LITTLE ELM

REGULAR MEETING
OF THE TOWN COUNCIL

Tuesday, December 5, 2023
6:00 PM
Little Elm Town Hall
100 W Eldorado Parkway, Little Elm, TX 75068

1. **Roll Call/Call to Order Regular Town Council Meeting.**

   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   C. Items to be Withdrawn from Consent Agenda.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.

2. **Presentations.**

A. Recognition of **Evelyn Kelly, Mayor for the Day.**

B. Presentation of **Donation to the Little Elm Library from the Little Elm Rotary Club.**

C. Present a **Proclamation Declaring December 2023 as Christian Heritage Month.**

D. Present a **Proclamation Recognizing the Alpha Kappa Alpha Sorority Incorporated Omega Alpha Omega Chapter.**

E. Present a **Life-Saving Award to Officer Joseph Nunez and Detective Benjamin Wollet.**

F. Present **Police Chief Recognition.**

G. Present a **Life-Saving Award to Members of the Little Elm Fire Department.**

H. Present **Town Manager Challenge Coin.**

3. **Public Comments**

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

4. **Consent Agenda**

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

A. Consider Action to Approve the **Minutes from the November 7, 2023, Regular Town Council Meeting.**

B. Consider Action to Approve an **Update to the Purchasing and Procurement Card Policies.**

C. Consider Action to Accept a **Grant from the Texas A&M Forest Service for a Fully Equipped Type 6 Fire Apparatus.**

D. Consider Action to Approve the **Purchase of a 24-hour Book Vending Kiosk and Services for the Little Elm Library.**

E. Consider Action to Approve **Resolution No. 1205202301 Approving an Amendment to the Town's Investment Policy; Authorized Broker/Dealers; Recording the Annual Review; and an Effective Date.**

F. Consider Action to Approve **Ordinance No. 1740 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.**

G. Consider Action to Approve an **Amendment to an Interlocal Cooperation Agreement between Denton County and the Town of Little Elm for a Portion of the Design, Construction and Right-of-Way for Ryan Spiritas Parkway.**

H. Consider Action to Approve **Resolution No. 1205202302 Finding that CoServ Gas, LTD.'s Statement of Intent to Increase Rates within the Town should be Denied; Finding that the Town's Reasonable Rate Case Expenses shall be Reimbursed by the Company; Finding that the Meeting which this Resolution is Passed is Open to the Public as Required by Law; Requiring Notice of this Resolution to the Company and the Town's Legal Counsel.**

I. Consider Action to Approve **Appointments to the Veterans Committee.**

J. Consider Action to **Ratify the City Affidavits Opting Out of the PFAS Class Actions Relative to 3M and DuPont, and to Take All Other Actions Incident and Related Thereto.**

K. Consider Action to Approve **Ordinance No. 1739 Amending the Code of Ordinances by Amending Chapter 2, Article II, Updating the Records Management Program; Providing a Repealing Clause; Providing a Severability Clause; and Providing an Effective Date.**

L. Consider Action to Approve **Design Contract Amendment #2 to Pacheco-Koch Consulting Engineers, Inc. for the Hill Lane Improvement Project.**

M. Consider Action to Approve an **Annual Interlocal Cooperative Agreement for Fire Protection Services with Denton County for Unincorporated Areas Around Town Limits.**

N. Consider Action to Approve an **Annual Interlocal Cooperative Agreement for EMS/ambulance services with Denton County for Unincorporated Areas Around Town Limits.**

O. Consider Action to Accept a **Grant Award from the Office of Community Oriented Policing Services for a De-Escalation Grant in the amount of $92,588.**

P. Consider Action to Approve an **Agreement for Fireworks to be sold on the Limited Purpose Annexation (LPA) Property for the purpose of Collecting Sales Tax during the Season of December 20, 2023 - January 1, 2024.**

Q. Consider Action to Award a **Professional Services Contract to Geotex Engineering to Perform Materials Testing Services for the Cottonwood Park Phase 1 Project.**

R. Consider Action to Approve a **Development Agreement Associated with the Lakefront Residential Overlay District, between the Town of Little Elm and Gurpreet Singh & Sukhnandan Kaur, Property Owners of 222 East Park Drive.**

S. Consider Action to Approve **Ordinance No. 1738 Amending the FY 2023-2024 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.**

T. Consider Action to Approve an **Interlocal Agreement between Denton County and the Town of Little Elm for the Purpose of Providing Engineering, Right-of-Way Acquisition, Utility Relocation, Inspections, and Construction of Hill Lane.**

U. Consider Action to **Ratify the Settlement Agreement for Condemnation Cases between the Town of Little Elm and BKDK, LP, Dogwood Timber, Inc. 401K Plan 251, and David Kirk for the Acquisition of Real Property and Water and Sewer Line Easement Necessary for the Construction of the French Settlement Road Improvement Project in the amount of $60,000.**

V. Consider Action to Approve a **Property Purchase Contract for Lot 5 Block A, Southside Acres, Little Elm, Texas, in the amount of $207,000.**

W. Consider Action to Approve the **Final Acceptance of the Woodrow Circle Improvement Project (Contract #2023-05).**

X. Consider Action to Approve a **Settlement Agreement for the Condemnation Lawsuit between the Town of Little Elm and Laura Elizabeth Keck, Joseph Adamson Nash, and Mary Caroline Mims for 2.656 Acres of Right-of-Way Necessary for the Construction of Ryan Spiritas Parkway in the amount of $1,619,730.**

Y. Consider Action to Approve an **Interlocal Agreement for Fire Protection Services between the Town of Little Elm and Denton County Fresh Water Supply Districts 8-A, 8-B, 11-A, 11-B, and 11-C.**

Z. Consider Action to Approve an **Interlocal Agreement for Fire Protection Services between the Town of Little Elm and Elm Ridge Water Control and Improvement District of Denton County.**

5. **Regular Items.**

A. Hold a Public Hearing, Present, Discuss, and Consider Action on **Ordinance No. 1742 Regarding a Request to Rezone Approximately 35 Acres of Land, Currently Zoned as Planned Development Based on Light Commercial and Multifamily District Standards Through Ordinance No. 1589, as Amended by Ordinance No. 1713, Generally Located on the Northwest Corner of US Highway 380 and FM 2931, within Little Elm's Town Limits, in Order to Amend the Existing Concept Plan to Provide for Modifications to the Internal Site Layout.**

Open Public Hearing:
Receive Public Comments:
Close Public Hearing:
Take Action on Ordinance No. 1742:

B. Hold a Public Hearing, Present, Discuss, and Consider Action on **Ordinance No. 1741 Regarding a Request to Rezone Approximately Five Acres of Land, Currently Zoned as Planned Development, Based on Light Commercial Standards, Through Ordinance No. 1477, Generally Located 300 Feet East of the Intersection of Old Highway 24 and Oak Grove Parkway, within Little Elm's Town Limits, in Order to Amend the Permitted Uses Within the Planned Development District.**

Open Public Hearing:
Receive Public Comments:
Close Public Hearing:
Take Action on Ordinance No. 1741:

C. Present, Discuss, and Consider Action on a **Development Agreement between the Town of Little Elm and Lakeside Shops and Business Park LLC.**

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

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

7. **Reconvene into Open Session**

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

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

8. **Adjourn.**

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

Persons with disabilities who plan to attend this meeting and who may need auxiliary aide of service such as interpreters for the hearing impaired, reader or large print are requested to contact the secretary at 214-975-0452 two days prior to the meeting so appropriate arrangements can be made.

BRAILLE IS NOT PROVIDED.

Respectfully,

Town Secretary

This is to certify that the above notice was posted on the Town's website this 1st day of December 2023 before 5:00 p.m.

Date:	12/05/2023
Agenda Item #:	2. 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:

Recognition of **Evelyn Kelly, Mayor for the Day.**

DESCRIPTION:

Evelyn Kelly is the recipient of Mayor for the Day as a result of the Little Elm Area Food Bank silent auction.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.

Date:	12/05/2023
Agenda Item #:	2. B.
Department:	Community Services
Strategic Goal:	Ensure strong relationship within the community and region
Staff Contact:	Chad Hyde, Director of Community Services

AGENDA ITEM:

Presentation of **Donation to the Little Elm Library from the Little Elm Rotary Club.**

DESCRIPTION:

One of Rotary International's foremost goals is promoting peace in the world. We believe when people work to create peace in their communities, that change can have a global effect. Little Elm Rotary Club is donating a set of 10 books for young children that promote peacebuilding and conflict prevention to Little Elm Public Library.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.

Date:	12/05/2023
Agenda Item #:	2. 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 a **Proclamation Declaring December 2023 as Christian Heritage Month.**

DESCRIPTION:

Mayor Cornelious will present a proclamation declaring December 2023 as Christian Heritage Month.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.

Attachments

2023 Christian Heritage Month Proclamation

LITTLE ELM

Proclamation

WHEREAS, Christianity is the largest religion in the world, with 2.2 billion practitioners worldwide and approximately 65% of Americans professing the Christian faith; and

WHEREAS, the Christian faith dates back several thousand years, having its roots in Judaism and culminating in the birth, death, burial, and resurrection of Jesus Christ in the first Century AD. Christianity has a strong heritage of feeding the poor, helping the sick, and standing up against social injustices. Its practitioners believe they offer hope to the world through the Gospel message that Jesus Christ is the Son of God and Savior of the World; and

WHEREAS, the United States was founded in part on the tenants of the Christian Faith and has a rich heritage in American history.

WHEREAS, local churches have contributed tremendously to the vitality of the Town of Little Elm, Texas by enriching the lives of its citizens; and

WHEREAS, during the month of December 2023, Christians and non-Christians across the state of Texas, and around the world, will celebrate Christmas, which they have been doing for centuries.

NOW, THEREFORE, we declare the month of **December 2023 as Christian Heritage Month** and urge all the residents of Little Elm, TX to take cognizance of this event and participate fittingly in its observance.

Given under my hand and Seal of the Town of Little Elm, Texas, this 5th day of December, 2023.

_____

Curtis J. Cornelious, Mayor of Little Elm

Date:	12/05/2023
Agenda Item #:	2. D.
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 Recognizing the Alpha Kappa Alpha Sorority Incorporated Omega Alpha Omega Chapter.**

DESCRIPTION:

Mayor Cornelious will present a proclamation recognizing the Alpha Kappa Alpha Sorority Incorporated Omega Alpha Omega Chapter.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.

Attachments

2023 2023 Alpha Kappa Alpha Sorority Incorporated Omega Alpha Omega Chapter Proclamation

LITTLE ELM

Proclamation

WHEREAS, Alpha Kappa Alpha Sorority, Incorporated was established on January 15, 1908, on the campus of Howard University in Washington, D. C. as the first Greek-letter organization by African American women in America; and

WHEREAS, Alpha Kappa Alpha Sorority, Incorporated, is an international service organization with a global membership composted of more than 325,000 distinguished and successful women who serve in their communities; and

WHEREAS, the Town of Little Elm is honored to pay tribute to their Founders' Day celebration as the Omega Alpha Omega Chapter join their international organization in celebrating 116 years of service to all mankind as did their Founders in 1908, and

WHEREAS, special recognition is due to the Omega Alpha Omega Chapter for their service and support of our community through annual community service and donations to their participation in AKA Day at the Capital in Austin, TX, Mental Health Awareness virtual events, Emerald City Scholarship fundraiser where Little Elm students are eligible to apply for scholarship assistance, held a Frisco and Little Elm Candidate Forum, support of Little Elm Mayor's Math Challenge Carnival, Youth Leadership Institute supporting youth ages 11 – 13 in leadership development, and HBCU College Fair and Voter Registration fair held at Little Elm High School.

NOW, THEREFORE, we recognize the **Alpha Kappa Alpha Sorority, Incorporated® Omega Alpha Omega Chapter** for their dedication to the residents of Little Elm and we thank them for being on outstanding community partner.

Given under my hand and Seal of the Town of Little Elm, Texas, this 5th day of December, 2023.

_____

Curtis J. Cornelious, Mayor of Little Elm

Date:	12/05/2023
Agenda Item #:	2. E.
Department:	Police
Strategic Goal:	Ensure strong relationship within the community and region
Staff Contact:	Rodney Harrison, Police Chief

AGENDA ITEM:

Present a **Life-Saving Award to Officer Joseph Nunez and Detective Benjamin Wollet.**

DESCRIPTION:

Police Chief Rodney Harrison will present a Life-Saving Award to Officer Joseph Nunez and Detective Benjamin Wollet for saving the life of a gunshot victim.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.

Date:	12/05/2023
Agenda Item #:	2. F.
Department:	Administrative Services
Strategic Goal:	Ensure excellence in public services while keeping up with the growth in the community
Staff Contact:	Rodney Harrison, Police Chief

AGENDA ITEM:

Present **Police Chief Recognition.**

DESCRIPTION:

Police Chief Rodney Harrison will recognize Katie Wilkinson for her work in establishing the Little Elm Police Department as a training academy.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.

Date:	12/05/2023
Agenda Item #:	2. G.
Department:	Administrative Services
Strategic Goal:	Ensure strong relationship within the community and region
Staff Contact:	Paul Rust, Fire Chief

AGENDA ITEM:

Present a **Life-Saving Award to Members of the Little Elm Fire Department.**

DESCRIPTION:

On June 21st, 2023, the members of the Fire Department responded to a cardiac arrest incident. Our members' excellent care, along with the continued excellent care of the ER care staff, resulted in the patient leaving the hospital without any medical deficits. These members are:

- Austin Hester
- Kevin LaRocca
- Bennie Matthews
- Brandon Winfrey
- Chandler Lawson
- Tyler Adair
- Dillon Bocanegra
- Jon Bailey

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.

Date:	12/05/2023
Agenda Item #:	2. H.
Department:	Administrative Services
Strategic Goal:	Ensure strong relationship within the community and region
Staff Contact:	Matt Mueller, Town Manager

AGENDA ITEM:

Present **Town Manager Challenge Coin.**

DESCRIPTION:

The Town Manager will present a challenge coin.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Information only, no action required.

Date:	12/05/2023
Agenda Item #:	4. A.
Department:	Administrative Services
Strategic Goal:	Maintain operational integrity and viability
Staff Contact:	Caitlan Biggs, Director of Administrative Services/Town Secretary

AGENDA ITEM:

Consider Action to Approve the **Minutes from the November 7, 2023, Regular Town Council Meeting.**

DESCRIPTION:

The minutes from the regular Town Council meeting on November 7, 2023, are attached for approval.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Minutes - November 7, 2023

D R A F T

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 NOVEMBER 7, 2023 - 6:00 p.m.

Present: Mayor Curtis J. Cornelious; Council Member Neil Blais; Mayor Pro Tem Jamell T. Johnson; Council Member Tony Singh; Council Member Lisa G. Norman; Council Member Andrew Evans; Council Member Michel Hambrick

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

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

Meeting was called to order at 6:03 p.m.

A. Present and Discuss the **2023 Legislative Session Review.**

Town Attorney Robert Brown gave an overview of the item in the attached presentation.

B. Present and Discuss **Little Elm Historical Artifacts.**

Council Member Lisa G. Norman stated that she had some constituents reach out to her about what we are going to do with historical artifacts of the Town.

Town Manager Matt Mueller stated that since the Town is relatively new, we do not have a lot of historical artifacts. He stated that Deputy Town Manager Doug Peach recommended working with the Denton County Historical Society to display the few items we do have.

Mayor Pro Tem Jamell Johnson suggested discussing the opportunity for a new time capsule. Mr. Mueller stated that this could be incorporated into the strategic plan as a long term objective.

C. Discussion of **Crossing Concerns on U.S. 380.**

Council Member Andrew Evans introduced this item. He stated there have been concerns from the community regarding safety for individuals crossing U.S. 380 due to the development in the area and lack of lighting. He is requesting support from Town Council for staff to continue to work with Denton ISD and TxDOT to improve safety measures.

Rocio Lopez, a resident of Union Park, stated that she shared a video of children crossing 380 with Council Member Evans who shared it with the school district. She stated that she has followed up wtih TxDOT regarding her concerns, who informed her that U.S. 380 does not meet the criteria for a school safety zone.

Council Member Evans suggested working with Denton ISD to look at options to find ways to make improvements for safety, such as wrought iron fencing along U.S. 380.

Council Member Neil Blais asked Chief Harrison if it would be possible to have designated patrol officers for a specified time period cite students for jaywalking at non-designated crossing areas. He stated that it would be possible.

Lopez also requested having another conversation with TxDOT regarding the striping of crosswalks on U.S. 380 and Navo Road that is faded.

Town Manager Matt Mueller gave background regarding staff's discussions with Denton ISD and TxDOT regarding this issue.

Additionally, Town Engineer Wesley Brandon gave an update on the construction of U.S. 380 in the attached presentation.

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

A. Invocation.

Pastor Melissa Hatch gave the invocation.

B. Pledge to Flags.

C. Items to be Withdrawn from Consent Agenda.

None.

D. Emergency Items if Posted.

None.

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

Council Member Neil Blais requested a workshop item around the requirement of an 8' fence between the commercial and residential areas, causing a gap.

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 reviewed highlights of the Executive Report that was sent out last week. He stated that there is a different route for the Christmas parade this year and that the tree lighting will be held at The Lawn. He also gave an update on small area studies as part of the Comprehensive Plan.

Director of Administrative Services Caitlan Biggs discussed concerns regarding voting precinct assignments.

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 **Proclamation Declaring the Month of November 2023 as Adoption Month.**

The Mayor presented the proclamation.

B. Present **Certificates of Completion for Class 8 of Citizens Government Academy.**

The Mayor and Town Manager Matt Mueller presented certificates and challenge coins to the graduates.

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.

The Mayor presented a proclamation to Button Memorial First United Methodist Church in celebration of their 170th Anniversary.

Michael McClellan, 300 Hardwicke Lane, asked for the Council to look into potential repairs on the northern section of Hardwicke from Woodrow Circle to where the concrete starts.

5. Consent Agenda

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

Motion by Council Member Tony Singh, seconded by Council Member Michel Hambrick ***to approve the consent agenda.***

Vote: 7 - 0 - Unanimously

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

B. Consider Action to Approve a **Sole Source Bid with Aqua-Aerobics Systems, Inc. for Repairs to the Wastewater Treatment Plant Filter System in an Amount not to Exceed $80,000.**

C. Consider Action to Approve the **Purchase of Body-Worn Cameras for the Little Elm Police Department from Axon Enterprise, Inc., in an amount not to exceed $504,409.50.**

D. Consider Action to Approve an **Agreement with LexisNexis Coplogic Solutions, Inc. for an Online Reporting System for the Police Department.**

E. Consider Action to Approve the **Quarterly Investment Report for the Period ending September 30, 2023.**

F. Consider Action to Approve **Resolution No. 1107202302 for the Town of Little Elm Police Department to Receive Grant Funding for Tobacco Compliance Checks of Tobacco Sales of Underage Tobacco Purchases at Licensed Retail Outlets within the Town of Little Elm.**

G. Consider Action to Approve the **Purchase of Tasers for the Little Elm Police Department from Axon Enterprise, Inc., in an amount not to exceed $84,979.28.**

H. Consider Action to Approve the **Unaudited Quarterly Budget Report for the Quarter Ending September 30, 2023.**

6. Regular Items.

A. Hold a Public Hearing, Present, Discuss, and Consider Action on **Ordinance No. 1737 Regarding a Request to Rezone Approximately 5.172 Acres of Land, Currently Zoned as Light Commercial, Generally Located on the Northwest Corner of Oak Grove Parkway and Scarlet Falls Drive, within Little Elm's Town Limits, in Order to Establish a New Planned Development District Based on Light Commercial District, with Modified Development Standards, for the Development of New Commercial Retail and Office Space, and a Drive-Thru Component.**

Open Public Hearing:
Receive Public Comments:
Close Public Hearing:
Take Action on Ordinance No. 1737:

Managing Director of Planning Olga Chernomorets gave an overview of the item in the attached presentation.

Open Public Hearing: 8:10 p.m.
Receive Public Comments:

- **Brian K., a resident of the neighborhood near this development, stated that a group of neighbors were opposed to the site plan due to the drive-thru near the neighborhood. He requested clarification that the drive-thru near the neighborhood was not included in the updated site plan. Ms. Chernomorets stated that the drive-thru near the neighborhood was removed but there was another one on the opposite side of the development. He would like to go back to his community to let them know that there is still a drive-thru in the site plan.**
- **Applicant Patrick Phillips presented the most recent site plan. He stated they would comply with the conditions proposed by staff. He requested Town Council reconsider the requirement of the 8' screening wall due to the existing fence that sits on top of a retaining wall.**

Close Public Hearing: 8:24 p.m.

Motion by Council Member Neil Blais, seconded by Council Member Lisa G. Norman ***to approve Ordinance No. 1737 with staff conditions, Department Head approval of implemented conditions, addition of screening wall in designated opening on the east side, and removal of the 8' screening fence.***

Vote: 7 - 0 - Unanimously

B. Present, Discuss, and Consider Action on a **Development Agreement between the Town of Little Elm and Ridge Realty Partners LLC.**

Motion by Council Member Andrew Evans, seconded by Mayor Pro Tem Jamell T. Johnson ***to approve the development agreement with amendments approved in previous agenda item.***

Vote: 7 - 0 - Unanimously

C. Present, Discuss, and Consider Action on **Casting Votes for the Denton County Appraisal District 2024 Board of Directors.**

Motion by Council Member Tony Singh, seconded by Mayor Pro Tem Jamell T. Johnson ***to nominate David Terre for the Denton CAD Board of Directors.***

Vote: 7 - 0 - Unanimously

D. Present, Discuss, and Consider Action to **Cancel the January 2, 2024, Regular Town Council Meeting.**

Motion by Council Member Michel Hambrick, seconded by Council Member Andrew Evans ***to cancel the January 2, 2024, meeting.***

Vote: 7 - 0 - Unanimously

E. Present, Discuss, and Consider Action to Approve an **Update to the Little Elm Governance Policy.**

Motion by Council Member Tony Singh, seconded by Council Member Neil Blais ***to approve the changes to the Governance Policy.***

Vote: 7 - 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 into Executive Session at 8:42 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 9:07 p.m. No action was taken.

9. Adjourn.

Meeting was adjourned at 9:08 p.m.

Respectfully,

Caitlan Biggs
Town Secretary

Passed and Approved this 5th day of December 2023.

Date:	12/05/2023
Agenda Item #:	4. B.
Department:	Finance
Strategic Goal:	Maintain operational integrity and viability
Staff Contact:	Kelly Wilson, Chief Financial Officer

AGENDA ITEM:

Consider Action to Approve an **Update to the Purchasing and Procurement Card Policies.**

DESCRIPTION:

The Town's Purchasing and Procurement Card policies provide guidelines to staff, ensuring that the Town is following State and Local requirements regarding procurement. The last time these policies were updated was in 2020. The most recent updates provide further clarification and needed updates since the recent financial software conversion. Updates include clarification of approval requirements, procurement card standard limits, tracking of gift cards and promotional items, and sales tax exceptions.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

PCard Policy

Purchasing Policy

LITTLE ELM

PROCUREMENT CARD POLICY

INTEGRITY
CUSTOMER SERVICE
EFFICIENCY
INNOVATION

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Purpose

The Procurement Card (P-Card) Program is designed for efficient and effective procurement of low dollar value goods and services, and approved travel expenses. This program is an additional tool available for use in compliance with Purchasing and Finance policies and procedures. It provides the Town an efficient and controllable method for monitoring small dollar purchases, reducing paperwork, and payment to vendors in a timely manner.

New Cards

New cards are approved by department Director and issued through JP Morgan Chase by a Program Administrator, on an as needed basis. Cardholders must be employees of the Town of Little Elm, and agree and adhere to the guidelines listed below and those set forth in the Town's Procurement Policy. The card is intended to replace petty cash, small dollar purchase orders, emergency purchases, and other Finance approved credit card use. Any usage outside of this policy is a violation and subject to revocation of P-Card and purchasing privileges.

P-Cards are issued with one of the following limit thresholds:

Level One: Low Use – $1,000 monthly limit and no transaction limit

Level Two: Moderate Use - $5,000 monthly limit and $3,000 transaction limit

Level Three: High Use - $10,000 monthly limit and $3,000 transaction limit

Monthly Limit: The maximum amount authorized for the billing cycle

Transaction Limit: The maximum amount authorized for a single transaction

Usage

P-Card expenditures will follow the same procedures that are in place under the Purchasing Guidelines for purchases under $3000. Minimum standards for card use, security and payment procedures are established in this guideline. This does not, however, preclude any department from adopting internal procedures that are more restrictive in nature.

A purchase should not be made with the P-Card unless it is the most productive purchasing method. In many cases, a Purchase Order is the most preferred method. P-Cards should NOT be used to replace adequate planning.

This P-Card policy is intended to:

- Ensure that P-Card transactions are in accordance with the Town's ordinances, policies, and procedures
- Ensure appropriate internal controls are established within the program
- Ensure that the City bears no legal liability from inappropriate use of procurement cards

Upon activation and signing the back of the card, cardholders may use their P-Card for Town purchases only. When in doubt as to whether a purchase is allowable, the cardholder should contact their Director or the Program Administrator prior to making the purchase. The card may be used for most transactions not exceeding the cardholder's transaction limit, including, but not limited to:

- In-person retail purchases;
- Telephone or online orders;
- Travel (including lodging, conference fees, and training); and
- Services.

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Payments

Purchases made with a P-Card must be paid for when the order is placed. If the exact amount is not known or the vendor does not accept credit cards, the user should enter a requisition into the financial system for a purchase order to place the order.

If an invoice is inadvertently received that was intended for P-Card payment, it shall be forwarded to Accounts Payable for payment. Invoices shall not be paid with a P-Card after the fact. This is to reduce risk of accidental duplicate payment.

Receipts

An original, itemized receipt for every purchase must be obtained from the vendor each time the card is used. Restaurant purchases must include the credit card receipt with the items purchased, total, including tip, in addition to the itemized receipt. Online and telephone purchases must also be documented by an itemized receipt, which may be emailed, faxed, or mailed to the cardholder.

Vendors should not send duplicate invoices for P-Card purchases to Accounts Payable, as this may result in accidental duplicate payments.

Receipts must be scanned and uploaded into the financial system during reconciliation.

If a receipt is lost, misplaced, or destroyed, the cardholder must make every attempt to obtain a duplicate. In the event that a duplicate receipt cannot be provided within a reasonable timeframe, the cardholder must notify the P-Card Administrator, and provide an Affidavit of Lost or Destroyed Receipt with the appropriate P-Card billing cycle reconciliation.

Card Security

Each cardholder is responsible for all charges to their assigned P-Card and must maintain the card in a safe and secure manner that prevents unauthorized or improper use. The P-Card shall not be loaned or made available to another employee, friend, or family member under any circumstance.

Restrictions

Restrictions include, but are not limited to:

- Alcohol or liquor; minimal exceptions may be authorized in writing by the Town Manager. Authorization must be granted BEFORE the purchase is made, and a copy uploaded to the financial software with the itemized receipt as part of the reconciliation process;
- Spouse or family member expenses incurred while traveling (see Travel Policy for other excluded travel related expenses);
- Circumventing the Purchasing Process by splitting transactions to avoid quote or bid requirements;
- Entertainment, such as theatre, movies, etc.;
- Services for existing contracts and agreements;
- Cash refunds or advances;
- Fuel purchases for a personal vehicle;
- Gift Cards; minimal exceptions may be authorized in writing by the Town Manager. Authorization must be granted BEFORE the purchase is made, and a copy uploaded to the financial software with the itemized receipt as part of the reconciliation process. Gift cards purchased in advance of distribution shall be held in the Purchasing office for tracking;
- Computer and / or communications hardware, software, and services without prior written approval from Information Technology (IT). Authorization must be granted BEFORE the purchase is made, and a copy uploaded to the financial software with the itemized receipt as part of the reconciliation process;
- Personal purchases;
- Payment of an invoice.

Each procurement card has a transaction limit, a monthly limit, and restrictive merchant codes (MCC). A card transaction will be denied if the transaction exceeds any of these limits. These limits and restrictions can be adjusted online by the Program Administrator and will take effect immediately.

Sales Tax

As a tax-exempt government agency, the Town of Little Elm does not pay sales tax in most cases. P-Cards display the Town's tax exempt number. Cardholders are responsible for ensuring that the Town is not charged sales tax by alerting the merchant in advance that the transaction is tax exempt. If tax is included, the Cardholder is responsible for the reversal or reimbursement of the sales tax charge. Exceptions are allowed for restaurants, hotel/motel, and minimal tax charges of $2.00 or less.

Accidental Charges / Reimbursement

If a restricted purchase is made accidently, and noticed at time of payment, request the vendor reverse/refund the purchase. If the transaction is not noticed until later, a personal check for the full amount of the purchase must be included with the copy of receipt for the monthly statement. This includes accidental tax charges. In all cases, notify the Program Administrator as soon as any accidental charges are incurred to provide an explanation for review.

Billing Cycle

The P-Card billing cycle ends on the 5th of each month (or the following business day) and must be reconciled and approved by the prescribed due date each month. Repeat failure to reconcile may result in cardholder infraction.

Travel Expense Reports

It is the Town's policy to pay for, or reimburse, all reasonable and necessary expenses incurred when an employee travels for Town-related business. Direct payment of travel expenses with a P-Card is encouraged, as permitted. (See Personnel Policy as it relates to Town travel).

If a cardholder places Town travel expenses on a personal credit card, and the airfare/hotel/event is cancelled or postponed for any reason; providing a credit to the individual, the Town will not reimburse the cardholder for such travel expenses.

