt. Notice given in any other manner shall be effective only if in writing and when actually received by the party or parties to be notified. For the purpose of notice, the addresses of the parties are as follows:

If to Town:

Attn: Town Manager
Town of Little Elm
100 W. Eldorado Parkway
Little Elm, TX 75068
(972) 377-1898

If to District:

President, Board of Supervisors
Elm Ridge Water Control and Improvement
District of Denton County
c/o Crawford & Jordan, LLP
3100 McKinnon Street, Suite 1100
Dallas, TX 75201
(214) 981-9090

Each Party shall have the right to change its address and specify same as the notices address for purposes of this Agreement by giving at least 30 days written notice to the other Party.

Section 7

Miscellaneous

7.1 Parties in Interest. This Agreement shall be for the sole and exclusive benefit of Town and District and shall not be construed to confer any benefit or right upon any other party.

7.2 Entire Agreement. This Agreement constitutes the entire Agreement among the Parties relative to the subject matter hereof. There have not been and are no agreements, covenants, representations or warranties among the Parties, either oral or written, relative to such subject matter other than those expressly stated or provided for herein.

7.3 Good Faith Cooperation. The Parties agree to use good faith in the performance of their respective duties and obligations under this Agreement such that the intent of the Parties shall be fulfilled. The Parties further agree to take such additional actions, from time to time, as may be necessary to fully carry out the purposes and intent of this Agreement including, but not limited to, the execution of further documentation.

7.4 Default and Remedies.

(a) Notice of Default. No Party shall be in default under this Agreement until (i) written notice of the alleged failure of such Party to perform any of its obligations hereunder has been given by another Party and (ii) such noticed Party has had a period of time, as specified below, in which to cure the alleged failure. The Party declaring a default shall notify the offending Party in writing of any such alleged failure to perform. Such notice shall specify the basis for a

declaration of default, and the notified Party shall have thirty (30) days from the receipt of such notice to cure any default. If a default is not cured within such 30-day period, then noticing Party shall have the option to terminate this Agreement.

If a party is in default under this Agreement, the non-defaulting party shall be entitled to all remedies available under the law.

(b) **Town Termination; Other Remedies.** Town shall have the right to terminate this Agreement for failure by District, as applicable, to make payments described in Section 5, but only after (i) Town provides written notice to the District of its intent to so terminate this Agreement and (ii) defaulting Party is given twenty-one (21) days from the receipt of such notice from Town to cure the failure. Town may terminate this Agreement for a failure to pay only after a failure to make all required payments within such 21-day period.

(c) **District Termination.** District's recourse for failure of Town to furnish Firefighting Services under this Agreement will be the right to terminate this Agreement on or after the 30th day after providing written notice to Town of such failure containing a description of how Town has failed to provide Firefighting Service, and Town fails to cure such default. Termination pursuant to this Section 7.4(c) shall not release District of its obligations to pay for Firefighting Services provided by Town up to the date of termination or the date Town ceased providing Firefighting Services, whichever is earlier.

(d) **District's Rights Upon Termination.** Should this Agreement be terminated for any reason, or if any term of this Agreement ends and the Agreement is not renewed, District will be free to seek the services contemplated by this Agreement from any source available to District.

7.5 Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application thereof to any person or circumstance, shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall be not be affected thereby.

7.6 Force Majeure.

(a) In the event any Party is rendered unable, wholly or in part, by "force majeure" (as hereinafter defined) to carry out its obligations under this Agreement, then the obligations of such Party to the extent affected by such force majeure, to the extent due diligence is being used to resume performance at the earliest practical time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period of time. As soon as reasonably possible after the occurrence of the force majeure relied upon, the Party whose contractual obligations are affected shall give written notice of such force majeure to the other Party. If possible to remedy, such cause shall be remedied with all reasonable dispatch.

(b) The term "force majeure" as used herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, order of the United States or the State of Texas or other military authority with jurisdiction over either Party, insurrections, riots, epidemics, landslides, earthquakes, fires, hurricanes, arrests, civil disturbances, widespread pestilence, explosions, breakage or accidents to machinery, pipelines or canals, significant variation from normal weather conditions reasonably expected during the period in question, and any other inability a Party could not have avoided by the exercise of due diligence and care. "Force majeure"

shall not mean or refer to governmental regulations or acts of any governmental entity, board, commission or council over which a Party may reasonably exert influence in order to meet its obligations pursuant to this Agreement.