Travel expense reports allow for the itemization of P-Card purchases as “prepaid expenses.”

As outlined in the Town’s Personnel Policy, meals are paid for via per diem and meal charges are not permitted on a PCard.

Promotional Gift Items

It is recognized that suppliers may include a promotional item, gift, or incentive with purchase. If a promotional item, gift, or incentive is received, the cardholder must surrender the item(s) to their department director for tracking and distribution upon receipt. Cardholders should take caution, by not choosing to purchase from a business simply based on promotional offerings.

Cardholder Duties and Responsibilities

Cardholders, or an assigned Admin, are responsible for reconciling PCard transactions in the financial system within the published due date each billing period. The cardholder must ensure each transaction is within the guidelines, sales tax was not applied (or exception applies), and the original, itemized receipt is included. Once the transactions have been reconciled and approved in the financial system, the transactions will route to Finance for review and finalization.

The cardholder is responsible for processing returns, verifying credits are received, and disputing charges directly with the vendor. Any transaction in dispute must be noted in the item's description in the financial system. Cash refunds for returns are not allowed. The cardholder must verify the credit is received and attach documentation such as a return receipt or email from the vendor to the expense report. If a cardholder finds a discrepancy, they should contact the vendor and attempt to resolve the problem directly. If a cardholder cannot resolve a disputed item directly with a vendor, the cardholder should contact Program Administrator for assistance.

The cardholder is responsible for immediately notifying JP Morgan Chase, their supervisor, and the Program Administrator if the card is lost of stolen. The contact number is found on the back of the physical card. The cardholder shall also complete the Lost Card Form and submit it to the Program Administrator Promptly. If fraud is suspected, the same steps should be followed.

Department Director Duties and Responsibilities

The Department Director is responsible for auditing and approving the transactions in the financial system after cardholder reconciliation.

P-Cards must be returned to the Program Administrator immediately upon notice of resignation, transfer, or termination of the cardholder. In the event of unauthorized or inappropriate purchases, the Town reserves the right to withhold final paychecks until this is resolved.

In the event a cardholder has used the card fraudulently, the Department Director shall immediately retrieve the card and report the misuse to the Program Administrator. Fraudulent activity of any kind is cause for immediate suspension or termination administered by the Town's Human Resources Department.

Program Administrator Duties and Responsibilities

The P-Card program is administered and maintained by the Purchasing Division and is the Town's point of contact for the program. Upon approval in the financial system, billing statement and receipts are reviewed by the Program Administrator for audit purposes. The Program Administrator orders and terminates the P-Cards, trains cardholders, maintains card limits and documentation, reconciles the expense reports with the Town's financial software, and audits the statement and receipts for compliance.

The Program Administrator will report to the Department Director and Chief Financial Officer (CFO) any cardholder infractions. Misuse and/or abuse of card privileges will be dealt with as follows:

1st Occurrence: The Program Administrator, Chief Financial Officer (CFO), and Department

Director will provide a warning to the cardholder. Cardholder will take the necessary, documented steps, to prevent further issues.

2nd Occurrence: The Program Administrator, Chief Financial Officer (CFO), and Department Director will determine if the cardholder will continue in the card program. Department Director will take the necessary, documented steps, to prevent further issues.

3rd Occurrence: The Program Administrator and Chief Financial Officer (CFO) will terminate the cardholder's privileges with deferral to the Human Resources Department for disciplinary action.

Revocation of the Purchasing Card

The purchasing card is subject to revocation at any time at the discretion of the Purchasing Manager and the Chief Financial Officer (CFO). Each cardholder must acknowledge receipt of the purchase card, understand the rules of usage, and sign the Cardholder Agreement Form. Failure to abide by this policy will result in revocation of their card and disciplinary action up to termination of employment. The cardholder will be required to reimburse any unauthorized transactions and the Town reserves the right to withhold final paychecks until all purchases are satisfactorily reconciled.

The Program Administrator will recommend to the Chief Financial Officer (CFO) that the card be revoked following any violation of the Procurement Card policy. The Program Administrator is authorized to temporarily suspend use of the card if unauthorized use is discovered and poses a threat to internal financial controls.

LITTLE ELM

AFFIDAVIT OF LOST OR DESTROYED RECEIPT

Employee Name	
Department	
Card Number	***(Last four digits only)***

I declare on oath that the original receipt for the transaction dated _____ in the amount of $_____ from _____(vendor name) has been lost or destroyed. The vendor has been contacted and is not able to provide a duplicate receipt for this purchase. The information below details the transaction in lieu of an itemized receipt.

I understand that falsification of this affidavit / itemization of this purchase constitutes an act of fraud.

Item Purchased (must be detailed)	Amount

Please list each item on a separate line. Use a supplemental sheet if necessary.

Employee Signature		Date
Department Director Signature		Date
Finance Department Signature		Date

TOWN OF LITTLE ELM
BUSINESS MEAL AUTHORIZATION & EXPENSE FORM

Attach this form to your PCard Statement
Receipts must be itemized

Meeting Date: _____ Amount: _____

Location: _____

Individuals Included: Business Relationship:

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

Purpose: _____
_____

Business Meals must meet ALL of the following criteria. Please check where applicable:

_____ Non-Routine
_____ Clear Business Objective which will benefit the Town
_____ Involves an Executive Level Employee or Designee and an client, official, or customer

And must meet one of the following tests:

1 Directly-Related Test: The meal must satisfy all of the following:
- _____ a. The main purpose of the combined business and meal is active conduct of business.
- _____ b. Business is actually conducted during the meal period, and
- _____ c. There is more than a general expectation of deriving income to the Town, Lowering Town expenses, or some other specific Town benefit at a future time.

2 Associated Test: The meal must satisfy all of the following :
- _____ a. Associated with the active conduct of the Towns Business, and
- _____ b. Directly before or after a substantial business discussion.

Approvals:

_____ _____
Date Cardholder Signature

_____ _____
Date Dept. Head Signature

Finance Use Only:

_____ _____
Date Finance Approval

CHAPTER 1 - Policy

Policy

It is the policy of the Town to conduct procurement functions efficiently, effectively, and in full compliance with all federal and state laws, Town Charter, and Town administration policy and procedures. The Town Council's authority to contract for all goods and services and make all sales is delegated to the Town Manager as set forth in this policy and to those employees to whom the Town Manager delegates that responsibility. The Purchasing Manager has been delegated by the Town Manager to contract for the Town in accordance with this policy.

Unauthorized personnel who attempt to contract in the name of the Town, or personnel making unauthorized purchases outside of the scope of this policy, may be subject to disciplinary action, legal action, and personal financial liability.

If a person fails to comply with the competitive bidding or competitive proposal procedures required by law, that person may be convicted of a Class B misdemeanor. This includes a situation in which a person knowingly makes or authorizes separate, sequential, or component purchases in an attempt to avoid competitive bidding requirements.

CHAPTER 2 – Responsibility, Authority, & Enforcement

This chapter covers the responsibility delegated to various staff, their respective approval authority, and enforcement.

Town Council

Pursuant to state law, Town Council issues the following policy statements:

1. Best Alternative Delivery Method – The Town Manager is authorized by Town Council to select the best alternative project delivery method as defined by state law.

2. Competitive Sealed Bidding or Proposals – The Town Manager, or his designee is authorized by Town Council to select a procurement method of either competitive sealed bidding or competitive sealed proposals for the procurement of goods and services as defined by State law for purchases that exceed $50,000 or as may be amended in the future.

3. Electronic Bids & Proposals – As defined in Town Resolution 10211402, and pursuant to Texas Local Government Code Section 252.0415 "Procedures for Electronic Bids or Proposals," the Town of Little Elm has adopted the following rules to ensure the identification, security, and confidentiality of electronic bids or proposals, and that the electronic bids or proposals remain effectively unopened until the proper time:

    a. Users of the system shall be assigned unique user names and passwords.

    b. Access to the system by authorized users shall be logged and tracked in order to record when any user has accessed the system, and what data the user has accessed.

    c. Transmittal of data through the internet shall be encrypted using SSL technology. All sensitive data within the system shall be encrypted using the Advanced Encryption Standard algorithm (AES), or better.

    d. All data shall be encrypted using a time-sensitive mechanism that allows the data to be decrypted only after the due date and time.

    e. The system shall be synchronized to two or more atomic clocks to ensure exact recording of the due date and time, and the receipt date and time, of each submission.

    f. Neither vendor identities nor the contents of submissions are available during the bidding process.

    g. Only the Town's Purchasing Manager or designee, with an authorized password, and only at the established due date and time, can request that the bid/proposal be opened.

    h. The Town will determine when and what information is released to the public pursuant to Texas Law.

4. Rejection of Bids – Although full compliance to specifications may have been met, all bids, quotations or proposals may be rejected prior to award if it is determined to be in the best interest of the Town. The Town Manager, or his designee, is authorized by Town Council to reject bids or proposals that are not in the best interest of the Town.

5. Exception to Council Approval – Items within the dollar amount previously approved by the Town Council require no further Town Council action when being purchased through or as:

   a. an Interlocal Agreement,
   b. a Cooperative Program,
   c. a regional Council of Government (COG) Program,
   d. a sole source as defined under State bidding laws,
   e. maintenance agreements for existing software or hardware, or
   f. utilities.

   Purchases that are part of a Capital Improvement Project (CIP) do not qualify for this exception.

6. Change Orders – The Town Manager, or his designee, is authorized by Town Council to approve change orders up to the dollar amount limit, as defined by state law or as may be amended in the future.

Town Manager

The Town Manager establishes the rules and regulations for the purchase of all goods and services by means of this policy. The Town Manager has delegated to the Purchasing Manager the authority to procure all goods and services and to dispose of all salvage/surplus and seized property for any department and shall administer the purchasing rules and regulations as established by all federal law, state law, and Town charter and ordinance provisions.

The Town Manager is responsible for ensuring compliance by all departments with the policies and procedures outlined in this policy and to promote and protect governmental purchasing integrity

Delegated Authority:

1. Purchases less than $50,000.
2. Change Orders less than $50,000.
3. Items not budgeted, subject to Town Council Budget Amendment Approval.
4. Approval of all procurement documents needing Council action.
5. Execute all contracts/agreements as approved and authorized by Town Council.
   a. Agreements and/or contracts obligating Town funds will be signed by the Town Manager, Purchasing Manager, or chief Financial Officer. No other employees have been designated or granted the authority to bind the Town.

Purchasing Manager

The Purchasing Manager performs or oversees compliance with all procurement requirements for goods and services as prescribed in this policy. The Purchasing Manager ensures all procurement activities are conducted with the highest level of ethical standards, provide suppliers a fair opportunity to compete for Town business and protect public funds.

1. Solicitations $50,000 or greater will be managed through the Purchasing division in collaboration with the responsible department.
2. Determine which method of procurement provides best value for the Town.
3. Approval of required rating for bonds and insurance.
4. Determine and implement the most appropriate method of disposal of salvage/surplus and seized property in accordance with applicable laws.
5. Collaborate with departments on:
    a. Solicitation documents and methods ensuring competition.
    b. Facilitating evaluation and recommendations for award.
    c. Concurrence with Town Council recommendations.
    d. Maintenance of vendor list.
6. Review and question requisition/solicitation documents.
7. Update all procurement forms, templates, policies, and procedures and ensure compliance.
8. Purchasing may consult with the Town Attorney for review of all procurement related issues.

Delegated Authority:

1. Execute all Purchase Orders as have been approved by the Town Council, Town Manager and/or other appropriate staff.
2. Execute all Interlocal or Cooperative Purchasing Agreements, as appropriate.
3. Purchase budgeted goods or services from a cooperative or off another entities competitively bid contract, as have been approved by the Town Council, Town Manager, and/or other appropriate staff.
4. Execute contracts, purchases, and change orders up to $50,000.
5. Execute contracts and change orders as have been approved by the Town Council and/or the Town Manager.
6. Determine which method of procurement provides the best value for the Town and make recommendation to the Town Manager and/or the Town Council, as appropriate.
7. Reject any and all bids, in concurrence with requesting department, when in the best interest of the Town, and make recommendation to the Town Manager and/or Town Council, as appropriate.

Directors

Directors are responsible for planning purchase requirements in order to allow sufficient time to obtain bids or proposals, to ensure policy compliance within their department, and to promote conduct that fosters public confidence in the integrity of the Town by:

1. Ensuring adequate funds are appropriated.
2. Manage, review, and approve department PCard use.
3. Utilize the Purchasing for purchases between $3,000 and $50,000 when possible.
    a. Exception: goods or services requiring vendor insurance/indemnification or a pre-bid conference will be managed and solicited by the Purchasing Manager.
4. Ensuring Historically Underutilized Business (HUB) participation in accordance with the provisions of Texas Local Government Code Chapter 252.
5. Provide specifications for goods or services requested to Purchasing and vendor sources when possible (name & email).
6. Delegate authority as appropriate to prepare requisitions and specifications.
7. Guard against misappropriation of Town funds by safeguarding public funds and ensure fair, open, and transparent purchasing processes by providing equal opportunities to all vendors.
8. Directors may sign contracts of $10,000 or less for one-time agreements, professional services, or special events. Contracts spanning multiple Fiscal Years require Purchasing approval in advance. All other types of contracts must be reviewed and signed by Town Manager, Chief Financial Officer, or Purchasing Manager (see Chapter 2, Town Manager, Item 5). Copy of signed agreement shall be forwarded to Purchasing and requisition entered into the financial system before services are rendered.

Directors are responsible for notifying Purchasing of:

1. Names of all departmental individuals authorized to approve requisitions and purchase orders and to ensure the approval process is maintained within the electronic system.
2. Any changes in delegation of such authority.
3. Any agreements signed at Director level.

Permanent authorization will remain in effect until written notification of a change is received by Purchasing.

Department Staff

Delegated individuals within a department who have been properly trained to prepare and issue requisitions, specifications, solicitations, and manage PCard reconciliation in accordance with this policy.

1. Provide complete documentation of any vendor's failure to perform as contracted.
2. Maintain records per retention schedule.

Procedures

The Chief Financial Officer and Purchasing Manager is responsible for ensuring the proper expenditures of funds, both budgeted and unbudgeted, and verifying the availability of funds for Town Council recommendations and awards before being placed on the Town Council Agenda.

Approval Authority

The following approval levels shall be utilized in all procurement related matters.

1. All procurement card (PCard) transactions must be approved by the respective department Director.
2. All other Procurement Related Expenses are approved as follows:

Amount	Approval Requirements				
$0 - $999	Designated Staff				
$1,000 - $2,999	Designated Staff	Purchasing			
$3,000-$24,999	Designated Staff	Director	Purchasing		
$25,000-$49,999	Designated Staff	Director	CFO	Purchasing	
$50,000 +	Designated Staff	Director	CFO	Town Council	Purchasing

Separate, Sequential, and Component Purchases, as defined in Appendix B, are prohibited.

Purchases less than $1000

Do not require a purchase order or quotations. These purchases may be placed on a P-card, or processed by forwarding an official invoice with check request to Accounts Payable.

Purchases $1,000- $2999.99

The user department must obtain at least one quote. Purchases may be placed on p-card or purchase order by entering a requisition for processing by Purchasing. Once the purchase order is issued, the user department may place the order.

Purchases $3000 to the State Expenditure Limit

The user department must obtain a minimum of three written quotes, and two must be from HUB vendors (when possible) as required by State Law. This information shall be submitted with the requisition to Purchasing for review and processing. The Purchasing Division shall select the vendor based upon the lowest overall price meeting specification(s) or best value, and issue the purchase order. Once the purchase order is issued, the user department may place the order.

Purchases above the State Expenditure Limit

Require the Purchasing Division to make the desired purchase.

The Purchasing Division, with the aid of the User Department, shall develop a bid or proposal package, if applicable, and distribute invitations to suppliers that may provide the products or services being bid or proposed and will publicly advertise the Town's intent to accept bids or proposals in accordance with State law. The Purchasing Division will also distribute and post the bid or proposal through the online Procurement software.

Pre-Bid or Pre-Proposal conferences may be conducted if, in the opinion of the Purchasing Manager, further explanation or coordination is needed due to the nature of the solicitation.

The Purchasing Division shall open bids or proposals at a designated time and place as indicated in the advertisement.

The Purchasing Division shall develop a bid or proposal tabulation and distribute, along with copies of the supplier bid documents, to the user department.

The User Department shall review all documents and provide a written award recommendation to the Purchasing Division.

The Purchasing Division shall review and evaluate all documents, including departmental recommendations, to ensure total compliance with all Town policies and State laws.

The Purchasing Division or User Department shall prepare an agenda package for Council approval prior to award. If an agenda package is prepared by the User Department, a copy should be routed to the Purchasing Division with sufficient time so that it may be reviewed for approval prior to placing on the agenda.

Once approved by Council, the user department shall enter a requisition for the purchase, and the Purchasing Division will issue a Purchase Order. Once the purchase Order is issued, the User Department shall forward to the awarded supplier.

Exceptions

A Purchase Order is required for all expenditures exceeding $1,000. The following are examples of exemptions to this statement:

1. Purchases made on a PCard
2. Refunds, cash or developer escrow repayments, and cash bonds
3. TMRS and insurance premiums and claims payments
4. Auction commission payments, United Way pass through payments
5. Postage and advertisement of legal notices
6. Certain medical payments including physicians, nurses, drug testing
7. Utilities
8. Real estate and rights-of-ways
9. Arbitrage
10. Expenditures for services in which a scope of work has been defined and specific rates are known at the time of engagement; but the extent of the engagement is not known; for example, the hiring of an attorney or legal counsel

Additional exemptions may be approved by the Purchasing Manager. The approval must be obtained prior to the order being placed.

Types of Solicitation Methods

Following are the types of solicitations or requests for pricing. The Purchasing Manager will determine the best method for each purchase in order to achieve best value for the Town.

1. Quote - Request for Quote
2. Invitation for Bid (IFB) – also known as Invitation to Bid (ITB), Competitive Sealed Bid (CSB)
3. Request for Proposal (RFP) – also known as Competitive Sealed Proposal (CSP)
4. Request for Information (RFI)
5. Request for Qualifications (RFQ) – also known as Request for Statements of Qualification

CHAPTER 2 – Responsibility, Authority, & Enforcement

Enforcement

It shall be the responsibility of the Purchasing Manager to enforce all purchasing procedures.

1. A violation is defined as an employee's action or omission that indicates an intentional or reckless disregard for purchasing laws, policy, or procedures. A violation also may be noted if the employee's action was unintentional but violates federal law, state law, Town charter, ordinance, policies, or procedures.
2. Violation of purchasing procedures will be noted to the appropriate Director in writing from the Purchasing Manager through a Statement of Non-Compliance form.
3. Repetitive violations of purchasing procedures by one department or individual will be communicated to the Town Manager in a memorandum from the Purchasing Manager.
4. Texas Local Government Code § 252.062, 252.063 and 271.029 provide criminal penalties for officers and employees who knowingly violate state statutes.

Personal Use Prohibitions and Permissions

1. If an employee acquires merchandise or services for the employee's personal use from a vendor doing business with the Town, such merchandise or services may not be delivered to the employee or another Town employee unless the acquisition is paid directly to the vendor by the employee. No personal invoices are to be mailed to an employee (or another Town employee for or on behalf of the employee) at the employee's (or other employee's) place of work. Employee is responsible for payment of applicable sales tax.
2. Employees may purchase merchandise or services from a vendor doing business with the Town provided that the price at which the item is purchased is the same price charged to all officers and employees of the Town. Employees cannot use the Town's business accounts for personal purchases. Employees that are involved in contract negotiations should not purchase merchandise or services for personal use with a vendor that is currently working, seeks to work, or has worked for the Town.
3. Employees shall not use the Town of Little Elm tax exemption forms for personal use.

CHAPTER 3 – Statute

The Procurement policy is based on Texas statutory provisions as found in the Texas Government Code, Texas Local Government Code, Texas Insurance Code, and Texas Labor Code, as amended. Although all such provisions apply to the policies and procedures set forth in this policy, selected statutes are provided herein for guidance, as follows:

Definitions, Texas Local Government Code, §252.001

1. **Component Purchases** – purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.
2. **High Technology Procurement** – the procurement of equipment, goods, or services of a highly technical nature, including:
   a. data processing equipment and software and firmware used in conjunction with data processing equipment;
   b. telecommunications equipment and radio and microwave systems;
   c. electronic distributed control systems, including building energy management systems; and
   d. technical services related to those items.
3. **Separate Purchases** – purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.
4. **Sequential Purchases** – purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

Quotes/bids threshold, Texas Local Government Code, §252.021

Expenditures of more than $3,000, but less than $50,000, require the buyer to obtain a minimum of three quotes. Two of the quotes must be from Historically Underutilized Businesses (HUB).

The Town must competitively bid or accept sealed proposals for any goods/services over $50,000.

Payments, Texas Government Code, §2251.021 through 2251.030

A payment by a governmental entity under a contract executed on or after September 1, 1987, is overdue on the **31st day after the later of**:

a. the date the governmental entity receives the goods under the contract; or

b. the date the performance of the service under the contract is completed; or

c. the date the governmental entity receives an invoice for the goods or service.

If goods or services are incomplete Town staff must document any issues/shortages and notify the vendor in writing. All deliveries should be verified upon receipt. **Payments are not made until goods and services are accepted.**

Interest on overdue payments accrues at the interest rate established by law.

Departments are encouraged to take advantage of prompt or early payment discounts.

Payments will only be made to vendors that have a valid purchase order or through use of a procurement card (PCard). Payments made via PCard shall be initiated prior to placement of an order.

Vendors / Contractors must pay subcontractor or supplier who supplies goods/services for which payment is made within ten (10) days after receipt of payment from the Town.

Criminal penalties, Texas Local Government Code, §252.062

1. A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 252.021. An offense under this subsection is a Class B misdemeanor.
2. A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates Section 252.021, other than by conduct described by Subsection (a). An offense under this subsection is a Class B misdemeanor.
3. A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates this chapter, other than by conduct described in Subsection (a) or (b). An offense under this subsection is a Class C misdemeanor.

Removal / Ineligibility, Texas Local Government Code, §252.063

1. The final conviction of a municipal officer or employee for an offense under Section 252.062 (a) or (b) results in the immediate removal from office or employment of that person.
2. For four years after that date of the final conviction, the removed officer or employee is ineligible:
    a. to be a candidate for or to be appointed or elected to a public office in this state;
    b. to be employed by the municipality with which the person served when the offense occurred; and
    c. to receive any compensation through a contract with that municipality.

Insurance requirements, Texas Labor Code, §406.096

All contractors and subcontractors shall have insurance coverage including worker's compensation. Proof of coverage must be provided prior to any work beginning. *Certificates must be submitted to Purchasing.*

Minimum Required Insurance: Workers Compensation, General Liability, and Auto Liability.

Other types of insurance may be required depending on the type of work or service requested.

"Building or construction" includes:

1. erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance; or
2. remodeling, extending, repairing, or demolishing a structure; or
3. otherwise improving real property or an appurtenance to real property through similar activities.

Public records

Vendors or a member of the public may request a copy of a Bid Tabulation that is compiled when bids are opened in accordance with Chapter 552 of the Texas Government Code.

The Town will not release copies of bids or the bid evaluations until after the contract has been awarded in accordance with §552.104 of the Texas Government Code. This is not a waiver of any exception to the requirements of public disclosure contained in the Texas Public Information Act including, but not limited to, trade secrets or other commercial or financial information that is made confidential by law.

CHAPTER 4 - Ethics

Procurement Code of Ethics

A special responsibility is imposed on all Town of Little Elm employees entrusted with the allocation of Town funds. In government procurement, employees are held to the highest degree of integrity, to secure best economic results, and to comply with the procurement process.

It is critical that employees involved in procurement and procurement-related functions remain independent, free of obligation or suspicion, and completely fair and impartial. Credibility and public confidence are vital. A shadow of doubt can be as harmful as the conduct itself. It is with this in mind that the following procedures are set forth. Every person employed by the Town of Little Elm and performing public purchasing and purchasing–related functions shall abide by this code of ethics.

Perception

1. Avoid the intent and/or appearance of unethical or compromising practice in relationships, actions, and communications. If a situation is perceived as real, then it is in fact real in its consequences.
2. Avoid business relationships with personal friends and relatives. Request a reassignment of responsibility if the situation occurs.
3. Avoid noticeable displays of affection, which may give an impression of impropriety.
4. Avoid holding business meetings with suppliers outside the office. If such a meeting is necessary, carefully choose the location so there will be no perception by others in the business community or your peers of impropriety.

Responsibility to Your Employer

1. Demonstrate loyalty to the Town of Little Elm by adhering to lawful instructions, using reasonable care, and only granted authority.
2. Follow the letter and spirit of all laws, policies, and procedures. Interpretation of the law should be left to legal counsel.
3. Understand the authority granted by the Town of Little Elm.

Conflict of Interest

Refrain from conducting any private business or professional activity that would result in a conflict of interest between the employee and employer.

No employee of the Town may:

1. Have any financial or other interest, directly or indirectly, in any proposed or existing contract, purchase, work, sale, or service to, for, with, or by the Town. The Town Manager may, at his discretion, waive this requirement.
2. Use Town employment, authority, or influence in any manner for personal betterment, financial or otherwise;
3. Have a financial interest, directly or indirectly, in the sale to the Town of any materials, supplies, or services.
4. Have discussions or participate in discussions of any Town agency, board, commission or instrumentality if the employee has a personal economic interest or is employed, directly or indirectly, by the person or entity that is the subject of the discussion or decision, except as noted below (see Town Human Resources Manual);

5. Accept other employment or engage in outside activities incompatible with the performance of duties and responsibilities as a Town employee or that might impair independent judgment in the performance of duties to the Town; or
6. Accept monetary payment or provide services for compensation, directly or indirectly, to a person or organization requesting an approval, investigation, or determination from the Town.

Violations of this policy may result in disciplinary action up to and including termination of employment and may void any resulting contract.

Town employees and officials must become familiar with the requirements in Texas Local Government Code Chapter 176, Disclosure of Certain Relationships with Local Government Officers; and Texas Local Government Code Chapter 171, Regulation of Conflicts of Interest of Officers of Municipalities; and the penalties provided therein.

Gratuities (Gifts and Entertainment)

Employees of the Town must:

1. Refrain from soliciting and/or accepting gifts of any kind from vendors, actual or potential;
2. Never provide special favors or privileges to anyone, either as payment or under any other circumstance;
3. Never accept for self, friends, or family any favors or benefits which might be construed as influencing the performance of duties;
4. Adhere to Town of Little Elm Code of Ordinance and to the Human Resource Policy regarding ethics/gifts.

Supplier/Vendor Relations

Employees of the Town must:

1. Promote positive vendor relations through courtesy and impartiality in all phases of the procurement process;
2. Handle confidential or proprietary information belonging to the Town, fellow employees, or vendors with care and proper consideration of ethical and legal ramifications, and governmental regulations;
3. Never use information gained confidentially in the performance of duties for profit;
4. Exhibit a friendly, cooperative and yet objective relationship to all suppliers; this will help avoid the appearance of partiality in business dealings; and
5. Actively strive to comply with Town policies and federal and state laws regarding purchases from small businesses and those owned by minorities and other disadvantaged groups.

Town employees must discharge their duties impartially so as to assure fair competitive access to government procurement by responsible suppliers. Town employees must conduct themselves in such a manner as to foster public confidence in the integrity of the Town of Little Elm procurement organization. It is each employee's duty to report any potential violations to the proper authorities.

CHAPTER 5 – General Information

Bid Protests

All protests regarding the bid solicitation process must be submitted in writing to the Purchasing Manager within five (5) working days following the opening of bids. This includes all protests relating to advertising of bid notices, deadlines, bid opening, and all other related procedures under the Texas Local Government Code, as well as protests relating to alleged improprieties or ambiguities in the specifications.

The 5-day limitation does not apply to protests relating to staff recommendations as to award of a bid. Protests relating to staff recommendations may be directed to the Town Council by contacting the Town Secretary prior to Town Council Award.

Budgeted Funds

Funds must be available and in the proper account prior to issuance of a purchase order and before the use of a purchasing card.

Check Request

Check requests are used for the following purchases:

1. **Refunds** – Include the reason for request and attach documentation indicating the person or organization name; date of original purchase, contract date or class date; and reason for refund.
2. **Contract Labor** – Include the reason for request and attach as backup, a copy of the employee contract for a one-time payment, jury duty, or for instructors. Submit proper documentation such as a copy of the instructor contract.
3. **Reimbursements** – Include copy of detailed invoice or receipt.

Debriefing

A debriefing is a review of the vendor's quote, bid, or proposal. It is normally provided to unsuccessful vendors. Debriefings are normally requested during the proposal process, but may be done for any type of solicitation that evaluates factors other than price. The process may be formal (face-to-face) or informal (over the phone/email).

Outline the vendor's strengths and weaknesses. This provides detailed information for the vendor to learn from and to better prepare for future proposals.

Do not discuss competing proposals.

Freight Charges and Fees

Include freight costs and fees in the total cost when obtaining quotes. Note: freight and fees must be considered in determining the award.

All freight should be requested as FOB Destination (delivery address) freight pre-paid and allowed.

Restricted Purchases

1. Information Technology (IT) related purchases/contracts, including software, hardware, copier and printer purchases, rentals, and leases, should be initiated by the IT Department to ensure proper security controls are met. If the purchase is not initiated by the IT Department, prior Authorization must be granted from the IT department BEFORE the purchase is made, and a copy uploaded to the financial software with the requisition.
2. Alcohol or liquor; minimal exceptions may be authorized in writing by the Town Manager. Authorization must be granted BEFORE the purchase is made, and a copy uploaded to the financial software with the requisition
3. Gift Cards; minimal exceptions may be authorized in writing by the Town Manager. Authorization must be granted BEFORE the purchase is made, and a copy uploaded to the financial software with the requisition. Gift cards purchased in advance of distribution shall be held in the Purchasing office for tracking;

Non-Discrimination Policy

1. It is the policy of the Town of Little Elm to afford all suppliers an equal opportunity to bid on any contract being issued by the Town.
2. The Town of Little Elm has a policy that prohibits discrimination against any person because of race, color, sex, religious affiliation, age, disability, or national origin, in the award or performance of any contract.
3. The Town of Little Elm will require its officers, employees, agents, and contractors to adhere to this Policy.
4. The Town of Little Elm encourages participation by Historically Underutilized Businesses (HUB's) to bid on Town contracts. The Town of Little Elm works to notify these businesses of bidding opportunities.

Placing Orders

A copy of a purchase order or purchase card (PCard) information must be given to the supplier at the time an order is placed. Invoices may not be paid with a Pcard.

Receiving of Materials

The authorized purchaser is responsible for verifying that all materials/services are received in working order and meet specifications. Once materials/services have been received and verified to be correct, indicate receipt of materials on the invoice by noting "received in full" or "received partial" for each line item on the Purchase Order**.**

If the quantity received does not agree with the vendor's packing slip or the material does not conform to specification, the vendor must be notified immediately.

Sales Tax Exemption

The Town is exempt from sales, excise and use taxes under Texas Tax Code, § 151.309. The Town is NOT exempt from sales tax for food, lodging or transportation-related purchases for employees during travel.

Tie Bids

If all factors and conditions relating to the bids are equal, then the tie bid will be awarded to the local vendor. If more than one vendor is local or none are local, then a coin toss will be conducted by the Purchasing Manager with at least one witness.

Electronic Signatures

An electronic signature or e-signature is any electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. The Town may elect to utilize e-signatures for certain contracts or transactions, when allowed by law. The use of electronic signatures, in accordance with the policy, are legally binding and equivalent to handwritten signatures.

Electronic Receipt of Bids

The Purchasing Division shall request electronic receipt of bids only, following established guidelines set forth in Town Resolution 10211402. The Purchasing Manager may make an exception to this procedure in the event that the Town determines it is necessary to accept paper bids.

CHAPTER 6 - Bonds, Insurance, and Indemnification

Bond Policy

1. Bidders may be required to provide certain bonds for Public Works Contracts. This ensures that if the bidder attempts to withdraw after the bid is accepted, the Town will not suffer loss. The Town will only accept corporate sureties duly qualified and authorized. Personal sureties will not be accepted. All required bonds must be approved by the Purchasing Manager prior to contractors or vendors commencing work.
2. The Town may require bonding on other projects to mitigate risk.
3. The Town of Little Elm requires payment, performance, and maintenance bonding to be provided on Town approved forms in accordance with statute.

Types of Bonds

1. **Bid Bonds** –The Bid Bond minimum limit is five percent (5%) of the total amount bid and would typically apply to construction contracts. It is the Town's option whether or not to require bidders to provide a Bid Bond. Certified or cashier's checks will NOT be accepted in lieu of a Bid Bond. Bid Bonds are provided on surety forms. Bid Bonds will be returned to the issuing vendor upon request. Bond must be requested within ten days of award.
2. **Payment Bonds** are required for Public Works Contracts in excess of fifty thousand dollars ($50,000) and must be written for one hundred percent (100%) of the total bid price. The Payment Bond is for the protection of those performing work as subcontractors or suppliers for the prime vendor/contractor. See Texas Government Code § 2253.021
3. **Performance Bonds** are required for all Public Works Contracts when the vendor's bid exceeds one hundred thousand ($100,000), and they must be written for one hundred percent (100%) of the total bid price. These bonds are solely for the protection of the Town in the event of a contractor/vendor default under Contract terms and conditions. See Texas Government Code § 2253.021
4. **Maintenance Bonds** can be written for a term relevant to the project. The coverage provided by a Maintenance Bond is to guarantee against defective workmanship and materials.

Insurance and Indemnification Policy

1. Contractors performing work on Town property or public right-of-way shall provide indemnification and certificates of insurance or a copy of their insurance policy(s) including a copy of the endorsements necessary to meet contract requirements, and hold harmless and defense clauses. The required language is inserted in solicitation documents by the Purchasing division or owner of the specifications.
2. Contractual agreements must contain a provision that transfers the risk of the project from the Town to the contractor. Because the contractor may not have the financial resources to handle the risks that are transferred in the contract, the Town requires that insurance be purchased and maintained by the contractor for financial security.
3. Workers' Compensation Insurance – Per Statute, contractors, and subcontractors hired for building and construction projects must provide Workers' Compensation Insurance for their employees regardless of the project's cost. See Texas Labor Code, § 406.096.
4. Purchasing must verify and approve all insurance documents prior to the contract, purchase order, or commencement of work to be performed.

A contract is a written, legally binding document or obligation to do or abstain from doing some act. A Purchase Order is a contract.

Purchase orders shall be written and approved before goods or services are ordered and received. An order may not be placed until the purchase order is approved by Purchasing and issued to the supplier. This ensures purchases are approved and within budget. A Purchase Order or Contract is required when insurance and indemnification is required.

The contractor must perform and meet the requirements of the contract. All guidance provided to a contractor must be within the scope of the contract.

Annual/Term Contracts

Annual/Term Contracts. The Town may use an annual fixed price contract to obtain required goods or services from a chosen vendor for a specified time period. These contracts eliminate the necessity of bidding commodities each time they are needed. Annual contracts require a bid solicitation, award process, and purchase order.

1. Purchases of items or services may be readily quantified (such as a fixed hourly rate or a fixed price per linear foot) will be awarded on a competitive sealed bid or proposal basis and approved according to expenditure authority.
2. Once an annual contract has been awarded and approved, the responsible department(s) will create an annual or term contract Purchase Order and release the items or services under the Purchase Order number generated from the system. Once approved, no further approvals are needed for purchases against the contract.
    a. Requested items should be detailed by description and unit cost on the P.O. or an attached document, with the remarks section stating that the items are under contract to the specified vendor. Releases will then be reconciled with invoices.
3. Annual contracts for the purchase of items or services where the price and quantity does not change from one month to another is initiated by issuing one annual/term purchase order, if the system in place permits such activity.

CAUTION: Items or a service purchased from a vendor other than the vendor awarded the work is a direct violation of purchasing policy unless such purchase is an emergency purchase. An emergency is defined in Chapter 14 of this policy, entitled "Emergency Purchases," and includes items that cannot be readily furnished by the contractor awarded the annual contract.

CHAPTER 8 – Disposal of Surplus Property

Surplus property is property owned by the Town that is no longer needed. There are multiple formats for the disposal process such as: auction, trade-in, recycling, and destruction. All methods require written approval.

1. Departments should contact the Purchasing Division prior to disposal of any property over $5,000.
2. Any item that is still operable and has a potential value at auction, please hold for auction.
3. Disposition forms / Fixed Asset Forms are available from Finance or on the Town web site.

After approval by the Purchasing Division, equipment should be stored until the property can be removed for auction.

Personal Use Prohibitions and Permissions

Town employees may purchase items from Town issued third party auctions, provided that the employee making the purchase was not involved in the decision to dispose of said item(s).

Purchase of Town Equipment not sold through auction.

Used “disposable” equipment such as cell phones and other electronic equipment may be sold to an employee when available and approved by the IT Manager at a cost equal to the current fair market value. Equipment must be close to or eligible for replacement.

CHAPTER 9 – Vendor Performance

Vendors play a crucial role in the Town's day-to-day operations. As such, maintaining communication during the vendor obligation period is important. Both Town staff and the vendor should provide open communication on project status, current issues, and potential issues.

Non-Performing Vendors

When a vendor fails to perform according to the Agreement (Purchase Order, Annual Agreement, Contract, and/or Specification), the Department Director, or designee will:

1. Document the issues in writing to the vendor and to Purchasing.
2. Schedule a meeting to discuss the issues.
3. Document the resolution to the issue, as agreed upon by the department and the vendor. Documentation shall be in writing and signed by the department and the vendor and a copy forwarded to the Purchasing Manager.

If a vendor's performance remains non-compliant or otherwise unsatisfactory, the department will notify the Purchasing Manager who will attempt to facilitate a resolution. If Purchasing cannot resolve the issues, the Purchasing Manager and the Department Director will make a joint determination to cancel the contract per its terms and conditions. Purchasing will then work with the department to obtain a substitute vendor or issue a new solicitation in accordance with purchasing policy.

CHAPTER 10 – Public Works Projects

Public Works projects are those projects that require the construction, repair, or renovation of a structure, building, street, highway, bridge, park, water and wastewater distribution facility, airport runway or taxiway, drainage project, or other improvement or addition to real property.

Bid Type

Texas Government Code Chapter 2269 requires the Town Council or its designee to determine which method of procurement provides the best value for the Town.

Prevailing Wage Rates

1. Texas Government Code Chapter 2258 mandates the any Public Work contract awarded by the Town include the requirement to pay prevailing wage rates. The statute requires the payment of a prevailing wage rate for laborers and mechanics and applies to both contractors and subcontractors. Wages for workers on construction projects shall not be paid less than the schedule of general prevailing rates of per diem wages as mandated.
    a. The Town has adopted the U.S. Department of Labor's Wage Determinations for Denton County, Texas, for use in all Public Works projects. Rates may be accessed at: http://www.wdol.gov/dba.aspx.
2. The prevailing wage rate or a link to the wage rates with the date shall be included in public works projects.
3. Rates shall be verified by the Purchasing Manager.

Bonding Requirements

Bonds shall be in accordance with Texas Government Code Chapter 2253.

1. The bond must be executed by a corporate surety in accordance with the policies and an approved Town of Little Elm form.
2. The corporate surety must be licensed by the State of Texas to issue surety bonds and appear on the U.S. Treasury List of acceptable sureties.
3. A Power of Attorney must be included.
4. Bonding shall be verified by the Purchasing Manager prior to award.

Insurance and Indemnification Requirements

1. The minimum insurance required will be specified by the Town of Little Elm.
2. For construction-related projects, all contractors and sub-contractors, including those delivering equipment or materials or performing a service shall provide workers' compensation for all employees. General contractors are responsible for ensuring that sub-contractors carry the same or higher insurance amounts as those required.
3. All contractors shall provide proof of coverage satisfactory to the Town. Contractors shall post required signs at job site(s) informing all workers of their right to workers' compensation coverage. Texas Labor Code § 406.096

Award of Contract/Agenda Item

1. Staff in conjunction with Purchasing will review and prepare a recommendation for award. Purchasing will write and submit the agenda item information.
2. Contracts will be processed by Purchasing and added to the contract management software.

CHAPTER 11 – Professional Services

Purpose

The following are designed to assist the Town's staff in the selection of individuals or firms to perform professional services. The desire is to establish fairness and consistency in the selection process while obtaining the best value (quality services at a reasonable price) for the Town in accordance with applicable legal requirements.

Departments are asked to seek proposals or qualifications for professional services at least every five years to help ensure the greatest and fairest competition in the selection of professional services by the Town of Little Elm.

Only the Town Manager, Purchasing Manager, or CFO, may sign a contract.

Definition of Professional Services

1. Professional services generally refer to those services performed by an individual or group of individuals where education, degrees, certification, license, and/or registration are required for qualification to perform the service. The term "professional services" includes labor and skill that is predominantly mental or intellectual, rather than physical or manual, in nature. (See Texas Attorney General Opinion No. JM-940, at p. 3 (1988)).
2. Certain professions are specifically named in the Professional Services Procurement Act (ACT), Texas Government Code Chapter 2254, Subchapter A. This includes services within the scope of the practice, as defined by state law, of:
    a. accounting
    b. architecture
    c. landscape architecture
    d. land surveying
    e. medicine
    f. optometry
    g. professional engineering
    h. real estate appraising
    i. professional nursing
3. If a department is not sure if a service is a "professional service," the department should contact the Purchasing Division before securing such services.

Procurement of Architectural, Engineering, or Land Surveying Services

When procuring architectural, engineering or land surveying services, the Town shall use a two-step selection process (see Texas Government Code § 2254.004):

1. First, the Town shall select, through the RFQ process, the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and
2. Second, attempt to negotiate with that provider a contract at a fair and reasonable price. Negotiations will be facilitated by Purchasing as lead for a team of stakeholders.

If the Town is unable to negotiate a satisfactory contract with the most highly qualified provider of architectural, engineering or land surveying services:

a. First, the Town shall formally end negotiations with that provider;
b. Second, select the next most highly qualified provider; and

c. Third, attempt to negotiate a contract with that provider at a fair and reasonable price. The Town must continue this process until a contract is entered into.

d. A purchase order must be issued upon award of contract.

Fees Estimated to be under $50,000 per Year

1. The Department and/or Purchasing Division may solicit proposals from qualified professionals. Proposals will be ranked based on the demonstrated competence and qualifications of the individual or company. Negotiations may be entered into with the most highly qualified according to rank. Selection will follow the procedures established by the Professional Services Procurement Act.
2. A Purchase Order is required.

Fees Estimated to be $50,000 or Greater per Year

1. The solicitation process will be managed by the Purchasing Division.
2. The process shall contain sufficient information to inform potential Professional service vendors as to the type of project, scope of services to be performed, the selection criteria to be used and weighting assigned to each of the criteria.
3. After the evaluation of submitted Requests for Proposals, it may be necessary (as determined by the Purchasing Division) to interview several of the firms and further evaluate them on the basis of the interview or a presentation, narrowing the field until one firm is selected for negotiations. Negotiations will be facilitated by the Purchasing Division as lead for a team of stakeholders.
4. When negotiations are concluded, a recommendation will be made to the Town Council.
5. A Purchase Order is required.

Procurement of Other Professional Services

1. Professional services may be contracted through the use of Request for Proposals (RFP) or Competitive Sealed Proposal (CSP) and selection should be made as listed above, however, cost is an additional criterion.
2. Services with fees under $50,000 per year may be solicited, evaluated, and awarded by the using department's director and/or the Purchasing Division.
3. Over $50,000, the solicitation process will be managed by the Purchasing Division. The solicitation may be advertised in one edition of the newspaper to run at least one week prior to the due date for RFP or CSP.
4. The selection process will be similar to that used for professional engineers, architects, and land surveyors, and after negotiations are successfully concluded the Town Council shall be asked to award a contract.
5. To determine the best solicitation process to use when procuring "other" professional services or if the service is considered "members of disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence" contact the Purchasing Division.
6. A Purchase Order is required.

CHAPTER 12 – Change Orders

A change order is the written documentation and approval process that must be performed when changes in the scope of a project are proposed after the performance of a contract has begun. Such changes may include a significant change in the quantity of work to be performed, the cost of work to be performed, or of the materials, equipment, or supplies to be furnished. A change order is usually written for a construction contract but may be necessary in other types of contracts.

Refer to Texas Local Government Code Chapters 252 and 271.

Threshold for Change Orders

A "threshold" is defined as a financial limit on the amount of expenditures which can be authorized by the Town Manager on a construction project before requiring Town Council approval. See Texas Local Government Code Chapters 252 and 271.

1. **Change Orders Greater than $50,000** – If the change order is greater than $50,000 it must be approved by the Town Council.
2. **Change Orders Less than $50,000** – If the change order is less than $50,000 it may be approved by the Purchasing Division.
3. A change order or cumulative total of project change orders may not exceed 25% of the original contract amount.
4. Once the total of all approved change orders on a project (including the contingency amount) totals more than $50,000, all subsequent change orders must be approved by the Town Council.
5. The original contract price may not be decreased by more than 25% without the consent of the contractor.
6. Change order forms must be used to document each change.
7. Change orders shall be listed in number sequence on the Purchase Order.

Approval for Change Orders

If a change order is greater than $50,000 and is extremely time sensitive and qualifies as an emergency, the Town Manager may approve such a change order prior to Town Council approval; however, such change order still must be brought to the Town Council as soon as possible for approval. Emergency conditions are defined in this policy.

Contingency Funds

The Town Council may establish a contingency fund for a construction project at the time of award of a bid to be used during the course of a project. A contingency fund may be established at any dollar amount above the bid award provided that is reasonable and prudent.

10% or less as determined by staff/budget.

CHAPTER 13 – Emergency Purchases

EMERGENCY PURCHASES, Texas Local Government Code §252.022

An emergency condition creates an immediate and serious need for materials, services, or construction that cannot be met through normal procurement methods and that seriously threatens the functioning of the Town or the protection of property or the health or safety of any person.

Emergency purchases are for critical, unforeseen government need. Because the Town's ability to serve the public would be impaired if purchases are not made immediately, emergency purchases are exempt from standard purchasing procedures.

True emergencies almost always occur as a result of parts and labor needed for unforeseen repairs to equipment that must be kept operational. When an emergency occurs, the need for quotes will be eliminated; however, written explanation must be indicated on the Statement of Compliance for Irregular Purchases.

1. If the product or services is over $3,000 and under $50,000, obtain the Town Manager's authorization. Once authorization has been received, submit a requisition to Purchasing and obtain a purchase order, call the vendor to initiate repair services or order the needed materials. Immediately or as soon as feasible, submit a copy of the invoice, delivery ticket and the irregular purchase form to Purchasing.
2. In the event the emergency expenditure exceeds $50,000, follow the same procedures outlined in item 1 above, and prepare an agenda item and/or resolution for Town Council approval prior to payment for the products or services purchased.

<u>An emergency created through neglect will not be processed as an emergency.</u>

Typical examples of such neglect are:

1. Depletion of stock due to lack of planning.
2. Building or equipment needing repairs for some time, suddenly becoming an emergency overnight.
3. Orders of materials for projects most of which must be planned weeks or months ahead of time, and requested just before desired use.

DISASTER EMERGENCY PURCHASES, Texas Local Government Code §252.022

In extreme cases involving a disaster, an emergency declaration will be made by the Mayor. All purchases must be documented through proper state & federal forms and authorized by the Emergency Operations Center or designated employee.

Non-exempt purchases over the State Bidding Limit shall be retroactively reported to Town Council.

CHAPTER 14 – Sole Source Purchases

SOLE SOURCE PURCHASES

Sole source purchases are goods and services available from only one supplier. There may be one vendor because of patents, copyrights or simply because the vendor is the only one which supplies the good or service.

Examples: Patented products, monopolized items, rare books, captive replacement part, or component for equipment, and software with exclusive distribution rights.

Items that are only available from one manufacturer are not a sole source, if the items can be purchased from distributors. Similarly, books available from multiple sources are not sole source.

The Town is responsible for obtaining and retaining documentation from the vendor that clearly states the reasons the purchase must be made on a "sole source" basis.

Written Justification

Sole Source purchases do not require multiple quotes. In order to request a sole source purchase, the following shall be provided with a requisition to the Purchasing Division:

1. A departmental justification statement explaining why a specific product or service is considered a sole source. Ideally, this statement will describe the specific feature or capability that the material or service possesses that no other product can provide.
2. A sole source letter from the supplier (written on company letterhead), stating why this material or service is sole source, explaining the specific feature or capability it has that is not available from other sources.

For example, only one vendor sells equipment with the special feature. Other vendors have a similar feature but not exactly the same. Ask the question: do we need the specific feature and why would a similar product not work.

CHAPTER 15 – Cooperative Purchases

COOPERATIVE PURCHASES

Texas Government Code, Chapter 791, and Texas Local Government Code, Chapter 271, authorize the use of cooperative purchasing programs. These chapters authorize the Town to use (piggyback) on another entity's bid and likewise allows another entity to use the Town's contracts. Additionally, the statutes allow the Town to use a cooperative contract issued by an established cooperative agency.

The following must be included and established in order for the Town to utilize a cooperative contract.

1. The awarded vendor must have agreed to the language (term).
2. An interlocal agreement must be in place.

The Town has established memberships and interlocal agreements in place and promotes participation in cooperative purchasing programs. Current Interlocal Agreements and Contracts are available on the e-procurement website at www.littleelm.org/purchasing.

APPENDIX A

References

State of Texas Statutes

1. Texas Local Government Code; Chapter 252, 253 271
2. Texas Government Code; Chapter 552, 791, 2251, 2252, 2253, 2254, 2258, 2269
3. Texas Labor Code, Chapter 406
4. Texas Insurance Code, Chapter 1811

Town Charter

1. Section 8.09 Purchasing
2. Section 14.08 Conflict of Interest

Appendix B

DEFINITIONS

Annual Contracts – Items under contract at a specific price over a specific period of time that are used continuously throughout the year by one or more departments. Annual contracts may be established for either a fixed quantity or an estimated quantity. Annual Contracts established for an estimated quantity are also called Requirements Contracts or Term Contracts.

Purchaser – Any person designated by the Town Manager or a Department Director to purchase products and/or services within a defined level of authority.

Best Value – Term as defined in Texas Local Government Code section 252.043. Differs from low bid based on the additional evaluation of quality, bidders past relationship with the municipality and total long-term cost to the Town. Relevant criteria shall be expanded to include sustainability factors in specifications when practicable.

Bid – (IFB) A formal document used to define products and/or services to be purchased.

Bonding:

Bid Bond – A bond guaranteeing that a vendor will execute a contract if it is selected for a project.

Payment Bond – A bond guaranteeing that a vendor will pay fees owed for labor and materials necessary for construction of a project.

Performance Bond – A bond guaranteeing that a vendor will perform under the contract in accordance with all specifications of the bid submitted.

Maintenance Bond – A bond guaranteeing that completed work is free of flaws and will perform its intended function for a specified period of time.

Change Order - A document detailing necessary changes in plans or specifications or increases or decreases in the quantity of work or materials to be purchased after the contract is approved which, as required under the Texas Local Government Code, section 252.048, must be approved by either the Department Director, the Town Manager or his designee, or the Town Council, depending on the dollar amount of the contract.

Consultant - An expert or a professional in a specific field that has a wide knowledge of the subject matter. The selection of a consultant will be the same as the selection of a professional service provider.

Emergency Purchase – A purchase made under certain defined situations such as, but not limited to, a purchase necessary to preserve or protect the public health or safety of the municipality's residents, allowable under the Texas Local Government Code section 252.022 as exemptions from competitive bidding and competitive proposals.

Excluded Parties List System (EPLS) - A website administered by the General Services Administration for the purpose of providing information on parties that are under suspension or debarment from receiving Federal contracts. The website for the EPLS search is www.sam.gov.

Financial Interest – Ownership, equity interests or entitlement to such interests (including stock, stock options, partnership interest and convertible debt but excluding interest in publicly-traded investments where the individual investor has no control over the selection of holdings or significant interest).

Appendix B

Historically Underutilized Business (HUB) – Any business determined by the State of Texas to be a minority.

Construction Project: – A construction program involving the mixture of labor and/or materials needed to produce the desired results. Samples of projects may be the construction of roads, water and sewer distribution systems and facilities.

Separate, Sequential, and Component Purchases – Purchases associated with intentionally avoiding the bidding process by splitting purchases. These types of purchases are closely monitored by the Texas Attorney General's Office. The following definitions are taken directly from the Texas Local Government Code:

> Separate Purchases – Means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase, (i.e. – purchase a car today and an engine tomorrow).
>
> Sequential Purchases – Means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase (i.e. – purchase a uniform for one employee and waiting one day to purchase for another).
>
> Component Purchases – Means purchases made of the component parts of an item that in normal purchasing practices would be purchased in one purchase (i.e. – purchase a CPU, monitor, and keyboard on different days).

Insurance:

> Commercial Automobile and Truck Liability Insurance – Provides coverage on owned, hired, and non-owned vehicles covering loading and unloading hazards written on an occurrence basis having a combined bodily injury and property limit, or separate limits for per person bodily injury, per accident bodily injury, and property damage limits.
>
> Commercial General Liability Insurance – Provides coverage for general liability, fire, legal liability, products and completed operations liability, advertising and personal liability, and medical payments as described under the common law of liability of the State of Texas.
>
> Employer's Liability Insurance – Provides coverage when an employee sues for work related injuries suffered under Texas common law.
>
> Excess Liability Insurance – Provides coverage that pays benefits only when coverage under other applicable insurance policies has become exhausted; also known as "Umbrella."
>
> Worker's Compensation Insurance – Provides coverage for all compensation and all benefits required under the Worker's Compensation Act of the State of Texas.

Interlocal Agreement – An agreement that allows local governments to contract with each other to provide governmental functions and services including joining together in contracting with others to provide goods and services.

Invoice – A document submitted to the Town of Little Elm, by a vendor, requesting payment for products and/or services received and accepted.

Job Order Contract – A procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite.

Appendix B

Local Preference – A preference allowable to a vendor whose principal place of business is inside the Town limits. The preference applies only to bid awards and is for evaluation purposes only.

Newspaper of Record – A newspaper which meets the requirements stated in Section 2051.044 of the Texas Government code for advertising purposes.

Nonresident Bidder – Any bidder that does not maintain their principal place of business within the State of Texas.

Check Request – A document initiated by an authorized Town representative that approves payment to a vendor when a purchase order is not feasible or required.

Personal Services – A contract is for a personal service if a specific individual person is required to perform the service. The service must be performed by the individual named in the contract.

Planning Services – Those services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the municipality.

Professional Services – A service which includes, but is not limited to, a certified public accountant, professional engineer, architect, landscape architect, land surveyor, physician or surgeon, nurse, attorney, instructor, appraiser, and consultant. A professional service is defined as a service requiring predominately mental or intellectual rather than physical or manual skills. A professional is the one who is a member of a discipline with widely accepted standards of required study or specified attainments in a special knowledge.

Project – Unless defined elsewhere, for purposes in this directive, a project is defined as a construction project, consisting of material and labor.

Purchase Order (PO) – A document created by the Purchasing Division that gives vendor authorization to provide supplies and services of purchases valued at $1,000 and above.

Quote – An offer, including pricing, quantity, and shipping charges, from a vendor which may or may not be accepted by Town staff. Quotes are acceptable for pricing purposes when competitive bidding or proposals are not required.

Request for Proposal (RFP) – A formal document used to solicit product and cost information for goods or services where subjective criteria are used to select from respondents.

Request for Qualifications (RFQ) – A formal document used to solicit qualifications and experience of potential providers of professional services.

Requirements Contracts – An annual contract that is established based on an estimated quantity. Under this type of contract, the Town has estimated its usage during the term of the contract, but is not obligated to purchase more or less than what it actually requires.

Retainage – A percentage of payment(s) held back as security for the faithful completion of the work.

Reverse Auction – An auction in which bidders compete to sell something to a single buyer, so the bid price proceeds downward rather than upward.

Appendix B

Sole Source Purchase – Any purchase of items available from only one source because of patents, copyrights, proprietary processes, natural monopolies, captive replacement parts, or components for equipment.

State Authorized Level/State Contract Expenditure Limit – The dollar amount, as set forth by the State of Texas, at which competitive sealed bids or competitive sealed proposals must be obtained.

State Cooperative Program – A program that allows a local government to purchase goods from the State's purchasing contracts, and allows the State to solicit bids on the local government's behalf, when considered feasible by the General Services Commission.

User Department – Any Town department.

Vendor – Any business which provides products and/or services in an open and competitive market.

Appendix C

ACRONYMS

CM:	Contract Management
COOP:	Cooperative Purchasing Program
CSB:	Competitive Sealed Bid
GSA:	General Services Administration (Federal)
HUB:	Historically Underutilized Business
IFB/ITB/CSB:	Bid**/**Invitation for Bid/Invitation to Bid/Competitive Sealed Bid
Quote:	Invitation to Quote
M/WBE:	Minority/Women Business Enterprise
NIGP:	National Institute of Governmental Purchasing
REQ:	Requisition
RFI:	Request for Information
RFP/CSP:	Request for Proposal/Competitive Sealed Proposal
RFQ:	Request for Qualifications/Request for Statement of Qualifications
RFA:	Request for Applications
SOW:	Scope of Work

Appendix D

CHOOSING A PROCUREMENT METHOD

Procurement Method	Use When	Advantages	Disadvantages
Invitation to Bid	Lots of competition exists. The product or service is available from more than one source.	Award process is simpler. Award is made to the lowest responsive, responsible bidder providing the best value to the State.	Defined specifications may be difficult to develop. Does not encourage innovative solutions
Request for Proposal	When factors other than price are evaluated. When negotiations are desired. Vendor is expected to provide innovative ideas.	Allows factors other than price to be considered. Allows for customized proposals suggesting different approaches to the same business need. Allows for negotiations in order to obtain the best value for the state.	Lead times for procurement are much greater. Evaluations are more complex and subjective.
Request for Information	There is insufficient information to write specifications for any procurement method	Provides information to prepare a complete bid or proposal document. Allows the business community to have input into the agency's solicitation document based on current industry practices and market factors. Informs agency of any potential problems early in the procurement.	
Request for Qualifications	Selection is made solely on the skills and qualifications of the contractor. Price is not a factor until after a vendor is selected.	Emphasizes the competency of the proposed contractors.	Contractor is selected before price is negotiated.

Table courtesy of the State of Texas Contract Management Guide version 1.10.

Date:	12/05/2023
Agenda Item #:	4. C.
Department:	Fire
Strategic Goal:	Ensure excellence in public services while keeping up with the growth in the community
Staff Contact:	Paul Rust, Fire Chief

AGENDA ITEM:

Consider Action to Accept a **Grant from the Texas A&M Forest Service for a Fully Equipped Type 6 Fire Apparatus.**

DESCRIPTION:

The grant will pay 100% of the costs associated with a fully equipped Type 6 Fire Apparatus. The Texas A&M Forest Service will purchase, order, and deliver the new wildland firefighting vehicle on the Town of Little Elm's behalf. In return, the Town agrees to keep the vehicle maintained and ready for statewide deployments through the Texas Intrastate Fire Mutual Aid System (TIFMAS). The vehicle will come with a manufacturer's warranty.