7.7 Liability.

(a) **District.** Nothing stated herein shall be construed as a waiver of all the protections afforded to the District as a sovereign governmental unit. District assumes no liability or responsibility for the acts and omissions of Town, its employees, agents, officers or others working through them in any capacity.

(b) **Town.** Nothing stated herein shall be construed as a waiver of all the protections afforded to the Town as a sovereign governmental unit. Town assumes no liability or responsibility for the acts and omissions of District, its employees, agents, officers or others working through them in any capacity.

7.8 Attorney's Fees and Venue. In the event suit is filed by a Party as a result of the performance or non-performance of the terms set forth in this Agreement, and given that this Agreement is a contract for good or services under Chapter 271 of the Texas Local Government Code, the prevailing Party shall recover its reasonable attorneys' fees and court costs, with venue of any such action to be in a state court in Denton County, Texas.

7.9 Waiver of Breach. No waiver by a Party of any default or breach of a term or condition of this Agreement by another Party may be treated as a waiver of any subsequent default or breach of the same or any other term or condition of this Agreement.

7.10 Modification. This Agreement may only be modified, changed or altered at any time upon mutual agreement of the Parties, provided that any such modification, change and/or alteration be reduced to writing and approved by the Parties' governing bodies and, to the extent required by law, the TCEQ and/or the qualified voters of the District.

7.11 No Waiver of Immunity. Nothing in this Agreement shall give any claim or cause of action to any person or party not a party to this Agreement, nor create any claim or cause of action against Town or District which would not exist in the absence of this Agreement. Nothing in this Agreement shall add to or change the liability limits or immunities otherwise available to another Party, and nothing in this Agreement shall be deemed or construed to waive any defense, privilege, or immunity of the Parties nor of any of their elected officials, officers, or employees, as to any claim or cause of action brought by any Party, person or entity.

7.12 Authority and Enforceability. The Parties represent and warrant that this Agreement has been approved and or adopted by the Parties' authorized representatives and that the individuals executing this Agreement on behalf of each Party has been duly authorized to do so. Each Party acknowledges and agrees that this Agreement is binding upon such Party and enforceable against such Party in accordance with its terms and conditions.

7.13 No Third-Party Beneficiaries. This Agreement only inures the benefit of, and may only be enforced by, the Parties. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

7.14 No Joint Enterprise. This Agreement is not intended to and shall not be construed so as to create a joint enterprise between Parties.

7.15 No Interpretation Against a Party. This Agreement shall not be construed more strictly against the drafter as the Parties have had the benefit of counsel in the negotiation and preparation of this Agreement.

7.16 Heading. The headings of the various paragraphs of the Agreement have been inserted for convenient reference only and shall not be construed to enlarge, diminish, or otherwise change the express provisions hereof.

7.17 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

7.18 Mediation. All claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this Agreement, including but not limited to breach thereof, shall be referred to mediation before, and as a condition precedent to, the initiation of any adjudicative action or proceeding, including arbitration.

SIGNED AND AGREED this ____ day of _____, 20____.

TOWN OF LITTLE ELM, TEXAS

**ELM RIDGE WATER CONTROL
AND IMPROVEMENT DISTRICT
OF DENTON COUNTY**

Mayor



President

ATTEST:

ATTEST:

Town Secretary



District Secretary



**THE STATE OF TEXAS §
COUNTY OF DENTON §**

This instrument was acknowledged before me on the ____ day of _____,
20____, by _____, Mayor of the Town of Little Elm, on behalf of said Town and as the
act and deed of the Town.

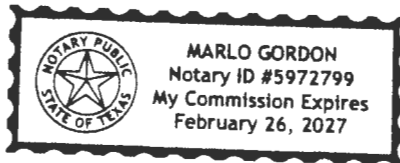
[SEAL.]

Notary Public, State of Texas

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This instrument was acknowledged before me on the 21st day of November, 2023, by Amy Myers President of Elm Ridge Water Control and Improvement District of Denton County, on behalf of said District and as the act and deed of the District.

[SEAL]



Marlo Gordon

Notary Public, State of Texas