BUDGET IMPACT:

There is no match for this grant program; 100% of the funds needed to equip and purchase the vehicle are provided through by the Texas A&M Forest Service.

RECOMMENDED ACTION:

Staff recommends approval.

Date:	12/05/2023
Agenda Item #:	4. D.
Department:	Community Services
Strategic Goal:	Maximize community recreation and leisure activities
Staff Contact:	Chad Hyde, Director of Community Services

AGENDA ITEM:

Consider Action to Approve the **Purchase of a 24-hour Book Vending Kiosk and Services for the Little Elm Library.**

DESCRIPTION:

Little Elm Public Library's initiative to extend book and material borrowing services to the northern Little Elm residents. Little Elm Public Library chose the 24-hour book vending machine from Envisionware due to the browsability of the machine. Historically, residents underutilize hold services and prefer to browse materials before checking out items. Other book kiosks are limited to what the patrons place on hold and do not have browsing capabilities. The new kiosk supports the Town's CORE Values of Innovation and Customer Service.

This type of kiosk lends itself to the community's preference of browsing. Residents will still have the ability to place items on hold and pick them up from the kiosk. The kiosk will hold 340 items, including books, STEM kits, DVDs/Blu-rays. Cardholders will be able to visit the kiosk at a time that is convenient for their schedules and not limited to specific hours.

To support this initiative the library will send activated library cards to the residents of Union Park to encourage use. Library staff will host information sessions about services provided (LinkedIn Learning, LEGO robotics classes) and storytimes for residents to promote use of the kiosk.

The kiosk will be located at Fire Station 3 and wrapped with a design promoting different library services. Within a five-minute drive of the kiosk live 26,377 people and predictions estimate the population to grow to 31,402 by 2028. Of the 26,377 people that currently reside near the kiosk location, 33% (8,862) are under the age of 19 and by 2028 estimates are 35% (10,855) and the parents that support these ages. Little Elm Public Library's highest circulation materials are picture books, children's chapter books, and children's graphic novels. In FY23, the books in these categories were checked out 46,070 times. By adding this kiosk, the Town is supporting this growing population's access to library services in a convenient location.

BUDGET IMPACT:

This new program is in the adopted FY 2023-2024 Budget in the General Fund-Library's operating capital budget. The 24-hour library main system, all operating components, and Envisionware services $180,325. The costs of adding this new program is within the approved budget.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Little Elm Library Kiosk

ENVISIONWARE®

3820 Mansell Road Suite 350
Alpharetta, GA 30022
United States

800 216 8370 US and Canada
+1 678 382 6500 Voice
+1 678 382 6501 Fax

September 19, 2023

Ms. Rachel Hadidi
Director, Little Elm Public Library
Little Elm Public Library
100 West Eldorado Parkway
Little Elm, TX 75068-0129

Dear Ms. Hadidi:

This letter provides clarification regarding the unique attributes of the 24-Hour Library proposed by John Himes as an upgrade to your existing EnvisionWare system.

EnvisionWare is *unique* in the library community as the only vendor that provides a level of comprehensive services aimed at public library self-service and operational efficiency. As a customer using EnvisionWare time and print management, you already know about the focus on patron self-service with intuitive designs that can free staff from tedious, repetitive tasks and empower patrons to do more for themselves.

EnvisionWare created a market for a free-standing, self-service remote 'branch' with the introduction of the 24-Hour Library, the first system successfully deployed to expand the reach of the library into underserved areas that cannot justify the expense of a brick-and-mortar branch. In keeping with EnvisionWare's principles of making the most of any investment, the system offers a broad range of services which make it peerless in the library community.

The 24-Hour Library's *unique array of services* include:

- ***Full patron circulation experience:*** Patrons can check in, check out, browse, return, and renew items (including items not present), 24 hours a day, 7 days a week.
- ***Checkout of electronic resources****:* The 24-Hour Library uniquely brings digital media to your patrons. You can setup the program display as a browsing station for eBooks and use the incorporated Wi-Fi for patrons to select and download electronic resources. This brings a plethora of new titles into the hands of your users and again replicates traditional library services into a self-service location.
- ***Pay fines and fees (optional):*** The optional payment system can be used to unblock 24-Hour Library users that owe fines over the threshold. It can also be used for patrons to place funds on deposit, which can then be used with all EnvisionWare self-service applications to pay for printing, copying, faxing, scanning and fine payment. In addition, the credit card terminals can be integrated into our library point of sale system.
- ***Hold pickup management:*** As a patron enters his or her library card, the system detects the presence of one or more holds for them. In the fully automated mode, the system starts dispensing all that user's holds. If the user doesn't want a title, they can instantly return the item. By dispensing all holds for that borrower (rather than asking a patron to pick each hold item he or she wants to dispense) items flow through the holds queue more quickly, rather than sitting on the shelf until they expire.
- ***Automated expired hold management:*** If a hold expires and the user has not picked up the requested item, the system will automatically dispense the expired item(s) into a specific bin. This automated process frees staff from the tedium of pulling holds.

- ***Multi-user functionality:*** One of the most powerful and unique attributes is multi-user visual browsing. Multiple users can scan the shelves to see the book spines, meaning that more than one person can engage with the system at a time. In fact, several people can browse while one is checking out and another is downloading an eBook.
- ***Internet access:*** The 24-Hour Library comes with a 2-channel Wi-Fi access point. One channel can be open to the public, replicating the same Internet access that is available at your existing libraries. The other is a VPN to be used by staff if they come to the site to conduct a registration or outreach event.
- ***Automated material sorting:*** The 24-Hour Library is the only system that incorporates a complete automated materials handling system. It can sort returns to make pickup of materials a seamless experience. Furthermore, the cost of a stand-alone AMH system is about equal to the price of the complete 24-Hour Library, illustrating considerable value.
- ***Library branding, marketing, and promotion:*** The system has lightboxes to provide bright and engaging library branding. EnvisionWare creates the film from the artwork provided by the library. Additionally, EnvisionWare's unique Library Marketing Kits provide materials for signage including recommendations for road sign designs that can lead patrons to the new 24-Hour Library location.
- ***Security monitoring and recording:*** The 24-Hour Library includes external and internal cameras and a 30-day DVR so you can watch activities from a remote location. EnvisionWare support can look at a recording from the internal camera to diagnose technical issues.
- ***Firewall protection:*** A complete router/firewall is included in the system to ensure optimal security, setup of a VPN for secure staff communications, and seamless integration with the library's network.
- ***EnvisionWare exceptional in-house installation, service, and support:*** The entire implementation process is high-touch. A consultant will be assigned to oversee the entire project. The Site Planning Guide available in the Customer Center, coupled with the consultant's experience at installing these systems across North America, ensures a successful end-to-end experience. This covers planning and preparation of the foundation and covering to the final delivery and setup of the system. Upon purchasing, the Professional Services team schedules an on-site session to train staff in the differences between traditional branch operation and 24-Hour Library management. This covers everything from how holds are uniquely managed to how to change the setup of the ILS for hold notifications. The 24-Hour Library arrives pre-configured and pre-tested. It is bolted to the slab in compliance with earthquake guidelines. Seamless integration also means a single point of contact for service. You have the assurance of a stellar experience for installation and ongoing exceptional customer service experiences.

We appreciate your consideration of this upgrade to your existing EnvisionWare solutions. If you have any questions after reviewing the enclosed information, please do not hesitate to contact me.

Sincerely,

John C. Dexter
General Manager

Cc: John Himes, Sales Consultant, Circulation Solutions – South Central

ENVISIONWARE®
Enriching Public Library Service Inside and Out
EnvisionWare, Inc.
3820 Mansell Road, Suite 350, Alpharetta, GA 30022
Toll Free 800.216.8370 International+1 678.382.6500

Quotation

US-82279

9/20/2023

Bill To

Finance Dept
Town of Little Elm
100 W Eldorado Pkwy
Little Elm TX 75068
United States

TOTAL

$180,325.00

Quote Expires: 12/19/2023

Federal EIN	Currency	Terms	Sales Rep
58-2424595	US Dollar	* 5 0 % D e p | B a l - 3 0 | Services-Accept	Himes, John

Quotation Title	Memo
24L-340D	24L - 340D - Base Quote - Outdoor Install

Qty	Item / Description	Ship To	Unit Price	Amount
1	**24L-340D** *24-Hour Library™ Main System - 340 Item System Delivers 24/7 library services including check out, return, item renewals, (2) large touch screen displays for program information, OPAC, ebook downloads or other library services, (1) display for branding, 340-item shelving capacity, 1,000 item 14-bin sorter for returns* *Includes:* *- Heating system* *- 1D/2D card/smartphone barcode scanner for patron cards and items* *- RFID and barcode detection for items and patron cards* *- Custom Sign Artwork/Design* *- Shelving step, supplies* *- Delivery minimum 12 weeks after confirmation of site plan* **! REQUIREMENTS !** *- ILS: SIP2 interface with Booksort extensions (Millennium/Sierra requires optional SIP2 sorter API)* *- Internet Connection* *- 120V 20A Power for system (+120V 60A service for heater operation in cold climates)* *- Overhang or canopy NOTE: Installation where an EnvisionWare canopy is NOT used requires written certification by Product Management.* *- Installation and Project Management required and not included - varies by requirements* *# OPTIONS #* *- eCommerce Self Service, Terminal, ECS Kiosk Terminal Bracket* *- Customer Central Management Control Licenses* *- Canopy (Important: 5 Month lead time from date order is placed)*	2 4 - H o u r 3 4 0 D - Aubrey	$149,900.00	$149,900.00

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Quotation

US-82279

9/20/2023

Qty	Item / Description	Ship To	Unit Price	Amount
	SUBTOTAL Hardware *SUBTOTAL for Hardware*			$149,900.00
1	**CM Control** *ENVISIONWARE CENTRAL MANAGEMENT CONTROL LICENSES - For installation on network IT or staff computers. The Control License provides remote connectivity to CM Clients that are on host computers or OneStop stations. Staff can use a control license to remotely interact with patrons and update systems from a central location.*	Main	$125.00	$125.00
1	**CM Gateway** *ENVISIONWARE CENTRAL MANAGEMENT GATEWAY is a single license to create a broker service between the CM Clients on your network, your CM Controls, and EnvisionWare Support via the Internet.* *+ Requires opening one port on your firewall to EnvisionWare's IP address range.*	Main	$165.00	$165.00
3	**CM Client** *ENVISIONWARE CENTRAL MANAGEMENT CLIENT - Install on OneStop computers or host systems. When a Control license is installed on a staff computer, staff can interact with patrons using self checkout or other computers running the CM Client. Staff can view station screens in stealth or alert mode and update systems.*	Main	$35.00	$105.00
	SUBTOTAL Items *SUBTOTAL for Items Above*			$395.00
1	**PS Rigging** *PROFESSIONAL RIGGING SERVICES for Remote Library Products* *Offload, place item and secure in place* *- Includes oversize forklift, equipment rental and labor team*	Main	$5,980.00	$5,980.00
80	**PS-HR-UM** *ENVISIONWARE PROFESSIONAL SERVICES - Consulting services at the hourly rate for customers under maintenance.* *- Quotations provide an estimate - actual time is billed.* *- The minimum charge is 1 hour.* *- The minimum for an onsite hourly project is 8 hours per day plus the actual first and additional flat fee expense charges.*		$195.00	$15,600.00
1	**PS-EXPFF-U 1st Day** *ENVISIONWARE PROFESSIONAL SERVICES - FLAT FEE FOR EXPENSES - First of Every Five Days Onsite. No partial days.*		$1,250.00	$1,250.00

This information is confidential and proprietary to EnvisionWare, Inc.

US-82279

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Quotation

US-82279

9/20/2023

Qty	Item / Description	Ship To	Unit Price	Amount
4	**PS-EXPFF-U Additional Day** *ENVISIONWARE PROFESSIONAL SERVICES - FLAT FEE FOR EXPENSES - Additional Days After First. Maximum (4) additional days before an additional First day is required.*		$400.00	$1,600.00
1	**PS-IC-TRAVEL** *ENVISIONWARE IMPLEMENTATION TRAVEL TIME – PER TRIP* ** Flat fee for travel time, per round trip, related to onsite professional services.* *++ This price does not include any of the fixed travel costs (Continental US) or billed expenses (Outside USA) items when onsite services are requested.*		$600.00	$600.00
	SUBTOTAL Services *SUBTOTAL for EnvisionWare Professional Services*			$25,030.00

Subtotal	$175,325.00
Discount	
Freight	$5,000.00
Tax	$0.00
PST-CA	

Freight charges are estimated; actual charges will be billed.

Send your purchase order or email confirmation to:
EMAIL : orders@envisionware.com | **FAX** : +1 678.382.6501

Use of EnvisionWare, Inc. Products is subject to the terms and conditions in the end user license agreement found at: http://system.envisionware.com/terms. By signing this quote or issuing a purchase order, you indicate your approval of EnvisionWare's terms and conditions.

Signature: _____ Date: _____

Total **$180,325.00**

Date:	12/05/2023
Agenda Item #:	4. E.
Department:	Finance
Strategic Goal:	Maintain operational integrity and viability
Staff Contact:	Kelly Wilson, Chief Financial Officer

AGENDA ITEM:

Consider Action to Approve **Resolution No. 1205202301 Approving an Amendment to the Town's Investment Policy; Authorized Broker/Dealers; Recording the Annual Review; and an Effective Date.**

DESCRIPTION:

Little Elm Council approved the updated Investment Policies on December 20, 2022, as required and cited as Section 2256.005(e) of the Texas Government Code that requires the governing body to review its investment policy and investment strategies not less than annually, and make changes as they deem appropriate. Town staff is requesting your annual review and approval of the investment policy with an effective date from the date of this passage as provided by law.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Resolution No. 1205202301

Town's Investment Policy

Appendix A-Brokers/Banks Approval List

Appendix D - Government Code Chapter 2256, Public Funds Investment

RESOLUTION NO 1205202301

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS, APPROVING AN AMENDMENT TO THE TOWN'S INVESTMENT POLICY; AUTHORIZED BROKER/DEALERS; RECORDING THE ANNUAL REVIEW; AND AN EFFECTIVE DATE.

WHEREAS, the Public Funds Investment Act, as amended, requires the Town to adopt an investment policy by rule, order, or resolution; and

WHEREAS, the attached Investment Policy has been amended to comply with the Public Funds Investment Act, as amended, and authorizes the investment of Town funds in safe and prudent investments.

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

SECTION 1. The Council of the Town of Little Elm, Texas approves the revised investment policy, investment strategy and authorized broker/dealers.

SECTION 2. The Council of the Town of Little Elm, Texas has performed an annual review of the investment policy and adopts its statements in the minutes recording that review.

SECTION 3. This resolution shall take effect immediately upon passage.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, on the 5th day of December 2023.

APPROVED:

_____
Curtis J. Cornelious, Mayor

ATTEST:

_____
Caitlan Biggs, Town Secretary

FINANCE DEPARTMENT
100 W. Eldorado Parkway
Little Elm, TX 75068

INVESTMENT POLICY

OF

TOWN OF LITTLE ELM, TEXAS

LITTLE ELM COMMUNITY DEVELOPMENT CORPORATION

HIGHWAY 380 MUNICIPAL MANAGEMENT DISTRICT

LITTLE ELM TAX INCREMENT REINVESTMENT ZONE #3

LITTLE ELM TAX INCREMENT REINVESTMENT ZONE #4

LITTLE ELM TAX INCREMENT REINVESTMENT ZONE #5

LITTLE ELM TAX INCREMENT REINVESTMENT ZONE #6

VALENCIA ON THE LAKE PUBLIC IMROVEMENT DISTRICT

VALENCIA ON THE LAKE PUBLIC IMROVEMENT DISTRICT #2

RUDMAN TRACT PUBLIC IMPROVEMENT DISTRICT

HILLSTONE POINT PUBLIC IMPROVEMENT DISTRICT #2

LAKESIDE ESTATES PUBLIC IMPROVEMENT DISTRICT #2

SPIRITAS RANCH PUBLIC IMPROVEMENT DISTRICT

SPIRITAS EAST PUBLIC IMPROVEMENT DISTRICT

PREFACE

It is the policy of the Town of Little Elm that all available funds within its control shall be invested in conformance with these legal and administrative guidelines.

Effective cash management is recognized as essential to good fiscal management. A comprehensive and effective cash management system will be pursued to optimize investment interest as viable and material revenue to all operating and capital funds. The Town's portfolio shall be designed and managed in a manner responsive to the public trust and consistent with local, state and federal law.

Earnings from investments will be used in a manner that will best serve the interests of the Town.

Section 1. Scope.

The Public Funds Investment Act ("PFIA"), Chapter 2256, Texas Government Code, prescribes that each local government is to adopt rules governing its investment practices and to define the authority of the investment officers. This Investment Policy addresses the methods, procedures, and practices which must be exercised to ensure effective and judicious fiscal management of funds of the Town of Little Elm, Texas, the Little Elm Community Development Corporation, the Highway 380 Municipal Management District, the Little Elm Tax Increment Reinvestment Zone #3, the Little Elm Tax Increment Reinvestment Zone #4, the Little Elm Tax Increment Reinvestment Zone #5, the Little Elm Tax Increment Reinvestment Zone #6, the Valencia on the Lake Public Improvement District, the Valencia on the Lake Public Improvement District #2, the Rudman Tract Public Improvement District, the Hillstone Point Public Improvement District #2, the Lakeside Estates Public Improvement District #2, Spiritas Ranch Public Improvement District, and Spiritas East Public Improvement District (sometimes collectively referred to as the "Entities" or separately as an "Entity").

This Policy shall apply to the investment and management of all funds of the Entities under their respective control, other than those expressly excluded herein or by applicable law or valid agreement. This Policy shall not supersede the restrictions on investment and use applicable to any specific fund and, in the event of any conflict between this Policy and the requirements of any fund subject hereto, the specific requirement applicable to such fund shall be followed as well as all other provisions of this Policy other than those in conflict.

In order to make effective use of the resources of the Entities, the respective monies of each Entity may be pooled for investment purposes as long as detailed accounting records reflect each Entity's stake, except for those monies required to be accounted for separately as stipulated by applicable laws, bond covenants or contracts. The income derived from this pooled investment shall be distributed in accordance with generally acceptable accounting procedures.

The following general fund groups will be utilized to consolidate investment objectives and strategies:

- Operating
- Capital Improvement
- Fiduciary

The Entities may invest specific fund balances or pool together for investment purposes, or a combination of both, as appropriate.

Section 2. Objectives.

The Entities' principal investment objectives in order of priority are:

1. Preservation of capital and the protection of investment principal.

2. Maintenance of sufficient liquidity to meet anticipated disbursement and cash flows.

3. Conformance with all Federal regulations, State of Texas statutes and other legal requirements, including the Town Charter, Town Ordinances, Articles of Incorporation, and this Policy.

4. Diversification to avoid incurring unreasonable risks regarding investments owned.

5. Attainment of a market rate of return which is commensurate with the acceptable risk and liquidity objectives of this Policy.

Section 3. Delegation of Authority.

The Town Council and Boards of Directors of the Districts or Corporations appoint the Town's Chief Financial Officer ("CFO"), Assistant Finance Director, and Controller as the "Investment Officers" of the Entities. Direct management responsibility for the investment program of each Entity is delegated by the Town Council and Boards of Directors to the Investment Officers. The Investment Officers' authority will at all times be limited by all applicable laws and regulations in effect from time to time, and this Policy.

The CFO shall develop and maintain written administrative procedures for the operation of the investment program consistent with this Policy. The controls shall be designed to prevent, identify and control losses of public funds arising from deviation from this Policy, fraud, employee error, and misrepresentation by third parties, or imprudent actions by employees and officers of the Town and the Corporations. In these procedures, the CFO may delegate specific portions of the investment management program. Such delegation shall state specifically the functions such person is authorized to perform.

The CFO shall obtain and maintain, at the expense of the respective Entity, fidelity bonds for the Investment Officers. No person may engage in an investment transaction except as provided under the terms of this Policy and the internal procedures established by the CFO. A current list of persons

authorized to transact investment business and wire funds on behalf of the Entities shall be maintained by the CFO.

At the discretion of the respective Entity, and in any event upon the termination or reassignment of any Investment Officer authorized to conduct transactions for the Entities pursuant to this Policy, the authority of such person shall be revoked and such revocation of authority shall be immediately communicated orally and in writing to each and every depository, broker/dealer, investment pool, investment advisor, custodian, and other agency or entity with whom the respective Entity has any existing or continuing relationship in the management of its investments.

In order to ensure qualified and capable investment management, the Investment Officers shall, within 12 months after taking office or assuming duties, attend at least one training session from an independent source approved in this Policy that addresses investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with the PFIA, and accumulate at least ten (10) hours of instruction. Additionally, the Investment Officers shall complete not less than eight (8) hours of training every two-year period that begins on the first day of the Town's fiscal year and consists of the two consecutive fiscal years after that date, addressing the aforementioned topics. The Government Finance Officers Association of Texas (GFOAT), Government Treasurers' Organization of Texas (GTOT), Texas Municipal League (TML), University of North Texas (UNT), North Central Texas Council of Governments (NCTCOG), American Institute of Certified Public Accountants (AICPA), and the Government Finance Officers Association (GFOA) are approved independent training sources.

Section 4. Investment Advisors.

The Town may, at the recommendation of the CFO, select one or more Investment Advisor(s) to assist the Investment Officers in the management of the Entities' funds. The Investment Advisor must be registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940 and also be registered with the Texas State Securities Board as an Investment Advisor. To be eligible for consideration, an Investment Advisor shall demonstrate knowledge of and experience in the management of public funds. A selected Investment Advisor shall act solely in an advisor and administrative capacity, within the guidelines of this Policy and without any discretionary authority to transact business on behalf of the Entities. The terms and conditions of any Investment Advisor contract shall comply with the PFIA. A contract with an Investment Advisor may not be for a term longer than two years and any contract, renewal, or extension must be approved by the Town Council.

Section 5. Standard of Care.

The standard of care for the Entities' respective investments shall be that such investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived.

The overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The Investment Officers and any others involved in the investment process shall recognize that the investment activities of the Entities are a matter of public record.

An Investment Officer, acting in accordance with written procedures and exercising due diligence and the proper standard of care, shall be relieved of personal responsibility for an individual investment's credit risk or market price changes, provided that this Policy and the Investment Officer's procedures were followed. In determining whether the Investment Officer exercised a proper standard of care, all investments over which the Officer had responsibility will be considered rather than a single investment, and whether the investment decision was consistent with this Policy, as applicable.

Section 6. Authorized Investments.

Subject to any limitations otherwise imposed by applicable law, regulations, bond indentures, or not outlined as authorized investments under Section 2256.009 of the Public Funds Investment Act, the following are the only permitted investments for the Entities' funds:

A. Direct obligations of the United States government including, but not limited to, U. S. Treasury Bills, U. S. Treasury Notes, U. S. Treasury Bonds, and U. S. Treasury STRIPS.

B. Debentures, discount notes or other obligations, guaranteed by, or for which the credit of any federal agency and instrumentality is pledged for payment including, but not limited to, Federal National Mortgage Association (FNMA), Federal Home Loan Bank (FHLB), Federal Farm Credit Bank (FFCB), Federal Agricultural Mortgage Corporation (FRMAC), Federal Deposit Insurance Corporation (FDIC), and Federal Home Loan Mortgage Corporation (FHLMC). Principal-only and interest-only mortgage backed securities are expressly prohibited.

C. Bonds or other interest bearing obligations of which the principal and interest are guaranteed by the full faith and credit of the United States government. Principal-only and interest-only mortgage backed securities are expressly prohibited.

D. Certificates of deposit and other evidences of deposit at a financial institution that has its main office or a branch office in Texas and a) is guaranteed or insured by the Federal Deposit Insurance Corporation (FDIC) or other federally sponsored deposit insurance corporation, or its successor, b) is secured by obligations in a manner and amount provided by law for deposits of the Entities, or c) is placed through a broker or depository institution that has its main office or a branch office in Texas that meets the requirements of the PFIA.

E. Repurchase agreements structured in compliance with the PFIA with an executed master repurchase agreement, collateralized at a minimum market value of one hundred two (102) percent of the dollar value of the transaction plus accrued interest. A flexible repurchase agreement that allows for withdrawals as needed to fund project expenditures may be utilized for capital improvement projects funded by bond proceeds.

The Town will not enter into repurchase agreements that would result in a reverse repurchase position for the Town.

F. Money Market Mutual Funds meeting each of the following criteria:

(1) Regulated by the Securities and Exchange Commission;

(2) No commission fee shall be charged on purchases or sales of shares (i.e. "no-load" fund);

(3) Have an objective of maintaining a constant daily net asset value of $1.0000 per share;

(4) Limit assets of the fund to those described as "government" securities; and

(5) Maintain a rating of AAAm or the equivalent by a nationally recognized rating agency.

G. State and local government investment pools that are organized under and meet the requirements of the PFIA, have been specifically approved by the CFO, and have been authorized by the Town Council and Boards of Directors, as the case may be.

H. Direct obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than "A" or its equivalent.

Section 7. Other Investment Guidelines.

The Entities seek active management of their respective portfolio assets. In the effort of meeting the objectives of this Policy, the Entities, as applicable, may from time to time sell investments that they own in order to better position its portfolio assets. Sales of investments prior to maturity shall be documented and approved by the CFO before such a transaction is consummated.

Each security investment transaction must be based upon competitive quotations received from broker/dealers who have been approved by the Town. At least three providers must be contacted in all transactions involving individual securities. For those situations where it may be impractical or unreasonable to receive three quotes for a transaction due to a rapidly changing market environment or to secondary market availability, documentation of a competitive market survey of comparable securities or an explanation of the specific circumstances must be included with the transaction quote/bid sheet.

The purchase and sale of all securities shall be on a delivery versus payment basis. In this manner, the Entities will always have possession of either its securities or its monies.

The Entities are not required to liquidate investments that were authorized at the time of purchase. However, an investment that requires a minimum credit rating does not qualify as an Authorized Investment during the period the investment does not have the minimum credit rating. The Investment Officers shall monitor the rating of each issuer, as applicable, at least quarterly, and take all prudent measures that are consistent with this Policy to liquidate an investment that does not have the required minimum rating.

Section 8. Portfolio Maturities.

Maturities shall be selected which provide for both stability of income and reasonable liquidity. The maximum stated maturity of any non-bond proceed investment is five (5) years. An investment's "average life" does not constitute a stated maturity. The weighted average maturity of all non-bond proceed investments shall not exceed two (2) years based on the stated maturity date of the investment.

In the case of callable securities, the Investment Officer shall additionally calculate a weighted average call date. However, at all times the stated final maturity shall be used in portfolio weighted average maturity calculations and reported as outlined in this Policy.

Investment of bond proceeds shall be limited to the shorter of the anticipated draw schedule or "temporary period" as defined by the Internal Revenue Service. Additionally, bond proceeds may be invested in a singular repurchase agreement, if reductions are allowed from the agreement without penalty for legitimate bond proceed expenditures and the final maturity is within the "temporary period" (this arrangement is commonly referred to as a "flexible repurchase agreement").

Section 9. Investment Allocation Limits.

It is the Policy of the Entities to avoid concentration of assets in a specific maturity, a specific issue, or a specific class of investments. The asset allocation in the portfolio should, however, be flexible depending upon the outlook for the economy and the investment market.

The Investment Officers shall evaluate how each investment purchased fits into the Entities' overall investment strategies (see Section 15 - Investment Strategy Statement).

Section 10. Broker/Dealers and Other Providers.

The Town shall maintain a list of broker/dealers which have been approved by the Town Council. Securities and other investments, where applicable, may only be purchased for the Entities from those authorized broker/dealers.

The Investment Officers shall review each broker/dealer approved under this Section, and at least annually the Town Council shall re-approve the applicable list.

Broker/dealers, investment pools, and other financial institutions will be selected by the Investment Officers on the basis of their financial stability, expertise in cash management, and their ability to service the Town's and Corporations' account. Each broker/dealer, investment pool, or financial institution shall be required to submit to the Entities (as applicable) information as requested by the Investment Officers. The Investment Officers shall maintain a file which includes the most recent information submitted by each firm.

All local government investment pools and discretionary investment management firms (defined by the PFIA as "business organizations") eligible to transact investment business with the Entities shall be presented a written copy of this Policy. The qualified representative of the business organization seeking to

transact investment business with the Entities shall execute a written instrument substantially to the effect that it has:

1) a completed Broker/Dealer Questionnaire (Appendix B) that provides information regarding creditworthiness, experience and reputation; and

2) a certification stating the firm has received, reviewed, understand and agrees to comply with the Town's investment policy. This certification also acknowledges that the business organization has implemented reasonable procedures and control in an effort to preclude investment transactions conducted between the Town and the organization that are not authorized by the Town's investment policy, except to the extent that this authorization is dependent on an analysis of the makeup of the Entities' entire portfolio, requires an interpretation of subjective investment standards, or relates to investment transactions of the Entities that are not made through accounts or other contractual arrangements over which the business organization has accepted discretionary investment authority; and

3) provide an audited financial statement for the most recent period; and

4) proof of Financial Industry Regulatory Authority (FINRA) registration; and

5) proof of current registration with the State of Texas Securities Commission.

The Entities shall not enter into an investment transaction with a business organization prior to receiving the written instrument described above.

Section 11. Selection of Depositories.

To be eligible for receipt of Entity deposits, financial institutions must be a member of the FDIC, or other federally sponsored deposit insurance corporation, and meet the minimum standards established by the Investment Officers. Financial institutions failing to meet the minimum criteria or, in the judgment of the Investment Officers, no longer offering adequate safety for the Entities will be removed from consideration.

Consistent with the requirements of State law, the Entities require all financial institution deposits to be federally insured or collateralized with marketable securities, irrevocable letters of credit, or in any other manner allowed by State law, if the amount of deposit exceeds federal insurance levels. Financial institutions serving as depositories will be required to sign a Depository Agreement with the Entities. The custodial portion of the Depository Agreement shall define the Entities' rights to the collateral in case of default, bankruptcy, or closing and shall establish a perfected security interest in compliance with Federal and State regulations; including:

A. the Agreement must be in writing;

B. the Agreement has to be executed by the Depository and the Entities contemporaneously with the acquisition of the asset;

C. the Agreement must be approved by the board of directors or the designated committee of the Depository and a copy of the meeting minutes must be delivered to the Investment Officers;

D. the Agreement must be continuously, from the time of execution, an official record of the Depository.

Eligible collateral for financial institution deposits shall include all items allowable with the PFIA, Public Funds Collateral Act, and Chapter 105 of the Local Government Code, subject to prior approval and at the sole discretion of the Investment Officers. Collateralization for all uninsured collected balances, plus accrued interest, if any.

Section 12. Safekeeping and Custody.

Investment securities purchased for the Entities shall be held in third-party safekeeping, and all pledged collateral shall be delivered to an independent third-party custodian prior to deposit. Each of the Entities may designate safekeeping or custodian bank(s). With the exception of federally insured deposits, in no event will the Entities' custodial or safekeeping institution also be counterparty (broker/dealer) to the purchase or sale of those securities or pledging of that collateral. The Entities shall execute a written agreement with each bank prior to utilizing the custodian or safekeeping services. The agreement must provide that the safekeeping or custodian bank will immediately record the receipt of purchased or pledged securities in its books and promptly issue and deliver a safekeeping receipt to the Entities showing the receipt and the identification of the security, as well as the Entities' perfected interest. The original safekeeping receipt for each transaction including purchased securities under a repurchase agreement and collateral securing deposits will be delivered to the Investment Officers.

Only institutions eligible under the Public Funds Collateral Act may be utilized as a custodian of securities pledged to secure financial institution deposits.

An Investment Officer must approve release of securities held as collateral, in writing, prior to their removal from the custodial account. A facsimile or email of a written authorization shall be sufficient if the custodian orally confirms receipt of the transmission, and an exact copy of the document is retained in the Entities' files.

Section 13. Recordkeeping and Reporting.

A record shall be maintained of all bids and offerings for investment transactions in order to ensure that the Entities receive competitive pricing. All transactions shall be documented by the person authorizing the transaction in a form that shows that person's name, the counterparty to the transaction, the date, a description of the transaction, and a brief statement of the reason(s) for the transaction.

Each depository institution of the Entities' funds shall maintain separate, accurate, and complete records relating to all deposits, the securities pledged to secure such deposits, and all transactions relating to the pledged securities. Each approved custodian shall maintain separate, accurate and complete records relating to all securities received on behalf of the Entities, whether pledged, purchased or subject to repurchase agreement, as well as all transactions related to such securities. Each depository and custodian

shall agree to make all the records described in this paragraph available to the Entities and their auditors at any reasonable time.

At least once each quarter, the Investment Officers shall verify that all securities owned by or pledged to the Entities are held in safekeeping in the safekeeping or custodial bank(s) with proper documentation. In conjunction with the annual audit, the Entities' respective investment program, including the records of safekeeping, custodian, and depository banks, shall be reviewed by the independent auditor. This annual audit shall include a compliance audit of the management and internal controls on investments and adherence to this Policy.

An investment report shall be prepared in compliance with the PFIA at least quarterly by the Investment Officers that:

a) describes in detail the investment position of the Entities,

b) states the reporting period beginning book and market values, and ending book and market values for the period of each pooled fund group,

c) states the reporting period ending book and market value for each investment by asset type and fund type,

d) states the maturity date of each investment,

e) states the fund for which each investment was purchased,

f) states the compliance of the investment portfolio with this Policy and the PFIA,

g) summarizes quarterly transactions, including a detailed list of the gains and losses recognized, and

h) explains the investment return during the previous quarter and compares the portfolio's performance to other benchmarks of performance.

Market Value of the investment portfolio will be calculated quarterly. Pricing information will come from FNC, Bloomberg, IDC, or any other source deemed reliable by the CFO. If the price of a particular security is not available from any of these sources, the price may be estimated by analyzing similar securities' market values.

This report will be prepared and signed by all of the Entities' Investment Officers and provided to the Town Council and Boards of Directors. In conjunction with the annual audit, these reports shall be annually reviewed by the independent auditor, and the result of that review shall be presented to the Town Council and Boards of Directors, as the case may be.

The Investment Officers shall determine market value of securities owned or pledged as collateral based on sources independent from the transaction.

All contracted Investment Advisors shall prepare reports as requested by the Investment Officers.

Section 14. Ethics and Conflicts of Interest.

Investment Officers and employees of the Entities involved in the investment process shall refrain from personal business activity that involves any of the Entities' approved custodians, depositories, broker/dealers, or investment advisors, and shall refrain from investing in any security issue held by the Entities. Investment Officers and employees of the Entities involved in the investment process shall not utilize investment advice concerning specific securities or classes of securities obtained in the transaction of the Entities' business for personal investment decisions, shall in all respects subordinate their personal investment transactions to those of the Entities, particularly with regard to the timing of purchases and sales, and shall keep confidential all investment advice obtained on behalf of the Entities and all transactions contemplated and completed by the Entities, except when disclosure is required by law.

All Investment Officers shall file with the Texas Ethics Commission, the Town Council, and the Boards of Directors a statement disclosing any personal business relationship with any business organization seeking to sell investments to the Entities or any relationship within the second degree by affinity or consanguinity to an individual seeking to sell investments to the Entities.

Section 15. Investment Strategy Statement.

In order to minimize risk of loss due to interest rate fluctuations, investment maturities will not exceed the anticipated cash flow requirements of the funds. Investment guidelines by fund-type are as follows:

a. Operating Funds

Suitability - Any investment eligible in this Policy is suitable for the Operating Funds.

Safety of Principal - All investments shall be of high quality with no perceived default risk. Market price fluctuations will however occur. By managing the weighted average days to maturity for the Operating Fund portfolio to less than two (2) years and restricting the maximum allowable maturity to five (5) years, the price volatility of the overall portfolio will be minimized.

Liquidity - The Operating Fund requires the greatest short-term liquidity of any of the fund types. Short-term financial institution deposits, investment pools, and money market mutual funds provide daily liquidity and may be utilized as a competitive yield alternative to fixed maturity investments.

Marketability - Investments with active and efficient secondary markets are necessary in the event of an unanticipated cash requirement.

Diversification - Investment maturities shall be staggered throughout the budget and cash flow cycle to provide cash flow based on the anticipated operating needs of the Entities. Risk of market price changes shall be controlled by avoiding over-concentration of assets in a specific

maturity sector, limitation of average and final maturity, and avoidance of over-concentration of specific instruments.

Yield - Attaining a competitive market yield for comparable investment-types and portfolio restrictions is the desired objective. The yield of an equally weighted, rolling six-month Treasury Bill portfolio shall be the minimum yield objective.

The Town's investment strategy is primarily passive. Given this strategy, the basis, or benchmark, used by the Investment Officer to determine whether market yields are being achieved shall be the 3 month or 6 month Treasury Bill or 1 or 2 year Treasury Note, whichever is closest to the weighted average maturity of the portfolio.

b. Capital Improvement Funds

Suitability - Any investment eligible in this Policy is suitable for Capital Improvement Funds.

Safety of Principal - All investments shall be of high quality with no perceived default risk. Market price fluctuations will however occur. By managing Capital Improvement Fund's portfolio to not exceed the anticipated expenditure schedule and restricting the maximum allowable maturity to the I.R.S. "temporary period", the market risk of the overall portfolio will be minimized.

Liquidity - The funds used for capital improvement programs have reasonably predictable draw down schedules, therefore investment maturities shall generally follow the anticipated cash flow requirements. Short-term financial institution deposits, investment pools, and money market mutual funds provide readily available funds generally equal to at least one month's anticipated cash flow needs, or a competitive yield alternative for short term fixed maturity investments. A singular repurchase agreement may be utilized if disbursements are allowed in the amount necessary to satisfy any expenditure request; this investment structure is commonly referred to as a flexible repurchase agreement.

Marketability - Investments with active and efficient secondary markets are necessary in the event of an unanticipated cash requirement.

Diversification - Market conditions and the arbitrage regulations influence the attractiveness of staggering the maturity of fixed rate investments for bond proceeds and other construction and Capital Improvement Funds. With bond proceeds, if investment rates exceed the applicable arbitrage yield, the Entities are best served by locking in most investments. If the arbitrage yield cannot be exceeded, then concurrent market conditions will determine the attractiveness of diversifying maturities or investing in shorter and larger lumps. At no time shall the anticipated expenditure schedule be exceeded in an attempt to bolster yield with any Entities' funds.

Yield - Achieving a positive spread to the applicable arbitrage yield is the desired objective for bond proceeds. Non-bond proceeds for construction and capital project funds will target an equally weighted, rolling six-month Treasury Bill portfolio as the minimum yield objective.

c. Fiduciary Funds

Suitability - Any investment eligible in this Policy is suitable for the Fiduciary Funds.

Safety of Principal - All investments shall be of high quality with no perceived default risk. Market price fluctuations will however occur. By managing the weighted average days to maturity for the Fiduciary Fund portfolio to less than nine (9) months and restricting the maximum allowable maturity to two years, the price volatility of the overall portfolio will be minimized.

Liquidity - The Fiduciary Fund requires short-term liquidity. Short-term financial institution deposits, investment pools, and money market mutual funds provide daily liquidity and may be utilized as a competitive yield alternative to fixed maturity investments.

Marketability - Investments with active and efficient secondary markets are necessary in the event of an unanticipated cash requirement.

Diversification - Investment maturities shall be staggered throughout the budget and cash flow cycle to provide cash flow based on the anticipated operating needs of the Entities. Market cycle risk may be reduced by diversifying the appropriate maturity structure out through two years.

Yield - Attaining a competitive market yield for comparable investment-types and portfolio restrictions is the desired objective. The yield of an equally weighted, rolling six-month Treasury Bill portfolio shall be the minimum yield objective.

Section 16. Policy Revisions.

This Policy will be reviewed at least annually by the Investment Officers, the Town Council, and Boards of Directors and may be amended as conditions warrant by the Town Council and Boards of Directors. Each Entity shall adopt a written instrument by rule, order, ordinance, or resolution stating that it has reviewed the Investment Policy and investment strategies and that the written instrument so adopted shall record any changes made to either the Investment Policy or investment strategies

Section 17. Effective Date.

This Policy shall become effective from and after its date of passage as provided by law.

Appendix A

Authorized Broker/Dealers

American National Bank & Trust
Great Pacific Securities
Farmers Bank & Trust
FHN Financial Capital Markets
FNC Financial Northeastern Securities, Inc.
Hilltop Securities, Inc.
Multi-Bank Securities, Inc.
Oppenheimer & Co. Inc.

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2256. PUBLIC FUNDS INVESTMENT

SUBCHAPTER A. AUTHORIZED INVESTMENTS FOR GOVERNMENTAL ENTITIES

Sec. 2256.001. SHORT TITLE. This chapter may be cited as the Public Funds Investment Act.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.002. DEFINITIONS. In this chapter:

(1) "Bond proceeds" means the proceeds from the sale of bonds, notes, and other obligations issued by an entity, and reserves and funds maintained by an entity for debt service purposes.

(2) "Book value" means the original acquisition cost of an investment plus or minus the accrued amortization or accretion.

(3) "Funds" means public funds in the custody of a state agency or local government that:

(A) are not required by law to be deposited in the state treasury; and

(B) the investing entity has authority to invest.

(4) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(5) "Investing entity" and "entity" mean an entity subject to this chapter and described by Section 2256.003.

(6) "Investment pool" means an entity created under this code to invest public funds jointly on behalf of the entities that participate in the pool and whose investment objectives in order of priority are:

(A) preservation and safety of principal;

(B) liquidity; and

(C) yield.

(7) "Local government" means a municipality, a county, a school district, a district or authority created under Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution, a fresh water supply district, a hospital district, and any political subdivision, authority, public corporation, body politic, or instrumentality of the

State of Texas, and any nonprofit corporation acting on behalf of any of those entities.

(8) "Market value" means the current face or par value of an investment multiplied by the net selling price of the security as quoted by a recognized market pricing source quoted on the valuation date.

(9) "Pooled fund group" means an internally created fund of an investing entity in which one or more institutional accounts of the investing entity are invested.

(10) "Qualified representative" means a person who holds a position with a business organization, who is authorized to act on behalf of the business organization, and who is one of the following:

(A) for a business organization doing business that is regulated by or registered with a securities commission, a person who is registered under the rules of the National Association of Securities Dealers;

(B) for a state or federal bank, a savings bank, or a state or federal credit union, a member of the loan committee for the bank or branch of the bank or a person authorized by corporate resolution to act on behalf of and bind the banking institution;

(C) for an investment pool, the person authorized by the elected official or board with authority to administer the activities of the investment pool to sign the written instrument on behalf of the investment pool; or

(D) for an investment management firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or, if not subject to registration under that Act, registered with the State Securities Board, a person who is an officer or principal of the investment management firm.

(11) "School district" means a public school district.

(12) "Separately invested asset" means an account or fund of a state agency or local government that is not invested in a pooled fund group.

(13) "State agency" means an office, department, commission, board, or other agency that is part of any branch of state government, an institution of higher education, and any nonprofit corporation acting on behalf of any of those entities.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 1, eff. Sept. 1, 1999.

Sec. 2256.003. AUTHORITY TO INVEST FUNDS; ENTITIES SUBJECT TO THIS CHAPTER. (a) Each governing body of the following entities may purchase, sell, and invest its funds and funds under its control in investments authorized under this subchapter in compliance with investment policies approved by the governing body and according to the standard of care prescribed by Section 2256.006:

(1) a local government;

(2) a state agency;

(3) a nonprofit corporation acting on behalf of a local government or a state agency; or

(4) an investment pool acting on behalf of two or more local governments, state agencies, or a combination of those entities.

(b) In the exercise of its powers under Subsection (a), the governing body of an investing entity may contract with an investment management firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or with the State Securities Board to provide for the investment and management of its public funds or other funds under its control. A contract made under authority of this subsection may not be for a term longer than two years. A renewal or extension of the contract must be made by the governing body of the investing entity by order, ordinance, or resolution.

(c) This chapter does not prohibit an investing entity or investment officer from using the entity's employees or the services of a contractor of the entity to aid the investment officer in the execution of the officer's duties under this chapter.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1454, Sec. 2, eff. Sept. 1, 1999.

Sec. 2256.004. APPLICABILITY. (a) This subchapter does not apply to:

(1) a public retirement system as defined by Section 802.001;

(2) state funds invested as authorized by Section 404.024;

(3) an institution of higher education having total endowments of at least $150 million in book value on September 1, 2017;

(4) funds invested by the Veterans' Land Board as authorized by Chapter 161, 162, or 164, Natural Resources Code;

(5) registry funds deposited with the county or district clerk under Chapter 117, Local Government Code; or

(6) a deferred compensation plan that qualifies under either Section 401(k) or 457 of the Internal Revenue Code of 1986 (26 U.S.C.

Section 1 et seq.), as amended.

(b) This subchapter does not apply to an investment donated to an investing entity for a particular purpose or under terms of use specified by the donor.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 505, Sec. 24, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1421, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 8.21, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1454, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 773 (H.B. 1003), Sec. 1, eff. June 14, 2017.

Sec. 2256.005. INVESTMENT POLICIES; INVESTMENT STRATEGIES; INVESTMENT OFFICER. (a) The governing body of an investing entity shall adopt by rule, order, ordinance, or resolution, as appropriate, a written investment policy regarding the investment of its funds and funds under its control.

(b) The investment policies must:

(1) be written;

(2) primarily emphasize safety of principal and liquidity;

(3) address investment diversification, yield, and maturity and the quality and capability of investment management; and

(4) include:

(A) a list of the types of authorized investments in which the investing entity's funds may be invested;

(B) the maximum allowable stated maturity of any individual investment owned by the entity;

(C) for pooled fund groups, the maximum dollar-weighted average maturity allowed based on the stated maturity date for the portfolio;

(D) methods to monitor the market price of investments acquired with public funds;

(E) a requirement for settlement of all transactions, except investment pool funds and mutual funds, on a delivery versus payment basis; and

(F) procedures to monitor rating changes in investments acquired with public funds and the liquidation of such investments consistent with the provisions of Section 2256.021.

(c) The investment policies may provide that bids for certificates of deposit be solicited:

(1) orally;

(2) in writing;

(3) electronically; or

(4) in any combination of those methods.

(d) As an integral part of an investment policy, the governing body shall adopt a separate written investment strategy for each of the funds or group of funds under its control. Each investment strategy must describe the investment objectives for the particular fund using the following priorities in order of importance:

(1) understanding of the suitability of the investment to the financial requirements of the entity;

(2) preservation and safety of principal;

(3) liquidity;

(4) marketability of the investment if the need arises to liquidate the investment before maturity;

(5) diversification of the investment portfolio; and

(6) yield.

(e) The governing body of an investing entity shall review its investment policy and investment strategies not less than annually. The governing body shall adopt a written instrument by rule, order, ordinance, or resolution stating that it has reviewed the investment policy and investment strategies and that the written instrument so adopted shall record any changes made to either the investment policy or investment strategies.

(f) Each investing entity shall designate, by rule, order, ordinance, or resolution, as appropriate, one or more officers or employees of the state agency, local government, or investment pool as investment officer to be responsible for the investment of its funds consistent with the investment policy adopted by the entity. If the governing body of an investing entity has contracted with another investing entity to invest its funds, the investment officer of the other investing entity is considered to be the investment officer of the first investing entity for purposes of this chapter. Authority granted to a person to invest an entity's funds is effective until rescinded by the investing entity, until the expiration of the officer's term or the termination of the person's employment by the investing entity, or if an investment management firm, until the expiration of the contract with the investing entity. In the administration of the duties of an investment officer, the person designated as investment

officer shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs, but the governing body of the investing entity retains ultimate responsibility as fiduciaries of the assets of the entity. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity.

(g) Subsection (f) does not apply to a state agency, local government, or investment pool for which an officer of the entity is assigned by law the function of investing its funds.

Text of subsec. (h) as amended by Acts 1997, 75th Leg., ch. 685, Sec. 1

(h) An officer or employee of a commission created under Chapter 391, Local Government Code, is ineligible to be an investment officer for the commission under Subsection (f) if the officer or employee is an investment officer designated under Subsection (f) for another local government.

Text of subsec. (h) as amended by Acts 1997, 75th Leg., ch. 1421, Sec. 3

(h) An officer or employee of a commission created under Chapter 391, Local Government Code, is ineligible to be designated as an investment officer under Subsection (f) for any investing entity other than for that commission.

(i) An investment officer of an entity who has a personal business relationship with a business organization offering to engage in an investment transaction with the entity shall file a statement disclosing that personal business interest. An investment officer who is related within the second degree by affinity or consanguinity, as determined under Chapter 573, to an individual seeking to sell an investment to the investment officer's entity shall file a statement disclosing that relationship. A statement required under this subsection must be filed with the Texas Ethics Commission and the governing body of the entity. For purposes of this subsection, an investment officer has a personal business relationship with a business organization if:

(1) the investment officer owns 10 percent or more of the voting stock or shares of the business organization or owns $5,000 or more of the fair market value of the business organization;

(2) funds received by the investment officer from the business organization exceed 10 percent of the investment officer's gross income for

the previous year; or

(3) the investment officer has acquired from the business organization during the previous year investments with a book value of $2,500 or more for the personal account of the investment officer.

(j) The governing body of an investing entity may specify in its investment policy that any investment authorized by this chapter is not suitable.

(k) A written copy of the investment policy shall be presented to any business organization offering to engage in an investment transaction with an investing entity. For purposes of this subsection and Subsection (l), "business organization" means an investment pool or investment management firm under contract with an investing entity to invest or manage the entity's investment portfolio that has accepted authority granted by the entity under the contract to exercise investment discretion in regard to the investing entity's funds. Nothing in this subsection relieves the investing entity of the responsibility for monitoring the investments made by the investing entity to determine that they are in compliance with the investment policy. The qualified representative of the business organization offering to engage in an investment transaction with an investing entity shall execute a written instrument in a form acceptable to the investing entity and the business organization substantially to the effect that the business organization has:

(1) received and reviewed the investment policy of the entity; and

(2) acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the entity and the organization that are not authorized by the entity's investment policy, except to the extent that this authorization:

(A) is dependent on an analysis of the makeup of the entity's entire portfolio;

(B) requires an interpretation of subjective investment standards; or

(C) relates to investment transactions of the entity that are not made through accounts or other contractual arrangements over which the business organization has accepted discretionary investment authority.

(l) The investment officer of an entity may not acquire or otherwise obtain any authorized investment described in the investment policy of the investing entity from a business organization that has not delivered to the entity the instrument required by Subsection (k).

(m) An investing entity other than a state agency, in conjunction with its annual financial audit, shall perform a compliance audit of management controls on investments and adherence to the entity's established investment policies.

(n) Except as provided by Subsection (o), at least once every two years a state agency shall arrange for a compliance audit of management controls on investments and adherence to the agency's established investment policies. The compliance audit shall be performed by the agency's internal auditor or by a private auditor employed in the manner provided by Section 321.020. Not later than January 1 of each even-numbered year a state agency shall report the results of the most recent audit performed under this subsection to the state auditor. Subject to a risk assessment and to the legislative audit committee's approval of including a review by the state auditor in the audit plan under Section 321.013, the state auditor may review information provided under this section. If review by the state auditor is approved by the legislative audit committee, the state auditor may, based on its review, require a state agency to also report to the state auditor other information the state auditor determines necessary to assess compliance with laws and policies applicable to state agency investments. A report under this subsection shall be prepared in a manner the state auditor prescribes.

(o) The audit requirements of Subsection (n) do not apply to assets of a state agency that are invested by the comptroller under Section 404.024.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 685, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1421, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 785, Sec. 41, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 1, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 149 (H.B. 1701), Sec. 1, eff. September 1, 2017.

Sec. 2256.006. STANDARD OF CARE. (a) Investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be

derived. Investment of funds shall be governed by the following investment objectives, in order of priority:

(1) preservation and safety of principal;

(2) liquidity; and

(3) yield.

(b) In determining whether an investment officer has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration:

(1) the investment of all funds, or funds under the entity's control, over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and

(2) whether the investment decision was consistent with the written investment policy of the entity.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.007. INVESTMENT TRAINING; STATE AGENCY BOARD MEMBERS AND OFFICERS. (a) Each member of the governing board of a state agency and its investment officer shall attend at least one training session relating to the person's responsibilities under this chapter within six months after taking office or assuming duties.

(b) The Texas Higher Education Coordinating Board shall provide the training under this section.

(c) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this chapter.

(d) An investment officer shall attend a training session not less than once each state fiscal biennium and may receive training from any independent source approved by the governing body of the state agency. The investment officer shall prepare a report on this subchapter and deliver the report to the governing body of the state agency not later than the 180th day after the last day of each regular session of the legislature.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 73, Sec. 1, eff. May 9, 1997; Acts 1997, 75th Leg., ch. 1421, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 2, eff. June 17, 2011.

Sec. 2256.008. INVESTMENT TRAINING; LOCAL GOVERNMENTS. (a) Except as provided by Subsections (a-1), (b), (b-1), (e), and (f), the treasurer, the chief financial officer if the treasurer is not the chief financial officer, and the investment officer of a local government shall:

(1) attend at least one training session from an independent source approved by the governing body of the local government or a designated investment committee advising the investment officer as provided for in the investment policy of the local government and containing at least 10 hours of instruction relating to the treasurer's or officer's responsibilities under this subchapter within 12 months after taking office or assuming duties; and

(2) attend an investment training session not less than once in a two-year period that begins on the first day of that local government's fiscal year and consists of the two consecutive fiscal years after that date, and receive not less than 10 hours of instruction relating to investment responsibilities under this subchapter from an independent source approved by the governing body of the local government or a designated investment committee advising the investment officer as provided for in the investment policy of the local government.

(a-1) Except as provided by Subsection (g), the treasurer, or the chief financial officer if the treasurer is not the chief financial officer, and the investment officer of a school district or a municipality, in addition to the requirements of Subsection (a)(1), shall attend an investment training session not less than once in a two-year period that begins on the first day of the school district's or municipality's fiscal year and consists of the two consecutive fiscal years after that date, and receive not less than eight hours of instruction relating to investment responsibilities under this subchapter from an independent source approved by the governing body of the school district or municipality, or by a designated investment committee advising the investment officer as provided for in the investment policy of the school district or municipality.

(b) An investing entity created under authority of Section 52(b), Article III, or Section 59, Article XVI, Texas Constitution, that has contracted with an investment management firm under Section 2256.003(b) and has fewer than five full-time employees or an investing entity that has contracted with another investing entity to invest the entity's funds may satisfy the training requirement provided by Subsection (a)(2) by having an officer of the governing body attend four hours of appropriate instruction in a two-year period that begins on the first day of that local government's fiscal year and consists of the two consecutive fiscal years

after that date. The treasurer or chief financial officer of an investing entity created under authority of Section 52(b), Article III, or Section 59, Article XVI, Texas Constitution, and that has fewer than five full-time employees is not required to attend training required by this section unless the person is also the investment officer of the entity.

(b-1) A housing authority created under Chapter 392, Local Government Code, may satisfy the training requirement provided by Subsection (a)(2) by requiring the following person to attend, in each two-year period that begins on the first day of that housing authority's fiscal year and consists of the two consecutive fiscal years after that date, at least five hours of appropriate instruction:

(1) the treasurer, or the chief financial officer if the treasurer is not the chief financial officer, or the investment officer; or

(2) if the authority does not have an officer described by Subdivision (1), another officer of the authority.

(c) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this chapter.

(d) Not later than December 31 each year, each individual, association, business, organization, governmental entity, or other person that provides training under this section shall report to the comptroller a list of the governmental entities for which the person provided required training under this section during that calendar year. An individual's reporting requirements under this subsection are satisfied by a report of the individual's employer or the sponsoring or organizing entity of a training program or seminar.

(e) This section does not apply to a district governed by Chapter 36 or 49, Water Code.

(f) Subsection (a)(2) does not apply to an officer of a municipality or housing authority if the municipality or housing authority:

(1) does not invest municipal or housing authority funds, as applicable; or

(2) only deposits those funds in:

(A) interest-bearing deposit accounts; or

(B) certificates of deposit as authorized by Section 2256.010.

(g) Subsection (a-1) does not apply to the treasurer, chief financial officer, or investment officer of a school district if:

(1) the district:

(A) does not invest district funds; or

(B) only deposits those funds in:

(i) interest-bearing deposit accounts; or

(ii) certificates of deposit as authorized by Section 2256.010; and

(2) the treasurer, chief financial officer, or investment officer annually submits to the agency a sworn affidavit identifying the applicable criteria under Subdivision (1) that apply to the district.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 69, Sec. 4, eff. May 14, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 3, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 222 (H.B. 1148), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1248 (H.B. 870), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 8.015, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1000 (H.B. 1238), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1000 (H.B. 1238), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 477 (H.B. 293), Sec. 1, eff. June 7, 2019.

Sec. 2256.009. AUTHORIZED INVESTMENTS: OBLIGATIONS OF, OR GUARANTEED BY GOVERNMENTAL ENTITIES. (a) Except as provided by Subsection (b), the following are authorized investments under this subchapter:

(1) obligations, including letters of credit, of the United States or its agencies and instrumentalities, including the Federal Home Loan Banks;

(2) direct obligations of this state or its agencies and instrumentalities;

(3) collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;

(4) other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, this state or the United States or their respective agencies and instrumentalities, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation or by the explicit full faith and credit of the United States;

(5) obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent;

(6) bonds issued, assumed, or guaranteed by the State of Israel;

(7) interest-bearing banking deposits that are guaranteed or insured by:

(A) the Federal Deposit Insurance Corporation or its successor; or

(B) the National Credit Union Share Insurance Fund or its successor; and

(8) interest-bearing banking deposits other than those described by Subdivision (7) if:

(A) the funds invested in the banking deposits are invested through:

(i) a broker with a main office or branch office in this state that the investing entity selects from a list the governing body or designated investment committee of the entity adopts as required by Section 2256.025; or

(ii) a depository institution with a main office or branch office in this state that the investing entity selects;

(B) the broker or depository institution selected as described by Paragraph (A) arranges for the deposit of the funds in the banking deposits in one or more federally insured depository institutions, regardless of where located, for the investing entity's account;

(C) the full amount of the principal and accrued interest of the banking deposits is insured by the United States or an instrumentality of the United States; and

(D) the investing entity appoints as the entity's custodian of the banking deposits issued for the entity's account:

(i) the depository institution selected as described by Paragraph (A);

(ii) an entity described by Section 2257.041(d); or

(iii) a clearing broker dealer registered with the Securities and Exchange Commission and operating under Securities and Exchange Commission Rule 15c3-3 (17 C.F.R. Section 240.15c3-3).

(b) The following are not authorized investments under this section:

(1) obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;

(2) obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;

(3) collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and

(4) collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1454, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 558, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 4, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 773 (H.B. 1003), Sec. 2, eff. June 14, 2017.

Acts 2017, 85th Leg., R.S., Ch. 863 (H.B. 2647), Sec. 1, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 874 (H.B. 2928), Sec. 1, eff. September 1, 2017.

Sec. 2256.010. AUTHORIZED INVESTMENTS: CERTIFICATES OF DEPOSIT AND SHARE CERTIFICATES. (a) A certificate of deposit or share certificate is an authorized investment under this subchapter if the certificate is issued by a depository institution that has its main office or a branch office in this state and is:

(1) guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or the National Credit Union Share Insurance Fund or its successor;

(2) secured by obligations that are described by Section 2256.009(a), including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than

the principal amount of the certificates, but excluding those mortgage backed securities of the nature described by Section 2256.009(b); or

(3) secured in accordance with Chapter 2257 or in any other manner and amount provided by law for deposits of the investing entity.

(b) In addition to the authority to invest funds in certificates of deposit under Subsection (a), an investment in certificates of deposit made in accordance with the following conditions is an authorized investment under this subchapter:

(1) the funds are invested by an investing entity through:

(A) a broker that has its main office or a branch office in this state and is selected from a list adopted by the investing entity as required by Section 2256.025; or

(B) a depository institution that has its main office or a branch office in this state and that is selected by the investing entity;

(2) the broker or the depository institution selected by the investing entity under Subdivision (1) arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the investing entity;

(3) the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States; and

(4) the investing entity appoints the depository institution selected by the investing entity under Subdivision (1), an entity described by Section 2257.041(d), or a clearing broker-dealer registered with the Securities and Exchange Commission and operating pursuant to Securities and Exchange Commission Rule 15c3-3 (17 C.F.R. Section 240.15c3-3) as custodian for the investing entity with respect to the certificates of deposit issued for the account of the investing entity.

Amended by Acts 1995, 74th Leg., ch. 32, Sec. 1, eff. April 28, 1995; Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 6, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 128 (H.B. 256), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 5, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 874 (H.B. 2928), Sec. 2, eff. September 1, 2017.

Sec. 2256.011. AUTHORIZED INVESTMENTS: REPURCHASE AGREEMENTS. (a) A fully collateralized repurchase agreement is an authorized investment under this subchapter if the repurchase agreement:

(1) has a defined termination date;

(2) is secured by a combination of cash and obligations described by Section 2256.009(a)(1) or 2256.013 or, if applicable, Section 2256.0204;

(3) requires the securities being purchased by the entity or cash held by the entity to be pledged to the entity either directly or through a joint account approved by the entity, held in the entity's name either directly or through a joint account approved by the entity, and deposited at the time the investment is made with the entity or with a third party selected and approved by the entity; and

(4) is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in this state.

(a-1) A repurchase agreement made by an investing entity under this section may be submitted for clearing and settlement to a covered clearing agency, as defined by the Securities and Exchange Commission in Rule 17Ad-22 (17 C.F.R. Section 240.17Ad-22).

(b) In this section:

(1) "Joint account" means an account maintained by a custodian bank and established on behalf of two or more parties to engage in aggregate repurchase agreement transactions.

(2) "Repurchase agreement" means a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations described by Section 2256.009(a)(1) or 2256.013 or, if applicable, Section 2256.0204, at a market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement.

(c) Notwithstanding any other law, the term of any reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered.

(d) Money received by an entity under the terms of a reverse security repurchase agreement shall be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

(e) Section 1371.059(c) applies to the execution of a repurchase agreement by an investing entity.

(f) An investing entity that contracts with an investment management firm under Section 2256.003(b) may authorize the firm to invest the entity's public funds or other funds under the entity's control in repurchase agreements as provided by this section using a joint account.

(g) An investment management firm responsible for managing a repurchase agreement transaction using a joint account on behalf of an investing entity as authorized under Subsection (f) must ensure that:

(1) accounting and control procedures are implemented to document the investing entity's aggregate daily investment and pro rata share in the joint account;

(2) each party participating in the joint account retains the sole rights of ownership to the party's pro rata share of assets invested in the joint account, including investment earnings on those assets; and

(3) policies and procedures are implemented to prevent a party participating in the joint account from using any part of a balance of the joint account that is credited to another party.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 6, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 773 (H.B. 1003), Sec. 3, eff. June 14, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1133 (H.B. 2706), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1093 (S.B. 1246), Sec. 7, eff. June 18, 2023.

Sec. 2256.0115. AUTHORIZED INVESTMENTS: SECURITIES LENDING PROGRAM. (a) A securities lending program is an authorized investment under this subchapter if it meets the conditions provided by this section.

(b) To qualify as an authorized investment under this subchapter:

(1) the value of securities loaned under the program must be not less than 100 percent collateralized, including accrued income;

(2) a loan made under the program must allow for termination at any time;

(3) a loan made under the program must be secured by:

(A) pledged securities described by Section 2256.009;

(B) pledged irrevocable letters of credit issued by a bank that is:

(i) organized and existing under the laws of the United States or any other state; and

(ii) continuously rated by at least one nationally recognized investment rating firm at not less than A or its equivalent; or

(C) cash invested in accordance with Section:

(i) 2256.009;

(ii) 2256.013;

(iii) 2256.014; or

(iv) 2256.016;

(4) the terms of a loan made under the program must require that the securities being held as collateral be:

(A) pledged to the investing entity;

(B) held in the investing entity's name; and

(C) deposited at the time the investment is made with the entity or with a third party selected by or approved by the investing entity;

(5) a loan made under the program must be placed through:

(A) a primary government securities dealer, as defined by 5 C.F.R. Section 6801.102(f), as that regulation existed on September 1, 2003; or

(B) a financial institution doing business in this state; and

(6) an agreement to lend securities that is executed under this section must have a term of one year or less.

Added by Acts 2003, 78th Leg., ch. 1227, Sec. 1, eff. Sept. 1, 2003.

Sec. 2256.012. AUTHORIZED INVESTMENTS: BANKER'S ACCEPTANCES. A bankers' acceptance is an authorized investment under this subchapter if the bankers' acceptance:

(1) has a stated maturity of 270 days or fewer from the date of its issuance;

(2) will be, in accordance with its terms, liquidated in full at maturity;

(3) is eligible for collateral for borrowing from a Federal Reserve Bank; and

(4) is accepted by a bank organized and existing under the laws of the United States or any state, if the short-term obligations of the bank, or of a bank holding company of which the bank is the largest subsidiary, are rated not less than A-1 or P-1 or an equivalent rating by at least one nationally recognized credit rating agency.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.013. AUTHORIZED INVESTMENTS: COMMERCIAL PAPER. Commercial paper is an authorized investment under this subchapter if the commercial paper:

(1) has a stated maturity of 365 days or fewer from the date of its issuance; and

(2) is rated not less than A-1 or P-1 or an equivalent rating by at least:

(A) two nationally recognized credit rating agencies; or

(B) one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1133 (H.B. 2706), Sec. 2, eff. September 1, 2019.

Sec. 2256.014. AUTHORIZED INVESTMENTS: MUTUAL FUNDS.

(a) A no-load money market mutual fund is an authorized investment under this subchapter if the mutual fund:

(1) is registered with and regulated by the Securities and Exchange Commission;

(2) provides the investing entity with a prospectus and other information required by the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) or the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.); and

(3) complies with federal Securities and Exchange Commission Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.).

(b) In addition to a no-load money market mutual fund permitted as an authorized investment in Subsection (a), a no-load mutual fund is an authorized investment under this subchapter if the mutual fund:

(1) is registered with the Securities and Exchange Commission;

(2) has an average weighted maturity of less than two years; and

(3) either:

(A) has a duration of one year or more and is invested exclusively in obligations approved by this subchapter; or

(B) has a duration of less than one year and the investment portfolio is limited to investment grade securities, excluding asset-backed securities.

(c) An entity is not authorized by this section to:

(1) invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, in mutual funds described in Subsection (b);

(2) invest any portion of bond proceeds, reserves and funds held for debt service, in mutual funds described in Subsection (b); or

(3) invest its funds or funds under its control, including bond proceeds and reserves and other funds held for debt service, in any one mutual fund described in Subsection (a) or (b) in an amount that exceeds 10 percent of the total assets of the mutual fund.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 8, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 773 (H.B. 1003), Sec. 4, eff. June 14, 2017.

Sec. 2256.015. AUTHORIZED INVESTMENTS: GUARANTEED INVESTMENT CONTRACTS. (a) A guaranteed investment contract is an authorized investment for bond proceeds under this subchapter if the guaranteed investment contract:

(1) has a defined termination date;

(2) is secured by obligations described by Section 2256.009(a)(1), excluding those obligations described by Section 2256.009(b), in an amount at least equal to the amount of bond proceeds invested under the contract; and

(3) is pledged to the entity and deposited with the entity or with a third party selected and approved by the entity.

(b) Bond proceeds, other than bond proceeds representing reserves and funds maintained for debt service purposes, may not be invested under this subchapter in a guaranteed investment contract with a term of longer than five years from the date of issuance of the bonds.

(c) To be eligible as an authorized investment:

(1) the governing body of the entity must specifically authorize guaranteed investment contracts as an eligible investment in the order, ordinance, or resolution authorizing the issuance of bonds;

(2) the entity must receive bids from at least three separate providers with no material financial interest in the bonds from which proceeds were received;

(3) the entity must purchase the highest yielding guaranteed investment contract for which a qualifying bid is received;

(4) the price of the guaranteed investment contract must take into account the reasonably expected drawdown schedule for the bond proceeds to be invested; and

(5) the provider must certify the administrative costs reasonably expected to be paid to third parties in connection with the guaranteed investment contract.

(d) Section 1371.059(c) applies to the execution of a guaranteed investment contract by an investing entity.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 9, 10, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 773 (H.B. 1003), Sec. 5, eff. June 14, 2017.

Sec. 2256.016. AUTHORIZED INVESTMENTS: INVESTMENT POOLS. (a) An entity may invest its funds and funds under its control through an eligible investment pool if the governing body of the entity by rule, order, ordinance, or resolution, as appropriate, authorizes investment in the particular pool. An investment pool shall invest the funds it receives from entities in authorized investments permitted by this subchapter. An investment pool may invest its funds in money market mutual funds to the extent permitted by and consistent with this subchapter and the investment policies and objectives adopted by the investment pool.

(b) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the investment officer or other authorized representative of the entity an offering circular or other similar disclosure instrument that contains, at a minimum, the following information:

(1) the types of investments in which money is allowed to be invested;

(2) the maximum average dollar-weighted maturity allowed, based on the stated maturity date, of the pool;

(3) the maximum stated maturity date any investment security within the portfolio has;

(4) the objectives of the pool;

(5) the size of the pool;

(6) the names of the members of the advisory board of the pool and the dates their terms expire;

(7) the custodian bank that will safekeep the pool's assets;

(8) whether the intent of the pool is to maintain a net asset value of one dollar and the risk of market price fluctuation;

(9) whether the only source of payment is the assets of the pool at market value or whether there is a secondary source of payment, such as insurance or guarantees, and a description of the secondary source of payment;

(10) the name and address of the independent auditor of the pool;

(11) the requirements to be satisfied for an entity to deposit funds in and withdraw funds from the pool and any deadlines or other operating policies required for the entity to invest funds in and withdraw funds from the pool;

(12) the performance history of the pool, including yield, average dollar-weighted maturities, and expense ratios; and

(13) the pool's policy regarding holding deposits in cash.

(c) To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the investment officer or other authorized representative of the entity:

(1) investment transaction confirmations; and

(2) a monthly report that contains, at a minimum, the following information:

(A) the types and percentage breakdown of securities in which the pool is invested;

(B) the current average dollar-weighted maturity, based on the stated maturity date, of the pool;

(C) the current percentage of the pool's portfolio in investments that have stated maturities of more than one year;

(D) the book value versus the market value of the pool's portfolio, using amortized cost valuation;

(E) the size of the pool;

(F) the number of participants in the pool;

(G) the custodian bank that is safekeeping the assets of the pool;

(H) a listing of daily transaction activity of the entity participating in the pool;

(I) the yield and expense ratio of the pool, including a statement regarding how yield is calculated;

(J) the portfolio managers of the pool; and

(K) any changes or addenda to the offering circular.

(d) An entity by contract may delegate to an investment pool the authority to hold legal title as custodian of investments purchased with its local funds.

(e) In this section, for purposes of an investment pool for which a $1.00 net asset value is maintained, "yield" shall be calculated in accordance with regulations governing the registration of open-end management investment companies under the Investment Company Act of 1940, as promulgated from time to time by the federal Securities and Exchange Commission.

(f) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter:

(1) a public funds investment pool that uses amortized cost or fair value accounting must mark its portfolio to market daily; and

(2) if the investment pool uses amortized cost:

(A) the investment pool must, to the extent reasonably possible, stabilize at a $1.00 net asset value, when rounded and expressed to two decimal places;

(B) the governing body of the investment pool must, if the ratio of the market value of the portfolio divided by the book value of the portfolio is less than 0.995 or greater than 1.005, take action as the body determines necessary to eliminate or reduce to the extent reasonably practicable any dilution or unfair result to existing participants, including a sale of portfolio holdings to attempt to maintain the ratio between 0.995 and 1.005; and

(C) the investment pool must, in addition to the requirements of its investment policy and any other forms of reporting, report yield to its investors in accordance with regulations of the federal Securities and Exchange Commission applicable to reporting by money market funds.

(g) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, a public funds investment pool must have an advisory board composed:

(1) equally of participants in the pool and other persons who do not have a business relationship with the pool and are qualified to advise the pool, for a public funds investment pool created under Chapter 791 and managed by a state agency; or

(2) of participants in the pool and other persons who do not have a business relationship with the pool and are qualified to advise the pool, for other investment pools.

(h) To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service.

(i) If the investment pool operates an Internet website, the information in a disclosure instrument or report described in Subsections (b), (c)(2), and (f) must be posted on the website.

(j) To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must make available to the entity an annual audited financial statement of the investment pool in which the entity has funds invested.

(k) If an investment pool offers fee breakpoints based on fund balances invested, the investment pool in advertising investment rates must include either all levels of return based on the breakpoints provided or state the lowest possible level of return based on the smallest level of funds invested.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 9, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 7, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 773 (H.B. 1003), Sec. 6, eff. June 14, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1133 (H.B. 2706), Sec. 3, eff. September 1, 2019.

Sec. 2256.017. EXISTING INVESTMENTS. Except as provided by Chapter 2270, an entity is not required to liquidate investments that were authorized investments at the time of purchase.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.46(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1421, Sec. 10, eff. Sept. 1, 1997.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 2, eff. May 23, 2017.

Sec. 2256.019. RATING OF CERTAIN INVESTMENT POOLS. A public funds investment pool must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1421, Sec. 11, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 8, eff. June 17, 2011.

Sec. 2256.020. AUTHORIZED INVESTMENTS: INSTITUTIONS OF HIGHER EDUCATION. In addition to the authorized investments permitted by this subchapter, an institution of higher education may purchase, sell, and invest its funds and funds under its control in the following:

(1) cash management and fixed income funds sponsored by organizations exempt from federal income taxation under Section 501(f), Internal Revenue Code of 1986 (26 U.S.C. Section 501(f));

(2) negotiable certificates of deposit issued by a bank that has a certificate of deposit rating of at least 1 or the equivalent by a nationally recognized credit rating agency or that is associated with a holding company having a commercial paper rating of at least A-1, P-1, or the equivalent by a nationally recognized credit rating agency; and

(3) corporate bonds, debentures, or similar debt obligations rated by a nationally recognized investment rating firm in one of the two highest long-term rating categories, without regard to gradations within those categories.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.0201. AUTHORIZED INVESTMENTS; MUNICIPAL UTILITY. (a) A municipality that owns a municipal electric utility that is engaged in the distribution and sale of electric energy or natural gas to the public may enter into a hedging contract and related security and insurance agreements in relation to fuel oil, natural gas, coal, nuclear fuel, and electric energy to protect against loss due to price fluctuations. A hedging transaction must comply with the regulations of the Commodity Futures Trading Commission and the Securities and Exchange Commission. If there is a conflict between the municipal charter of the municipality and this chapter, this chapter prevails.

(b) A payment by a municipally owned electric or gas utility under a hedging contract or related agreement in relation to fuel supplies or fuel

reserves is a fuel expense, and the utility may credit any amounts it receives under the contract or agreement against fuel expenses.

(c) The governing body of a municipally owned electric or gas utility or the body vested with power to manage and operate the municipally owned electric or gas utility may set policy regarding hedging transactions.

(d) In this section, "hedging" means the buying and selling of fuel oil, natural gas, coal, nuclear fuel, and electric energy futures or options or similar contracts on those commodities and related transportation costs as a protection against loss due to price fluctuation.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 48, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 7 (S.B. 495), Sec. 1, eff. April 13, 2007.

Sec. 2256.0202. AUTHORIZED INVESTMENTS: MUNICIPAL FUNDS FROM MANAGEMENT AND DEVELOPMENT OF MINERAL RIGHTS. (a) In addition to other investments authorized under this subchapter, a municipality may invest funds received by the municipality from a lease or contract for the management and development of land owned by the municipality and leased for oil, gas, or other mineral development in any investment authorized to be made by a trustee under Subtitle B, Title 9, Property Code (Texas Trust Code).

(b) Funds invested by a municipality under this section shall be segregated and accounted for separately from other funds of the municipality.

Added by Acts 2009, 81st Leg., R.S., Ch. 1371 (S.B. 894), Sec. 1, eff. September 1, 2009.

Sec. 2256.0203. AUTHORIZED INVESTMENTS: PORTS AND NAVIGATION DISTRICTS. (a) In this section, "district" means a navigation district organized under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(b) In addition to the authorized investments permitted by this subchapter, a port or district may purchase, sell, and invest its funds and funds under its control in negotiable certificates of deposit issued by a bank that has a certificate of deposit rating of at least 1 or the equivalent by a nationally recognized credit rating agency or that is associated with a holding company having a commercial paper rating of at

least A-1, P-1, or the equivalent by a nationally recognized credit rating agency.

Added by Acts 2011, 82nd Leg., R.S., Ch. 804 (H.B. 2346), Sec. 1, eff. September 1, 2011.

Sec. 2256.0204. AUTHORIZED INVESTMENTS: INDEPENDENT SCHOOL DISTRICTS. (a) In this section, "corporate bond" means a senior secured debt obligation issued by a domestic business entity and rated not lower than "AA-" or the equivalent by a nationally recognized investment rating firm. The term does not include a debt obligation that:

(1) on conversion, would result in the holder becoming a stockholder or shareholder in the entity, or any affiliate or subsidiary of the entity, that issued the debt obligation; or

(2) is an unsecured debt obligation.

(b) This section applies only to an independent school district that qualifies as an issuer as defined by Section 1371.001.

(c) In addition to authorized investments permitted by this subchapter, an independent school district subject to this section may purchase, sell, and invest its funds and funds under its control in corporate bonds that, at the time of purchase, are rated by a nationally recognized investment rating firm "AA-" or the equivalent and have a stated final maturity that is not later than the third anniversary of the date the corporate bonds were purchased.

(d) An independent school district subject to this section is not authorized by this section to:

(1) invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds, reserves, and other funds held for the payment of debt service, in corporate bonds; or

(2) invest more than 25 percent of the funds invested in corporate bonds in any one domestic business entity, including subsidiaries and affiliates of the entity.

(e) An independent school district subject to this section may purchase, sell, and invest its funds and funds under its control in corporate bonds if the governing body of the district:

(1) amends its investment policy to authorize corporate bonds as an eligible investment;

(2) adopts procedures to provide for:

(A) monitoring rating changes in corporate bonds acquired with public funds; and

(B) liquidating the investment in corporate bonds; and

(3) identifies the funds eligible to be invested in corporate bonds.

(f) The investment officer of an independent school district, acting on behalf of the district, shall sell corporate bonds in which the district has invested its funds not later than the seventh day after the date a nationally recognized investment rating firm:

(1) issues a release that places the corporate bonds or the domestic business entity that issued the corporate bonds on negative credit watch or the equivalent, if the corporate bonds are rated "AA-" or the equivalent at the time the release is issued; or

(2) changes the rating on the corporate bonds to a rating lower than "AA-" or the equivalent.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1133 (H.B. 2706), Sec. 5, eff. September 1, 2019.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1347 (S.B. 1543), Sec. 1, eff. June 17, 2011.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1133 (H.B. 2706), Sec. 5, eff. September 1, 2019.

Sec. 2256.0205. AUTHORIZED INVESTMENTS; DECOMMISSIONING TRUST. (a) In this section:

(1) "Decommissioning trust" means a trust created to provide the Nuclear Regulatory Commission assurance that funds will be available for decommissioning purposes as required under 10 C.F.R. Part 50 or other similar regulation.

(2) "Funds" includes any money held in a decommissioning trust regardless of whether the money is considered to be public funds under this subchapter.

(b) In addition to other investments authorized under this subchapter, a municipality that owns a municipal electric utility that is engaged in the distribution and sale of electric energy or natural gas to the public may invest funds held in a decommissioning trust in any investment authorized by Subtitle B, Title 9, Property Code.

Added by Acts 2005, 79th Leg., Ch. 121 (S.B. 1464), Sec. 1, eff. September 1, 2005.

Sec. 2256.0206. AUTHORIZED INVESTMENTS: HEDGING TRANSACTIONS. (a) In this section:

(1) "Eligible entity" means a political subdivision that has:

(A) a principal amount of at least $250 million in:

(i) outstanding long-term indebtedness;

(ii) long-term indebtedness proposed to be issued; or

(iii) a combination of outstanding long-term indebtedness and long-term indebtedness proposed to be issued; and

(B) outstanding long-term indebtedness that is rated in one of the four highest rating categories for long-term debt instruments by a nationally recognized rating agency for municipal securities, without regard to the effect of any credit agreement or other form of credit enhancement entered into in connection with the obligation.

(2) "Eligible project" has the meaning assigned by Section 1371.001.

(3) "Hedging" means acting to protect against economic loss due to price fluctuation of a commodity or related investment by entering into an offsetting position or using a financial agreement or producer price agreement in a correlated security, index, or other commodity.

(b) This section prevails to the extent of any conflict between this section and:

(1) another law; or

(2) an eligible entity's municipal charter, if applicable.

(c) The governing body of an eligible entity shall establish the entity's policy regarding hedging transactions.

(d) An eligible entity may enter into hedging transactions, including hedging contracts, and related security, credit, and insurance agreements in connection with commodities used by an eligible entity in the entity's general operations, with the acquisition or construction of a capital project, or with an eligible project. A hedging transaction must comply with the regulations of the federal Commodity Futures Trading Commission and the federal Securities and Exchange Commission.

(e) An eligible entity may pledge as security for and to the payment of a hedging contract or a security, credit, or insurance agreement any general or special revenues or funds the entity is authorized by law to pledge to the payment of any other obligation.

(f) Section 1371.059(c) applies to the execution by an eligible entity of a hedging contract and any related security, credit, or insurance agreement.

(g) An eligible entity may credit any amount the entity receives under a hedging contract against expenses associated with a commodity purchase.

(h) An eligible entity's cost of or payment under a hedging contract or agreement may be considered:

(1) an operation and maintenance expense of the eligible entity;

(2) an acquisition expense of the eligible entity;

(3) a project cost of an eligible project; or

(4) a construction expense of the eligible entity.

Added by Acts 2017, 85th Leg., R.S., Ch. 773 (H.B. 1003), Sec. 7, eff. June 14, 2017.

Sec. 2256.0207. AUTHORIZED INVESTMENTS: PUBLIC JUNIOR COLLEGE DISTRICT FUNDS FROM MANAGEMENT AND DEVELOPMENT OF MINERAL RIGHTS. (a) In addition to other investments authorized under this subchapter, the governing board of a public junior college district may invest funds received by the district from a lease or contract for the management and development of land owned by the district and leased for oil, gas, or other mineral development in any investment authorized to be made by a trustee under Subtitle B, Title 9, Property Code (Texas Trust Code).

(b) Funds invested by the governing board of a public junior college district under this section shall be segregated and accounted for separately from other funds of the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 344 (H.B. 1472), Sec. 1, eff. September 1, 2017.
Redesignated from Government Code, Section 2256.0206 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(34), eff. September 1, 2019.

Sec. 2256.0208. LOCAL GOVERNMENT INVESTMENT OF BOND PROCEEDS AND PLEDGED REVENUE. (a) In this section, "pledged revenue" means money pledged to the payment of or as security for:

(1) bonds or other indebtedness issued by a local government;

(2) obligations under a lease, installment sale, or other agreement of a local government; or

(3) certificates of participation in a debt or obligation described by Subdivision (1) or (2).

(b) The investment officer of a local government may invest bond proceeds or pledged revenue only to the extent permitted by this chapter, in accordance with:

(1) statutory provisions governing the debt issuance or the agreement, as applicable; and

(2) the local government's investment policy regarding the debt issuance or the agreement, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1133 (H.B. 2706), Sec. 4, eff. September 1, 2019.

Sec. 2256.021. EFFECT OF LOSS OF REQUIRED RATING. An investment that requires a minimum rating under this subchapter does not qualify as an authorized investment during the period the investment does not have the minimum rating. An entity shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not have the minimum rating.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.022. EXPANSION OF INVESTMENT AUTHORITY. Expansion of investment authority granted by this chapter shall require a risk assessment by the state auditor or performed at the direction of the state auditor, subject to the legislative audit committee's approval of including the review in the audit plan under Section 321.013.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 42, eff. Sept. 1, 2003.

Sec. 2256.023. INTERNAL MANAGEMENT REPORTS. (a) Not less than quarterly, the investment officer shall prepare and submit to the governing body of the entity a written report of investment transactions for all funds covered by this chapter for the preceding reporting period.

(b) The report must:

(1) describe in detail the investment position of the entity on the date of the report;

(2) be prepared jointly by all investment officers of the entity;

(3) be signed by each investment officer of the entity;

(4) contain a summary statement of each pooled fund group that states the:

(A) beginning market value for the reporting period;

(B) ending market value for the period; and

(C) fully accrued interest for the reporting period;

(5) state the book value and market value of each separately invested asset at the end of the reporting period by the type of asset and fund type invested;

(6) state the maturity date of each separately invested asset that has a maturity date;

(7) state the account or fund or pooled group fund in the state agency or local government for which each individual investment was acquired; and

(8) state the compliance of the investment portfolio of the state agency or local government as it relates to:

(A) the investment strategy expressed in the agency's or local government's investment policy; and

(B) relevant provisions of this chapter.

(c) The report shall be presented not less than quarterly to the governing body and the chief executive officer of the entity within a reasonable time after the end of the period.

(d) If an entity invests in other than money market mutual funds, investment pools or accounts offered by its depository bank in the form of certificates of deposit, or money market accounts or similar accounts, the reports prepared by the investment officers under this section shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the governing body by that auditor.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1421, Sec. 12, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 9, eff. June 17, 2011.

Sec. 2256.024. SUBCHAPTER CUMULATIVE. (a) The authority granted by this subchapter is in addition to that granted by other law. Except as provided by Subsection (b) and Section 2256.017, this subchapter does not:

(1) prohibit an investment specifically authorized by other law; or

(2) authorize an investment specifically prohibited by other law.

(b) Except with respect to those investing entities described in Subsection (c), a security described in Section 2256.009(b) is not an authorized investment for a state agency, a local government, or another investing entity, notwithstanding any other provision of this chapter or other law to the contrary.

(c) Mortgage pass-through certificates and individual mortgage loans that may constitute an investment described in Section 2256.009(b) are

authorized investments with respect to the housing bond programs operated by:

(1) the Texas Department of Housing and Community Affairs or a nonprofit corporation created to act on its behalf;

(2) an entity created under Chapter 392, Local Government Code; or

(3) an entity created under Chapter 394, Local Government Code.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 3, eff. May 23, 2017.

Sec. 2256.025. SELECTION OF AUTHORIZED BROKERS. The governing body of an entity subject to this subchapter or the designated investment committee of the entity shall, at least annually, review, revise, and adopt a list of qualified brokers that are authorized to engage in investment transactions with the entity.

Added by Acts 1997, 75th Leg., ch. 1421, Sec. 13, eff. Sept. 1, 1997.

Sec. 2256.026. STATUTORY COMPLIANCE. All investments made by entities must comply with this subchapter and all federal, state, and local statutes, rules, or regulations.

Added by Acts 1997, 75th Leg., ch. 1421, Sec. 13, eff. Sept. 1, 1997.

SUBCHAPTER B. MISCELLANEOUS PROVISIONS

Sec. 2256.051. ELECTRONIC FUNDS TRANSFER. Any local government may use electronic means to transfer or invest all funds collected or controlled by the local government.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.052. PRIVATE AUDITOR. Notwithstanding any other law, a state agency shall employ a private auditor if authorized by the legislative audit committee either on the committee's initiative or on request of the governing body of the agency.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.053. PAYMENT FOR SECURITIES PURCHASED BY STATE. The comptroller or the disbursing officer of an agency that has the power to invest assets directly may pay for authorized securities purchased from or through a member in good standing of the National Association of Securities Dealers or from or through a national or state bank on receiving an invoice from the seller of the securities showing that the securities have been purchased by the board or agency and that the amount to be paid for the securities is just, due, and unpaid. A purchase of securities may not be made at a price that exceeds the existing market value of the securities.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 8.67, eff. Sept. 1, 1997.

Sec. 2256.054. DELIVERY OF SECURITIES PURCHASED BY STATE. A security purchased under this chapter may be delivered to the comptroller, a bank, or the board or agency investing its funds. The delivery shall be made under normal and recognized practices in the securities and banking industries, including the book entry procedure of the Federal Reserve Bank.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 8.68, eff. Sept. 1, 1997.

Sec. 2256.055. DEPOSIT OF SECURITIES PURCHASED BY STATE. At the direction of the comptroller or the agency, a security purchased under this chapter may be deposited in trust with a bank or federal reserve bank or branch designated by the comptroller, whether in or outside the state. The deposit shall be held in the entity's name as evidenced by a trust receipt of the bank with which the securities are deposited.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 8.69, eff. Sept. 1, 1997.

Date:	12/05/2023
Agenda Item #:	4. F.
Department:	Finance
Strategic Goal:	Maintain operational integrity and viability
Staff Contact:	Kelly Wilson, Chief Financial Officer

AGENDA ITEM:

Consider Action to Approve **Ordinance No. 1740 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.**

DESCRIPTION:

The town charter requires that when the budget is amended that the amendment be by ordinance. This budget amendment addresses several items discussed below.

"The legal level of budgetary control is at the fund level. The Town Manager is authorized to transfer budgeted amounts between departments within any fund. Any revisions that increases the total expenditures of any fund greater than the original budget must be approved by ordinance of Town Council."

BUDGET IMPACT:

Landscape Fund
Wayfinding project reflects change orders for additional signs and electrical work. The project is being offset by increased cell tower rent and tree mitigation fees collected. The increase to the revenue and the expenditures is a net neutral to the budget and no impact on fund balance. The budget amendment reflects an increase of $62,037 for the project and collected revenue.

Risk Management Fund
In an effort to assist departments that are impacted by various tort claims to the Town's property, Finance established a separate accounting process to track the insurance proceeds and expenses associated with the claim. This helps provide departments not be penalized for exceeding their budget authority due to elements out of their control for insurance claims. The budget amendment for $35,544 addresses the insurance proceeds and expenses. There is no impact to the Town's budget since we are increasing revenue and expenses to net to zero.

Asset Forfeiture Fund:

This fund accounts for loss of property for failing to obey the law. Due to the nature of accounting for this, the Town does not establish an adopted budget at the beginning of the year. It is at year end, Finance takes to Council for approval the actual accounted for property the Town is able to spend on specific Police training, equipment, etc. that is outlined in Chapter 59 of the Code of Criminal Procedure. The requested budget amendment reflects an increase to the fund for collected revenue in the amount of $343,630 and expenditures in the amount of $120,534.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Ordinance No. 1740 FY2022-2023 Budget Amendment

Exhibit A FY2022-2023 Budget Amendment

ORDINANCE NO. 1740

AN ORDINANCE OF THE TOWN COUNCIL OF LITTLE ELM, TEXAS ("TOWN"), AUTHORIZING CERTAIN BUDGET AMENDMENT PERTAINING TO THE FISCAL YEAR 2022-2023 BUDGET; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town is required by the Town Charter to approve a budget amendment by ordinance and upon approval such amendment shall become an attachment to the original budget; and

WHEREAS, a budget amendment has been prepared for certain appropriations and expenditures in the FY 2022-2023 Budget and submitted to the Town Council for approval and a true and correct copy is attached as Exhibit A.

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

SECTION 1. Pursuant to the Town Charter requirements of the Town of Little Elm, Texas, in the year 2022-2023, a Budget Amendment attached as Exhibit A is hereby authorized and approved.

SECTION 2. This Ordinance shall take effect immediately from and after its passage as the law in such cases provides.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, Texas this the 5th day of December, 2023.

APPROVED:

_____
Curtis J. Cornelious
Mayor

ATTEST:

_____
Caitlan Biggs
Town Secretary

Ordinance 1740
EXHIBIT "A"
BUDGET AMENDMENT
FISCAL YEAR 2022-2023
December 5, 2023

Landscape Fund	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ 659,513	$ 659,513	$ 721,550	$ 62,037
Total Revenue	**$ 659,513**	**$ 659,513**	**$ 721,550**	**$ 62,037**
Expenditures:				
Total Expenditures	$ 552,000	$ 750,937	$ 812,974	$ 62,037
Total Transfers Out	-	-	-	$ -
Total Expenditures	**$ 552,000**	**$ 750,937**	**$ 812,974**	**$ 62,037**

Risk Management Fund	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ -	$ 147,340	$ 182,884	$ 35,544
Total Revenue	**$ -**	**$ 147,340**	**$ 182,884**	**$ 35,544**
Expenditures:				
Total Expenditures	$ -	$ 147,340	$ 182,884	$ 35,544
Total Transfers Out	-	-	-	-
Total Expenditures	**$ -**	**$ 147,340**	**$ 182,884**	**$ 35,544**

Asset Forfeiture Fund	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ -	$ -	$ 343,630	$ 343,630
Total Revenue	**$ -**	**$ -**	**$ 343,630**	**$ 343,630**
Expenditures:				
Total Expenditures	$ -	$ -	$ 120,534	$ 120,534
Total Transfers Out	-	10,000	10,000	-
Total Expenditures	**$ -**	**$ 10,000**	**$ 130,534**	**$ 120,534**

Total Revenue	**$ 441,211**
Total Expenditures	**$ 218,115**
Net Effect All Funds	**$ 223,096**

Date:	12/05/2023
Agenda Item #:	4. G.
Department:	Economic Development Corporation
Strategic Goal:	Promote and expand Little Elm's identity
Staff Contact:	Doug Peach, Deputy Town Manager

AGENDA ITEM:

Consider Action to Approve an **Amendment to an Interlocal Cooperation Agreement between Denton County and the Town of Little Elm for a Portion of the Design, Construction and Right-of-Way for Ryan Spiritas Parkway.**

DESCRIPTION:

The Town had provided the cost estimate of **Seven Hundred Thousand and NO/100 Dollars ($700, 000.00)** to Denton County for the ROW associated with the Spiritas project. That amount was based on an estimate of acquiring **115,695 square feet** (2.656 acres) at $**8.00 per foot.**

Unfortunately, the Keck's did not accept that offer, much in part because TXDOT paid them $38.00 per square foot on their property directly across the street. The Town declined and started the legal process of condemnation. The hearing was set for October 23rd. Prior to the hearing, Keck's attorney **agreed to $14.00 per square foot, for a total of One Million Six Hundred Nineteen Thousand, Seven Hundred Thirty and NO/100 Dollars ($1,619,730.00)** with a deadline to fund said amount by **December 10, 2023.**

In the current ICA with Denton County associated with the Spiritas project, Denton County has already allocated **Seven Hundred Thousand and NO/100 Dollars ($700, 000.00)**. In addition to those funds, we have reached terms with Centurion American to pay **Four Hundred Twenty One Thousand, One Hundred Thirty and NO/100 Dollars ($421,130.00)** for their portion of ROW they are responsible for, but we are still short on the remaining cost.

The original ICA is being amended to include an additional **Five Hundred Thousand and NO/100 Dollars ($500,000.00),** increasing the contribution from $700,000.00 to a **total of One Million Two Hundred and NO/100 Dollars $1,200,000.00** to fund the increase in cost of the ROW for the connector road behind the HEB Property.

BUDGET IMPACT:

At this time, we have a deal on the table to settle the suit for One Million Six Hundred Nineteen Thousand, Seven Hundred Thirty and NO/100 Dollars ($1,619,730.00)

Of this amount, the developer, Centurion American, is responsible to the Town for Four Hundred Twenty One Thousand, One Hundred Thirty and NO/Dollars ($421,130.00)

This leaves a balance of One Million One Hundred Ninety Eight Thousand, Six Hundred and NO/100 Dollars ($1,198,600.00) to be paid by the Town.

Of that amount, Seven Hundred Thousand and NO/100 Dollars ($700,000.00) is provided in the existing ICA, leaving a balance of approximately Five Hundred Thousand and NO/100 Dollars ($500,000.00)

This Amended ICA affirms that Denton County will provide for and contribute the additional Five Hundred Thousand and NO/100 Dollars ($500,000.00) needed to solidify the current offer.

Town will utilize CIP reserves to cash flow the purchase until such time as the County and the Developer reimburse the Town based on such agreements.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

ICA Spiritas Parkway Amendment

THE STATE OF TEXAS §
§
COUNTY OF DENTON §

AMENDMENT NO. 1 TO INTERLOCAL COOPERATION AGREEMENT BETWEEN DENTON COUNTY, TEXAS, AND THE TOWN OF LITTLE ELM, TEXAS

THIS AMENDMENT to the Interlocal Cooperation Agreement is made and entered into by and between Denton County, Texas, hereinafter "the County"; and the Town of Little Elm, Texas, hereinafter "the Town." The County and the Town are collectively referred to herein as "the Parties." On August 30, 2022, the Parties entered into an Interlocal Cooperation Agreement under Denton County Commissioners Court Order Number 22-0715, hereinafter "the original Agreement," for the purpose of providing for design, testing, drainage, right-of-way acquisition, utility relocations, and construction associated with the new FM 2931/Ryan Spiritas Parkway Project as a new four-lane divided thoroughfare with sidewalks from FM 720 to US 380 and acquisition of approximately 1.96 acres for the FM 720 and Ryan Spiritas Parkway Connector at a total estimated project cost of NINE MILLION SEVEN HUNDRED THIRTY-SIX THOUSAND EIGHT HUNDRED AND SIX AND NO/100 DOLLARS ($9,736,806.00).

WHEREAS, under the terms of the original Agreement, the County and Town agreed that the County would contribute an amount which shall not exceed THREE MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS ($3,100,000.00) toward satisfactory completion of the Project.

WHEREAS, under the original Agreement the County and the Town agreed that the Town would secure a contract for the design, testing, drainage, right-of-way acquisition, any necessary utility relocations, and construction required for satisfactory completion of the Project.

WHEREAS, the Parties to the original Agreement now intend to amend the original Agreement, in order to reflect an increase in total estimated Project cost and an increase in the financial contribution of the County toward satisfactory completion of the Project, which shall be memorialized in this document as Amendment No. 1 to the original Agreement between the County and the Town; and

NOW, THEREFORE, the County and the Town for the mutual covenants and agreements contained in the original Agreement and as contained herein, and for the other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree to amend

Section II and Section III of the original Agreement to reflect the change in the Project estimate and an increase in the County's contribution toward satisfactory completion of the Project. All other terms and conditions of the original Agreement are hereby affirmed by the Parties. The amended portions of the original Agreement are as follows:

AMENDED SECTION II

The County and the Town hereby agree that Amendment No. 1 will revise the Project estimate from NINE MILLION SEVEN HUNDRED THIRTY-SIX THOUSAND EIGHT HUNDRED AND SIX AND NO/100 DOLLARS ($9,736,806.00) to TEN MILLION TWO HUNDRED THIRTY-SIX THOUSAND EIGHT HUNDRED AND SIX AND NO/100 DOLLARS ($10,236,806.00).

AMENDED SECTION III

The County and the Town hereby agree that Amendment No. 1 will amend the original Agreement to increase the County contribution toward satisfactory completion of the Project from THREE MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS ($3,100,000.00) to an amount which shall not exceed THREE MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS ($3,600,000.00), for an increased County contribution toward satisfactory completion of the Project of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($500,000.00).

This Amendment to the original Agreement shall replace and supersede Section II and Section III of the original Agreement between the Parties. **All other provisions of the original Agreement shall remain in full force and effect unless modified by subsequent written amendment signed by both of the Parties to the original Agreement.**

This Agreement may be executed in multiple counterparts, attached to the original Agreement, and shall collectively constitute an Amendment to the original Agreement. All other terms and conditions of the original Agreement are hereby affirmed by the Parties.

Executed this _____ day of _____, 2023.

DENTON COUNTY, TEXAS
1 Courthouse Drive, Suite 3100
Denton, Texas 76209

By: _____
Honorable Andy Eads
Denton County Judge
Acting by and on behalf of the authority
of the Denton County Commissioners Court

ATTEST:

By: _____
Denton County Clerk

TOWN OF LITTLE ELM, TEXAS
100 West Eldorado Parkway
Little Elm, Texas 75068

By:_____
Honorable Curtis Cornelious
Mayor of the Town of Little Elm, Texas
Acting by and on behalf of the authority
of the Town of Little Elm, Texas

ATTEST:

By: _____
Town Secretary

COUNTY AUDITOR'S CERTIFICATE

I hereby certify funds are available to accomplish and pay the obligation of Denton County, Texas, under this Agreement.

_____
Denton County Auditor

APPROVAL OF AMENDMENT NO. 1 TO INTERLOCAL COOPERATION AGREEMENT BETWEEN DENTON COUNTY, TEXAS, AND THE TOWN OF LITTLE ELM, TEXAS

Denton County, Texas, acting by and through the Denton County Commissioners Court, having been advised of the Project, hereby agrees to amend Section II and Section III of the Interlocal Cooperation Agreement which was approved on August 30, 2022, under Denton County Commissioners Court Order Number 22-0715.

Amendment No. 1 will amend the original Agreement to provide additional funding by the County toward satisfactory completion of the Project in the amount of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($500,000.00). The scope of the Project shall continue to be to provide for the design, testing, drainage, right-of-way acquisition, utility relocations, and construction associated with the new FM 2931/Ryan Spiritas Parkway Project as a new four-lane divided thoroughfare with sidewalks from FM 720 to US 380 and acquisition of approximately 1.96 acres for the FM 720 and Ryan Spiritas Parkway Connector. The total increased Denton County commitment toward satisfactory completion of the Project shall be in an amount which shall not exceed THREE MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS ($3,600,000.00).

All other provisions of the original Agreement shall remain in full force and effect unless modified by subsequent written amendment signed by both of the Parties to the original Agreement.

Denton County, Texas, hereby gives its specific written approval of the Parties prior to beginning the Project in satisfaction of the requirements of the Interlocal Cooperation Act, Texas Government Cod Chapter 791.

By vote on this date, the Denton County Commissioners Court has approved the Project identified above and authorized execution of this document by the presiding officer of the Denton County Commissioners Court.

Date: _____

By: _____
Presiding Officer of the Denton
County Commissioners Court

Date:	12/05/2023
Agenda Item #:	4. H.
Department:	Administrative Services
Strategic Goal:	Maintain operational integrity and viability
Staff Contact:	Doug Peach, Deputy Town Manager

AGENDA ITEM:

Consider Action to Approve **Resolution No. 1205202302 Finding that CoServ Gas, LTD.'s Statement of Intent to Increase Rates within the Town should be Denied; Finding that the Town's Reasonable Rate Case Expenses shall be Reimbursed by the Company; Finding that the Meeting which this Resolution is Passed is Open to the Public as Required by Law; Requiring Notice of this Resolution to the Company and the Town's Legal Counsel.**

DESCRIPTION:

On July 28, 2023, CoServ Gas, Ltd. ("CoServ" or "Company"), pursuant to Subchapter C of Chapter 104 of the Gas Utility Regulatory Act, filed its Statement of Intent to change gas rates at the Railroad Commission of Texas ("RRC") and in all municipalities exercising original jurisdiction within its service area. The Steering Committee of Cities Served by CoServ Gas, Ltd. ("CoServ Gas Cities") engaged the services of consultants to review the Company's filing. The consultants identified numerous unreasonable expenses and proposed significant reductions to the Company's request. Settlement discussions are ongoing, but no agreement has been met. Accordingly, CoServ Gas Cities' attorneys recommend that all member cities adopt the Resolution denying the rate change. Once the Resolution is adopted, CoServ will have 30 days to appeal the decision to the Railroad Commission where the appeal will be consolidated with CoServ's filing. All cities with original jurisdiction will need to adopt the denial resolution no later than December 7.

Purpose of the Resolution:

The purpose of the Resolution is to deny the rate increase proposed by CoServ.

Explanation of "Be It Resolved" Paragraphs:

1. This paragraph finds that the Company's application is unreasonable and should be denied.
2. This section states that the Company's current rates shall not be changed.
3. The Company will reimburse Cities for their reasonable rate case expenses. Legal counsel and consultants, approved by the Cities, will submit monthly invoices that will be forwarded

to CoServ for reimbursement.

4. This section merely recites that the Resolution was passed at a meeting that was open to the public and that the consideration of the Resolution was properly noticed.
5. This section provides CoServ and counsel for CoServ Gas Cities will be notified of the City's action by sending a copy of the approved and signed resolution to counsel.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Resolution No. 1205202302

RESOLUTION NO. 1205202302

A RESOLUTION OF THE TOWN OF LITTLE ELM, TEXAS FINDING THAT COSERV GAS, LTD.'S STATEMENT OF INTENT TO INCREASE RATES WITHIN THE TOWN SHOULD BE DENIED; FINDING THAT THE TOWN'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND THE TOWN'S LEGAL COUNSEL.

WHEREAS, the Town of Little Elm, Texas ("Town") is a gas utility customer of CoServ Gas, Ltd. ("CoServ" or "Company") and is a regulatory authority under the Gas Utility Regulatory Act ("GURA") with exclusive original jurisdiction over CoServ's rates, operations, and services within the Town; and

WHEREAS, the Town cooperated with a coalition of similarly situated cities served by the Company that have joined together to facilitate the review and response to natural gas issues affecting the rates charged in CoServ's service area ("CoServ Gas Cities" or "Steering Committee of Cities Served by CoServ Gas, Ltd."); and

WHEREAS, on or about July 28, 2023, CoServ filed with the Town a Statement of Intent to Increase Rates seeking to increase natural gas rates by $10.3 million annually in incorporated areas; and

WHEREAS, the Town passed Resolution No. 1205202302 to suspend the effective date of CoServ's requested rate increase for 90 days, the maximum period allowed by law; and

WHEREAS, CoServ Gas Cities hired and directed legal counsel and consultants to prepare a collective response to the Company's requested increase, which resulted in a conclusion that CoServ's proposed rates are not reasonable; and

WHEREAS, CoServ Gas Cities' attorneys recommend that members deny the requested increase; and

WHEREAS, GURA § 103.022 provides that costs incurred by CoServ Gas Cities in ratemaking activities are to be reimbursed by the regulated utility.

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

Section 1. That the rates proposed by CoServ to be recovered through its gas rates charged to customers located within the Town limits, are hereby found to be unreasonable and shall be denied.

Section 2. That the Company shall continue to charge its existing rates to customers within the Town.

Section 3. That the Town's reasonable rate case expenses shall be reimbursed in full by CoServ.

Section 4. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

Section 5. That a copy of this Resolution shall be sent to CoServ, care of Charles Harrell, CoServ Gas, Ltd., 7701 South Stemmons Freeway, Corinth, Texas 76210 (Charrell@coserv.com); and to Thomas Brocato, counsel for CoServ Gas Cities, Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701 (tbrocato@lglawfirm.com).

PASSED AND APPROVED this 5th day of December, 2023.

_____
Curtis J. Cornelious, Mayor

ATTEST:

_____
Caitlan Biggs, Town Secretary

APPROVED AS TO FORM:

_____
Robert Brown, Town Attorney

Date:	12/05/2023
Agenda Item #:	4. I.
Department:	Administrative Services
Strategic Goal:	Ensure strong relationship within the community and region
Staff Contact:	Caitlan Biggs, Director of Administrative Services/Town Secretary

AGENDA ITEM:

Consider Action to Approve **Appointments to the Veterans Committee.**

DESCRIPTION:

The Veterans Committee has two board positions (unexpired terms) and two alternate positions vacant. The Interview Committee is recommending the following appointments:

- Board Members
  - Charles Losiewicz, expiring August 2025
  - Derrick JaQuess, expiring August 2024
- Alternates
  - Gerod Ware, expiring August 2025
  - Michael Kelly, expiring August 2025

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval.

Date:	12/05/2023
Agenda Item #:	4. J.
Department:	Administrative Services
Strategic Goal:	Maintain operational integrity and viability
Staff Contact:	Doug Peach, Deputy Town Manager

AGENDA ITEM:

Consider Action to **Ratify the City Affidavits Opting Out of the PFAS Class Actions Relative to 3M and DuPont, and to Take All Other Actions Incident and Related Thereto.**

DESCRIPTION:

The Town has been notified that it may wish to participate in the settlement of two nationwide class action lawsuits regarding PFAS (Per- and polyfluoroalkyl substances) in water treatment systems. PFAS, known as a "forever chemical" because it is nearly indestructible, is a family of man-made, toxic chemicals encompassing hundreds of compounds, including perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA). PFOS and PFOA are used to make coatings and products that resist heat, oil, stains, grease, and water; and are also the primary components of AFFF (firefighting foam), which is used to extinguish fuel fires. These substances are easily dissolved in water, which increases their mobility and the ease with which they spread into the environment, contaminating soil, and leaching into groundwater and aquifers. Given the toxicity and persistence of these chemicals, any amount found in groundwater or drinking water is likely to be deemed unacceptable by regulatory agencies. The presence of these chemicals may require the installation of costly treatment systems or modifying existing systems. The EPA will likely release its initial recommended maximum contaminant level (MCL) in the coming months for PFOS and PFOA; the MCL will likely be established at a very low level. Once the EPA (or a state regulatory body such as the Texas Commission on Environmental Quality) establishes this MCL, cities and water providers will have the financial responsibility to treat their water to reduce PFAS below the MCL. It is anticipated that this process will likely be costly and take time to implement. A multitude of lawsuits were filed against 3M and DuPont for designing, manufacturing, marketing, selling, and supplying PFAS. The various lawsuits were consolidated into a class action and in June 2023, the parties announced they had reached settlement agreements that would provide public water suppliers with up to $14 billion over 13 years to test and treat for PFAS contamination. The 3M settlement will pay plaintiffs between $10-$12.5 billion and the DuPont settlement will pay plaintiffs between $1-$2 billion. Virtually every public water system in the nation was (presumably) sent notice of the lawsuits (Little Elm was recently provided notice) and has been given the option to participate in the settlements or to "opt out" of the settlements. Public water systems must file

notice with the court regarding which option they choose. It is clear that if a municipality, such as Little Elm, does not have its own water treatment plant, it will receive no settlement proceeds. Since water treatment services for the Town are provided by North Texas Municipal Water District (NTMWD), NTMWD has suggested that its member cities opt out of the settlements. Similar suggestions have been made by the other large water providers in North Texas, the City of Dallas and the City of Fort Worth, for their customers. The trial court also has made it clear that a municipality like Little Elm cannot recover settlement proceeds in addition to any recovery obtained by NTMWD because that would be considered a double recovery. Since it is extremely unlikely that Little Elm would receive any settlement proceeds, and in cooperation with our regional partners and NTMWD, it is both the Town Attorney's and Town staff's recommendation that the Town opt out of the settlements. The "opt out" decision must be filed with the court on or before December 4 for the DuPont lawsuit and on or before December 11 for the 3M lawsuit. It is the Town Attorney's understanding that virtually all municipalities in this region are opting out and therefore, any settlement proceeds would be distributed to the respective water treatment provider, NTMWD (or Dallas or Fort Worth).

Given the time constraints, the Town Manager has signed all required documents to opt out of the settlement. This item will ratify the opt out.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

DuPont

3M

November 27, 2023

VIA EMAIL AND UPS OVERNIGHT MAIL

In re: Aqueous Film-Forming Foams Products Liability Litigation
c/o Notice Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103
PFASSettlement@AngeionGroup.com

RE: Request for Exclusion from Settlement Agreement in *City of Camden, et al. v. E.I. DuPont de Nemours and Company, et al.*, Case No. 2:23-cv-03230-RMG (*In re: Aqueous Film-Forming Foams Products Liability Litigation,* MDL No. 2-18-mn-2873-RMG)

Dear Notice Administrator:

My name is Matt Mueller and I am the Town Manager of the Town of Little Elm, Texas ("Town"). The Town is a treated water customer of the North Texas Municipal Water District ("District"); the District provides treated water to the Town for which the Town is charged rates and fees; and the Town does not own or operate any water treatment facilities or own and operate a public water system. The Town hereby formally requests to be excluded from the Settlement Agreement in the above-referenced matter. The attached Affidavit provides the pertinent information requested by the Notice of Proposed Class Action and Settlement. The Affidavit further provides that I have the requisite legal authority to make this request on behalf of the Town.

By this request, the Town understands that it will be waiving the ability to participate in the settlement of the above-referenced case, and all benefits and obligations contained therein.

If you have any questions about this request for exclusion, please contact the Town's attorney:

Robert F. Brown
Brown & Hofmeister, L.L.P.
740 E. Campbell Road, Suite 800
Richardson, Texas 75081
214/747- 6100 (Main)
214/747-6111 (Fax)

Sincerely,

Matt Mueller
Town Manager

Attachment: Affidavit in Support of Request for Exclusion

c: Service as required by Settlement Agreement (via electronic mail and overnight courier, delivery confirmation requested):

Jeffrey M. Wintner
Graham W. Meli
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
jmwintner@wlrk.com
gwmeli@wlrk.com

Kevin T. Van Wart
Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
kevin.vanwart@kirkland.com

Michael T. Reynolds
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
mreynolds@cravath.com

Scott Summy
Baron & Budd, P.C.
3102 Oak Lawn Ave, Ste. 1100
Dallas, Texas 75219
ssummy@baronbudd.com

Michael A. London
Douglas & London
59 Maiden Lane, 6th Floor
New York, NY 10038
mlondon@douglasandlondon.com

Paul J. Napoli
Napoli Shkolnik
1302 Av. Ponce de Leon
San Juan, Puerto Rico 00907
PNapoli@NSPRLaw.com

Elizabeth A. Fegan
Fegan Scott LLC
150 S. Wacker Dr, 24th floor
Chicago, Il 60606
beth@feganscott.com

Joseph F. Rice
Motley Rice
28 Bridgeside Blvd.
Mount Pleasant, SC 29464
jrice@motleyrice.com

Clerk
U.S. District Court for the District of South Carolina
85 Broad Street
Charleston, SC 29401

AFFIDAVIT IN SUPPORT OF REQUEST BY THE TOWN OF LITTLE ELM, TEXAS, FOR EXCLUSION FROM SETTLEMENT AGREEMENT

***City of Camden, et al. v. E.I. DuPont de Nemours and Company, et al.*, Case No. 2:23-cv-03230-RMG (*In re: Aqueous Film-Forming Foams Products Liability Litigation*, MDL No. 2-18-mn-2873-RMG)**

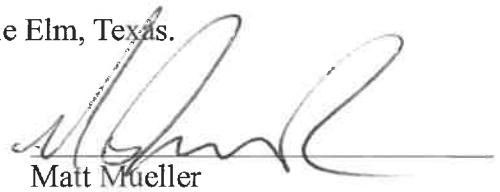
1. My name is Matt Mueller. I am over 21 years of age, have never been convicted of a felony or a crime of dishonesty or moral turpitude, and am competent to make this Affidavit. I am the Town Manager of the Town of Little Elm, Texas ("Town"). The Town is a treated water customer of the North Texas Municipal Water District ("District"); the District provides treated water to the Town for which the Town is charged rates and fees; and the Town does not own or operate any water treatment facilities or own and operate a public water system. As the Town Manager of the Town, under the specific legal authority granted to me by the Town Council of the Town, the Town hereby formally requests to be excluded from the Settlement Agreement between Public Water Systems and 3M Company.

2. The Town's address is 100 W. Eldorado Parkway, Little Elm, TX 75068, telephone number 214-975-0406. My address is the same, my email address is MMueller@littleelm.org. and I may be telephoned at 214-975-0406. For fax purposes, documents may be forwarded to me and to the Town at my email address.

3. As Town Manager of the Town of Little Elm, Texas, I have authority to execute this Affidavit and am legally authorized to request to exclude the Town as a Settlement Class Member, from the DuPont Settlement Agreement. At this time, I am formally requesting that the Town be excluded from the DuPont Settlement Agreement in the case of *City of Camden, et al. v. E.I. DuPont de Nemours and Company, et al.*, Case No. 2:23-cv-03230-RMG, in the AFFF MDL, *In re: Aqueous Film-Forming Foams Products Liability Litigation,* MDL No. 2-18-mn-2873-RMG.

I declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 27th day of November, 2023, at Little Elm, Texas.



Matt Mueller

November 27, 2023

VIA EMAIL AND UPS OVERNIGHT MAIL

In re: Aqueous Film-Forming Foams Products Liability Litigation
c/o 3M Notice Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103
PFASSettlement@AngeionGroup.com

RE: Request for Exclusion from Settlement Agreement in *City of Camden, et al. v. 3M Company*, Case No. 2:23-cv-03147-RMG (*In re: Aqueous Film-Forming Foams Products Liability Litigation,* MDL No. 2-18-mn-2873-RMG)

Dear 3M Notice Administrator:

My name is Matt Mueller and I am the Town Manager of the Town of Little Elm, Texas ("Town"). The Town is a treated water customer of the North Texas Municipal Water District ("District"); the District provides treated water to the Town for which the Town is charged rates and fees; and the Town does not own or operate any water treatment facilities or own and operate a public water system. The Town hereby formally requests to be excluded from the Settlement Agreement in the above-referenced matter. The attached Affidavit provides the pertinent information requested by the Notice of Proposed Class Action and Settlement. The Affidavit further provides that I have the requisite legal authority to make this request on behalf of the Town.

By this request, the Town understands that it will be waiving the ability to participate in the settlement of the above-referenced case, and all benefits and obligations contained therein.

If you have any questions about this request for exclusion, please contact the Town's attorney:

Robert F. Brown
Brown & Hofmeister, L.L.P.
740 E. Campbell Road, Suite 800
Richardson, Texas 75081
214/747- 6100 (Main)
214/747-6111 (Fax)

Sincerely,

Matt Mueller
Town Manager

Attachment: Affidavit in Support of Request for Exclusion

cc: Service as required by Settlement Agreement (via electronic mail and overnight courier, delivery confirmation requested):

Special Master Matthew Garretson
Wolf/Garretson LLC
P.O. Box 2806
Park City, UT 84060
Matt@WolfGarretson.com

AFFF Public Water System Claims
P.O. Box 4466
Baton Rouge, LA 70821
info@pfaswatersettlement.com

Kevin H. Rhodes
Executive Vice President and Chief
Legal Affairs Officer
Legal Affairs Department
3M Company
3M Center, 220-9E-01
St. Paul, MN 55144-1000
krhodes@mmm.com

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1099 New York Avenue, N.W.,
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Washington, DC 20001-4412
TPerrelli@jenner.com

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ssummy@baronbudd.com

Michael A. London
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mlondon@douglasandlondon.com

Paul J. Napoli
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1302 Av. Ponce de Leon
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PNapoli@NSPRLaw.com

Elizabeth A. Fegan
Fegan Scott LLC
150 S. Wacker Dr, 24th floor
Chicago, Il 60606
beth@feganscott.com

Joseph F. Rice
Motley Rice
28 Bridgeside Blvd.
Mount Pleasant, SC 29464
jrice@motleyrice.com

Clerk
U.S. District Court for the District of South Carolina
85 Broad Street
Charleston, SC 29401

AFFIDAVIT IN SUPPORT OF REQUEST BY THE TOWN OF LITTLE ELM, TEXAS, FOR EXCLUSION FROM SETTLEMENT AGREEMENT

***City of Camden, et al. v. 3M Company*, Case No. 2:23-cv-03147-RMG (*In re: Aqueous Film-Forming Foams Products Liability Litigation*, MDL No. 2-18-mn-2873-RMG)**

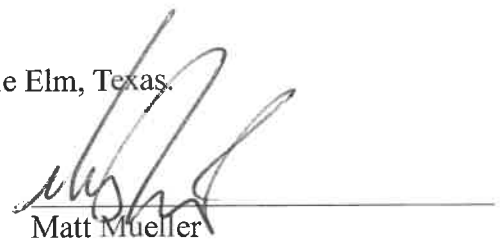
1. My name is Matt Mueller. I am over 21 years of age, have never been convicted of a felony or a crime of dishonesty or moral turpitude, and am competent to make this Affidavit. I am the Town Manager of the Town of Little Elm, Texas ("Town"). The Town is a treated water customer of the North Texas Municipal Water District ("District"); the District provides treated water to the Town for which the Town is charged rates and fees; and the Town does not own or operate any water treatment facilities or own and operate a public water system. As the Town Manager of the Town, under the specific legal authority granted to me by the Town Council of the Town, the Town hereby formally requests to be excluded from the Settlement Agreement between Public Water Systems and 3M Company.

2. The Town's address is 100 W. Eldorado Parkway, Little Elm, TX 75068, telephone number 214-975-0406. My address is the same, my email address is MMueller@littleelm.org. and I may be telephoned at 214-975-0406. For fax purposes, documents may be forwarded to me and to the Town at my email address.

3. As Town Manager of the Town of Little Elm, Texas, I have authority to execute this Affidavit and am legally authorized to request to exclude the Town as a Settlement Class Member, from the 3M Settlement Agreement. At this time, I am formally requesting that the Town be excluded from the 3M Settlement Agreement in the case of *City of Camden, et al. v. 3M Company*, Case No. 2:23-cv-03147-RMG, in the AFFF MDL, *In re: Aqueous Film-Forming Foams Products Liability Litigation,* MDL No. 2-18-mn-2873-RMG.

I declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 27th day of November, 2023, at Little Elm, Texas.



Matt Mueller

Date:	12/05/2023
Agenda Item #:	4. K.
Department:	Administrative Services
Strategic Goal:	Maintain operational integrity and viability
Staff Contact:	Caitlan Biggs, Director of Administrative Services/Town Secretary

AGENDA ITEM:

Consider Action to Approve **Ordinance No. 1739 Amending the Code of Ordinances by Amending Chapter 2, Article II, Updating the Records Management Program; Providing a Repealing Clause; Providing a Severability Clause; and Providing an Effective Date.**

DESCRIPTION:

The Town is in the process of scanning and storing records electronically in order to provide a higher level of customer service internally and externally. As part of this process, the Code of Ordinances needs to be amended to be in compliance with the Texas State Library and Archives Commission.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Ordinance No. 1739

ORDINANCE NO. 1739

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, AMENDING THE CODE OF ORDINANCES, BY AMENDING CHAPTER 2, ARTICLE II, UPDATING THE RECORDS MANAGEMENT PROGRAM; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Title 6, subtitle C, Texas Local Government Code (Local Government Records Act) provides that a municipal government must establish by ordinance an active and continuing records management program to be administered by a Records Management Officer; and

WHEREAS, the Town of Little Elm desires to update the city policies and procedures consistent with the Local Government Records Act and in the interests of cost-effective and efficient recordkeeping.

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

SECTION 1. That the Code of Ordinances of the Town of Little Elm, Texas, be and the same is hereby amended by amending Chapter 2, Article II, to read as follows:

Sec. 2-19. Records management program.

The Town Council deems it necessary to implement a continuing records management program to be administered by a records management officer in accordance with the Local Government Records Act.

Sec. 2-20. Definition of town records.

All documents, papers, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic media, or other information recording media, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by the Town of Little Elm or any of its officers or employees pursuant to law or in the transaction of public business are hereby declared to be the records of the Town of Little Elm and shall be created, maintained, and disposed of in accordance with the provisions of this article or procedures authorized by it and in no other manner.

Sec. 2-21. Additional definitions.

(1) "Department director" means the officer who by ordinance, order, or administrative policy is in charge of an office of the town that creates or receives records.

(2) "Essential record" or "vital record" means any record of the town necessary to the resumption or continuation of operations of the town in an emergency or disaster, to the recreation of the legal and financial status of the town, or to the protection and fulfillment of obligations to the people of the state.

(3) "Permanent record" means any record of the town for which the retention period on a records control schedule is given as permanent.

(4) "Records control schedule" means a document prepared by or under the authority of the records management officer listing the records maintained by the town, their retention periods, and other records disposition information that the records management program may require.

(5) "Records management" means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of recordkeeping. The term includes the development of records control schedules, the management of filing and information retrieval systems, the protection of essential and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems.

(6) "Records liaison officers" mean the persons designated under Section 2-28.

(7) "Records management officer" means the person designated in Section 2-24.

(8) "Records management plan" means the plan developed under Section 2-25.

(9) "Retention period" means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction."

Sec. 2-22. Town records declared public property.

All town records as defined in Section 2-20 are hereby declared to be the property of the Town of Little Elm. No town official or employee has, by virtue of such person's position, any personal or property right to such records even though such person may have developed or compiled them. The unauthorized destruction, removal from files, or use of such records is prohibited.

Sec. 2-23. Policy.

It is hereby declared to be the policy of the Town of Little Elm to provide for efficient, economical, and effective controls over the creation, distribution, organization, maintenance, use, and disposition of all town records through a comprehensive system of integrated procedures for the management of records from their creation to their ultimate

disposition, consistent with the requirements of the Local Government Records Act and accepted records management practice.

Sec. 2-24. Designation of records management officer.

The town secretary, and the successive holders of said office, shall serve as records management officer for the town. As provided by state law, each successive holder of the office shall file such person's name with the director and librarian of the Texas State Library within thirty days of the initial designation or of taking up the office, as applicable.

Sec. 2-25. Records management plan to be developed; authority of plan.

(a) The records management officer shall develop a records management plan for the town in accordance with town policy and state law. The plan must contain policies and procedures designed to reduce the costs and improve the efficiency of recordkeeping, to adequately protect the essential records of the town, and to properly preserve those records of the town that are of historical value. The plan must be designed to enable the records management officer to carry out his or her duties prescribed by state law and this article effectively.

(b) The records management plan shall be binding on all offices, departments, divisions, programs, commissions, bureaus, boards, committees, or similar entities of the town and records shall be created, maintained, stored, microfilmed, or disposed of in accordance with the plan.

(c) State law relating to the duties, other responsibilities, or recordkeeping requirements of a department director do not exempt the department director or the records in the department director's care from the application of this article and the records management plan adopted under it and may not be used by the department director as a basis for refusal to participate in the records management program of the town.

Sec. 2-26. Duties of records management officer.

In addition to other duties assigned in this article, the records management officer shall:

(1) administer the records management program and provide assistance to department directors in its implementation;

(2) plan, formulate, and prescribe records disposition policies, systems, standards, and procedures;

(3) in cooperation with department directors identify essential records and establish a disaster plan for each town office and department to ensure

maximum availability of the records in order to re-establish operations quickly and with minimum disruption and expense;

(4) develop procedures to ensure the permanent preservation of the historically valuable records of the town;

(5) establish standards for filing and storage equipment and for recordkeeping supplies;

(6) provide records management advice and assistance to all town departments by preparation of a manual or manuals of procedure and policy and by on-site consultation;

(7) monitor records retention schedules and administrative rules issued by the Texas State Library and Archives Commission to determine if the records management program and the town's records control schedules are in compliance with state regulations;

(8) disseminate to the town and department directors information concerning state laws and administrative rules relating to local government records;

(9) instruct records liaison officers and other personnel in policies and procedures of the records management plan and their duties in the records management program;

(10) direct records liaison officers or other personnel in the conduct of records inventories in accordance with adopted retention schedules and policies as required by state law and this article;

(11) ensure that the maintenance, preservation, microfilming, destruction, or other disposition of the town records is carried out in accordance with the policies and procedures of the records management program and the requirements of state law;

(12) maintain records on the volume of records destroyed under approved records control schedules, the volume of records microfilmed or stored electronically, and the estimated cost and space savings as the result of such disposal or disposition;

(13) report annually to the town manager, or designee on the implementation of the records management plan in each department of the town, including summaries of the statistical and fiscal data compiled under section 2-26 (12); and

(14) bring to the attention of the town manager non-compliance by department directors or other town personnel with the policies and procedures of the records management program or the Local Government Records Act.

Sec. 2-27. Duties and responsibilities of department directors.

In addition to other duties assigned in this article, department directors shall:

(1) cooperate with the records management officer in carrying out the policies and procedures established in the town for the efficient and economical management of records and in carrying out the requirements of this article;

(2) adequately document the transaction of government business and the services, programs, and duties for which the department director and such person's staff are responsible; and

(3) maintain the records in such person's care and carry out their preservation, microfilming, destruction, or other disposition only in accordance with the policies and procedures of the records management program of the town and the requirements of this article.

Sec. 2-28. Designation of records liaison officers.

Each department director shall designate a member of such department director's staff to serve as records liaison officer for the implementation of the records management program in the department.

If the records management officer determines that in the best interests of the records management program more than one records liaison officer should be designated for a department, the department director shall designate the number of records liaison officers specified by the records management officer. Persons designated as records liaison officers shall be thoroughly familiar with all the records created and maintained by the department. In the event of the resignation, retirement, dismissal, or removal by action of the department director of a person designated as a records liaison officer, the department director shall promptly designate another person to fill the vacancy. A department director may serve as records liaison officer for such department.

Sec. 2-29. Duties and responsibilities of records liaison officers.

In addition to other duties assigned in this article, records liaison officers shall:

(a) conduct or supervise the conduct of inventories of the records of the department in accordance with adopted retention schedules and policies;

(b) in cooperation with the records management officer coordinate and implement the policies and procedures of the records management program in their departments; and

(c) disseminate information to department staff concerning the records management program.

Sec. 2-30. Records control schedules to be developed; approval; filing with state.

(a) The records management officer, in cooperation with department directors and record liaison officers, shall prepare records control schedules on a department by department basis listing all records created or received by the department and the retention period for each record. Records control schedules shall also contain such other information regarding the disposition of town records as the records management plan may require. The city submitted a Declaration of Compliance with the Records Scheduling Requirement of the Local Government Records Act with the Texas State Library and Archives Commission on November 22, 2023, declaring that the city has adopted record control schedules that comply with the minimum requirements established on records retention schedules issued by the Texas State Library and Archives Commission.

(b) Each records control schedule shall be monitored and amended as needed by the records management officer on a regular basis to ensure that it is in compliance with records retention schedules issued by the state and that it continues to reflect the recordkeeping procedures and needs of the department and the records management program of the town.

Sec. 2-31. Implementation of records control schedules, destruction of records under schedule.

(a) A records control schedule for a department that has been approved and adopted under section 2-30 shall be implemented by department directors and records liaison officers according to the policies and procedures of the records management plan.

(b) A record whose retention period has expired on a records control schedule shall be destroyed unless an open records request is pending on the record, the subject matter of the record is pertinent to a pending law suit, or the department director requests in writing to the records management officer that the record be retained for an additional period.

(c) Prior to the destruction of a record under an approved records control schedule, authorization for destruction must be obtained by the records management officer.

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Sec. 2-32. Destruction of unscheduled records.

A record that has not yet been listed on an approved records control schedule may be destroyed if its destruction has been approved in the same manner as a record destroyed under an approved schedule and the records management officer has submitted to and received back from the director and librarian of the Texas State Library an approved destruction authorization request.

Sec. 2-33. Records center.

A records center, developed pursuant to the plan required by section 2-25, shall be under the direct control and supervision of the records management officer. Policies and procedures regulating the operations and use of the records center shall be contained in the records management plan developed under section 2-25.

Sec. 2-34. Micrographics.

All existing records that have been microfilmed but not yet converted into a scanned record shall be maintained up to the point in which they are scanned, until their retention has been met, or as is administratively valuable in accordance with Texas State Library and Archives Commission.

Sec. 2-35. Electronic storage.

Electronic records shall have the same retention and storage and ownership requirements as records of any other format. The records management plan will establish policies and procedures for the electronic storage of town records, including policies to ensure that all scanning, imaging, or electronic storage is done in accordance with standards and procedures for electronic records of local government records established in rules of the Texas State Library and Archives Commission.

Sec. 2-36. Archival storage.

Records, regardless of media that have been determined to have continuing historical value beyond the retention requirements, may be transferred to the town's archives with written approval of the records management officer. The records management plan will establish policies and procedures for archival custody of town records.

SECTION 2. That all provisions of the ordinances of the Town of Little Elm in conflict with the provisions of this Ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the Town of Little Elm not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 4. That this Ordinance shall take effect from and after its passage as the law and charter in such cases provide.

DULY PASSED by the Town Council of the Town of Little Elm, Texas, on the 5th day of December, 2023.

APPROVED:

_____
Curtis J. Cornelious, Mayor

_____
Caitlan Biggs, Town Secretary

APPROVED AS TO FORM:

_____
Robert Brown, Town Attorney

Date:	12/05/2023
Agenda Item #:	4. L.
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 **Design Contract Amendment #2 to Pacheco-Koch Consulting Engineers, Inc. for the Hill Lane Improvement Project.**

DESCRIPTION:

On December 21, 2021, Town Council awarded a professional services agreement to Pacheco-Koch Consulting Engineers, Inc. (now Westwood) for engineering design services related to the expansion of Hill Lane, extending from its intersection with FM 720 to Dickson Lane. An amendment to the contract was approved in 2022 to include additional traffic signal and landscaping design services. The total estimated construction cost is approximately $9.1M. This proposed Contract Amendment #2 would add the services needed to provide a more cost-effective and efficient drainage design compared to the current design.

The general scope of work includes field surveying, soil investigations, as well as the preparation of design drawings, specifications, and other contract documents required to complete the project. Amendment #1 added traffic engineering services for the intersection improvements on FM 720, as well as landscape architecture services for the project.

This proposed Amendment #2 includes the additional design services needed to install a channelized drainage system, rather than a piped system running along Hill Lane. The current design includes large box culverts and other pipes that must be installed very deep under the roadway. This design will require specialized equipment, extensive traffic controls, and additional paving to install. The proposed channel design would instead route stormwater through a surface channel along a natural drainage path and require much less piping and lighter equipment to install. Overall, the proposed design is expected to save approximately $2,000,000 in construction costs and require less time to build. The consultant will also provide as-needed permitting, bidding, and construction administration services.

BUDGET IMPACT:

Funding for the project is currently identified in the Roadway Impact Fee Fund, as well as the Town's Capital Improvement Program. These costs will also be reimbursed through a separate funding agreement with Denton County as the project is completed. The current approved funding amount is $675,000 from the South Impact fees, and approving this proposed amendment would add $100,700 to that amount. Funding from South Impact Fees.

$	615,000.00	Original Funding Amount
$	60,000.00	Approved Amendment #1
$	**100,700.00**	**Proposed Amendment #2**
$	775,700.00	Total Project Funding Request

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Proposed Contract Amendment #2

EXHIBIT B - WORK ORDER

MAPS # 2016-1066 **MAPS DATE:** 01/20/2017

CONSULTANT NAME Pacheco Koch Consulting Engineers, LLC

Pursuant to and subject to the referenced Master Agreement for Professional Services (MAPS), between the Town of Little Elm, Texas ("Owner"), and Consultant, Owner hereby requests that Consultant erform, and Consultant agrees to perform, the work described below upon the terms set forth in said MAPS and in this Work Order:

Work Order #: 7

Consultant Project #: 007

Project Name: Hill Lane Drainage Improvements

INVOICE SUBMITTAL

Billing Period:	Monthly-Through the end of each month, billed by the 10th of the following month.
Invoice Mailing Instructions:	Mail to: Town of Little Elm Accounts Payable 100 W. Eldorado Pkwy. Little Elm, TX 75068 Email to: accounts.payable@littleelm.org Include work order number, PO number, billing period, and project name,

OWNER OPTIONAL INFORMATION:

1. **Work Site:** Consultant Offices unless otherwise stated.
2. **Work to be performed:** All work shall be in accordance with the scope listed below and as listed in the Master Agreement for Professional Services.
3. **Drawings / Plans are not attached.**
4. **Date and Time to Commence:** Upon Receipt of Purchase Order and Sign Work Order.
5. **Other:**

CONSULTANT PROVIDED INFORMATION:

1. **Scope of Work: See Exhibit C**
2. **Time Line: See Exhibit C**
3. **Compensation: See Exhibit D**

ACCEPTANCE:

This Work Order is accepted on the terms set forth herein and in the MAPS referenced above, as indicated by the signatures below.

TOWN OF LITTLE ELM	**CONSULTANT**
Matthew Mueller, Town Manager	Signature Brian D. O'Neill, PE, CFM, Director Public Infrastructure Printed Name & Title
Date	Date

EXHIBIT C

SPECIAL ENGINEERING SERVICES
FOR HILL LANE DRAINAGE IMPROVEMENTS

The project will include:

- Drainage Analysis of existing channel
- Design of Drainage Improvements of channel
- Environmental Pre-Construction Services
- Geotechnical Engineering of existing channel
- Topographic Survey of existing channel
- Preparing Easement Documents

The scope of work for Special Engineering Services involves Preliminary and Final Design, Project Plans, Specifications and Estimates on Channel. Plan sheets will be added to the Hill Lane Paving Improvements project.

I. DRAINAGE ANALYSIS AND DESIGN SERVICES

In conjunction with the Hill Lane Paving Improvements Project (PROJECT), there is the need for analysis and design of an earthen drainage channel diversion from Lonesome Dove Road to W. Dickson Lane (Approx. 1,200 LF) west of Hill Lane. The channel will be sized and designed to handle diverted flow from Hill Lane to meet current Town of Little Elm drainage criteria.

A. Hydrologic, Hydraulic and Erosion Analyses:

1. The CONSULTANT will conduct a field visit to walk existing drainage channel from Lonesome Dove Road to W. Dickson Lane to observe and photograph existing conditions.
2. The CONSULTANT will perform hydrologic calculations to determine existing and proposed design discharges to the earthen drainage channel diversion from Lonesome Dove Road to W. Dickson Lane (Approx. 1,200 LF) west of Hill Lane.
3. The CONSULTANT will prepare a hydraulic model for existing and proposed channel conditions to evaluate the existing channel capacity and conceptually size the proposed channel to convey the design discharges.
4. The CONSULTANT will perform an erosion assessment of the proposed channel. The hydraulic model will be used to aid in determining maximum allowable shear stress and channel velocity for potential erosion protection improvements.
5. CONSULTANT will perform QA/QC of existing conditions analyses.

B. Preliminary (60%) Design Plans and Specifications

At such time as CONSULTANT is directed by OWNER, CONSULTANT shall prepare preliminary design plans, including a detailed demolition and protection plan sheets,

detailed plan and profile sheets for proposed channel improvements, quantity sheets, and construction details. Preliminary plans will be of sufficient detail for submission for franchise utility review. The requirements for preliminary plans will be in accordance with the Town of Little Elm Design Criteria Standards. An updated preliminary opinion of probable construction cost for proposed capital improvements will be submitted. The CONSULTANT will perform QA/QC of preliminary plans. A preliminary plans review meeting and project walkthrough with the OWNER will be conducted. Preliminary plans must be approved by OWNER prior to CONSULTANT commencing with the preparation of final design plans.

C. Final (90% and 100%) Design Plans and Specifications

Upon acceptance of preliminary plans by the City, the Engineer shall prepare final design plans and specifications. Final plans shall be consistent with previous sections and shall include: Right-of-way plans and documents, final construction plans, erosion control, traffic control and project phasing sheets, bid proposal and special specifications as required. An updated final opinion of probable construction cost for proposed capital improvements will be submitted. The CONSULTANT will perform QA/QC and constructability review of final plans.

II. ENVIRONMENTAL – PRE-CONSTRUCTION SERVICES

A. Onsite Wetland Delineation and Wetland Delineation Report

CONSULTANT will field delineate the boundaries of wetlands and waterways in the field using the routine determination method set forth in the Corps of Engineers Wetlands Delineation Manual (U.S. Army Corps of Engineers, 1987) and using the wetland determination data form provided in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual for the appropriate region. Delineated wetlands will be located via GPS in the field and classified according to Wetlands of the United States (U.S. Fish and Wildlife Service Circular 39; Shaw and Fredine, 1971) and Wetlands and Deepwater Habitats of the United States (FWS/OBS Publication 79/31; Cowardin *et al.*, 1979). Drainages within the Delineation Area will be considered non-wetland Water of the United States (WOTUS), as they may not exhibit all parameters required for wetlands (i.e., predominance of hydrophytes, hydric soils, and jurisdictional hydrology). Accordingly, their boundaries will be delineated in the field by documenting their Ordinary High-Water Marks (OHWMs), as determined according to the USACE Regulatory Guidance Letter No. 05-05 (U.S. Army Corps of Engineers 2005).

CONSULTANT will prepare a written report and wetland boundary map to describe the wetlands and summarize the soils, vegetation, and hydrology observed in the field. The report will include text, data forms, and supporting maps. CONSULTANT will submit the report in digital (PDF) format to regulatory agencies. The report will include the appropriate application forms and supporting exhibits to request to request a Boundary Confirmation from the U.S. Army Corps of Engineers (USACE), which regulates the discharge of

dredged or fill material into Waters of the United States under Section 404 of the Clean Water Act.

If required by the USACE, CONSULTANT will coordinate with agencies and arrange an onsite meeting and field visit to review the wetland delineation and request agency concurrence under the federal wetland regulatory program. One CONSULTANT staff member will attend the agency field review/concurrence meeting.

WETLAND DELINEATION ASSUMPTIONS

1. The delineation will include a 200-foot either side of channel corridor along 1,714 linear feet of channel located north of West Dickenson Lane, extending north to Hill Lane in Little Elm, Texas.
2. Weather conditions will not prevent soils, hydrology, and vegetation from being properly analyzed.
3. The U.S. Army Corps of Engineers will not request additional documentation to support their review.
4. Delineated boundaries will be located using a sub-meter GPS unit, traditional survey of wetland boundaries can be completed, if needed, under a separate task.
5. No additional intensive hydrologic studies, or mapping of subsurface drain tile will be required.
6. Not more than one site visit will be necessary to gain agency acceptance of the delineated wetland boundary, and the wetland boundaries will be accepted by regulatory agencies with only minor changes.
7. OWNER will pay all applicable application fees.

B. <u>USACE Approved Jurisdictional Determination Request</u>

If the stream is ephemeral and likely not a Waters of the US, at the request of the OWNER, CONSULTANT will prepare and submit an Official Jurisdictional Determination (JD) memo with supporting data to the USACE. This official JD will include a copy of the Wetland Delineation Report and a memo summary of the wetlands and watercourses in the project area. CONSULTANT will include all wetlands and watercourses delineated for the project. CONSULTANT will include their opinion of the Jurisdictional Status of each wetland and watercourse and supporting mapping and information.

AJD REQUEST ASSUMPTIONS

1. CONSULTANT will submit the AJD request using most recently available USEPA issued guidance on AJD determinations and if it is determined that the project is likely to contain non-jurisdictional Waters of the US.

C. <u>Pre-Application Meeting with USACE</u>

CONSULTANT will submit the Wetland Delineation Report drafted in Task 1 above, along with a cover memo requesting the AJD and assignment of a Project Manager in Task 2

above and a request to set up a Pre-Permitting meeting to the Fort Worth District of the USACE. CONSULTANT will schedule and attend and provide technical support at the Permitting Pre-Application Meeting with the U.S. Army Corps of Engineers. CONSULTANT will prepare and provide an agenda for the meeting and all exhibits needed for the meeting. This meeting will be to review the potential permitting required for the proposed impacts onsite.

D. Non-Reporting Nationwide Permitting Memo (If Needed)

Given the drainage and linear water feature that exists within the project area, CONSULTANT assumes that some wetlands and/or watercourses impacts will be unavoidable, requiring potential consultation and permitting through the USACE. If the project will require only minor amounts of wetland fill for construction, channel modification and road crossings, the project will likely qualify as non-reporting under Nationwide Permits 3, 13, or 14 (i.e., No Pre-Construction Notification required).

CONSULTANT will quantify wetland impacts for the project. For purposes of this work scope, CONSULTANT has assumed that no permanent fill over 1/10th acre per impact will be necessary to ensure the project will not require pre-construction notification to the USACE. CONSULTANT will confirm that the proposed project impacts to wetlands and waters fall below pre-construction notification thresholds under the appropriate Nationwide Permit. CONSULTANT will prepare the necessary report and supporting documents for OWNER to adequately document these findings but will not submit the information to the U.S. Army Corps of Engineers unless specifically requested by the OWNER. We have assumed only one iteration of wetland impact assessment will be needed and that detailed functional assessment of wetlands will not be necessary.

Assumptions:

- There will be no coordination with the USACE to confirm applicability of the No PCN assumption under Section 404 of the Federal Clean Water Act.
- CONSULTANT will rely on the Wetland Delineation Report, the T&E Survey Report and the Field Cultural Resources Survey for the No-PCN memo and will not complete any coordination with the U.S. Army Corps of Engineers or the USFWS for the project.

Deliverables:

CONSULTANT will provide one draft of the Memo to OWNER for review and comment. The Memo will then be finalized based on OWNER's comments.

The Memo and supporting documentation will be provided in Word and PDF format; hard copies may be provided upon request.

E. U.S. Army Corps of Engineers Pre-Construction Notification Package Submittal

As CONSULTANT understands the project, a segment of a watercourse is proposed to be impacted for stormwater management and conveyance on this site. If the watercourse is

determined to be a Jurisdictional Water of the U.S., Nationwide Permit 43 covers Waters of the US impacts for Stormwater Management Facilities up to ½ acre. Under Nationwide Permit 43, any impact on the project will require Pre-Construction Notification. Mitigation is also required for any watercourse impacts exceeding 3/100th of an acre (1,306 square feet) and for any wetland impacts exceeding 1/10th of an acre (4,356 square feet). CONSULTANT has assumed that the project will require only minor amounts of wetland fill for site development (less than 0.5-acre).

CONSULTANT will prepare a package that meets the requirements for Pre-Construction Notification to the Fort Worth District of the US Army Corps of Engineers under the Federal Clean Water Act. CONSULTANT will prepare the wetland application narrative and supporting exhibits. The Pre-Construction Notification Package to the USACE will include:

- A completed US Army Corps of Engineers Nationwide Permit Pre-Construction Notification (PCN) 43 form as required by the Fort Worth District,
- A Project Description, including proposed activity, name of impacted waters, location,
- A Wetland Boundary Map showing existing wetland sizes and classifications,
- A Grading Plan depicting areas of wetland fill/excavation,
- Other exhibits, including a site location map, soils mapping.
- A TX RAM Stream Assessment will be completed for the watercourse.
- A wetland sequencing narrative (alternatives, wetland avoidance, impact minimization), and
- Tables summarizing wetland fill and replacement area(s).

Schedule:

The Pre-Construction Notification Package can be provided within 20 business days of receiving the project layout and associated GIS shapefiles.

Assumptions

1. A Pre-Application meeting with the USACE will be completed for the project.
2. A final layout with all proposed infrastructure will be available at the time CONSULTANT begins work on the permitting application, and the layout (and waters impacts) will not change during application preparation and following submittal to the Corps.
3. If wetland mitigation is required, agencies will agree to purchasing wetland and/or stream credit replacement credits from an approved, off-site bank rather than constructing wetlands on-site. The wetland replacement will occur at an approved off-site location through the wetland bank program, and the cost of wetland banking credits, and any associated fees, will be paid by OWNER.
4. The project will not require extensive investigation of alternative replacement sites or suitable wetland banking locations.

5. The proposed site plan will not require more than 0.5-acre of wetland or watercourse impact.
6. A typical level of responses will be received during the comment period, which can be addressed in approximately 15 hours of staff time.
7. The OWNER will provide CONSULTANT with proof of property rights or ownership, and adjoining landowner contact information, if needed.
8. Time over and above the 10 planned hours for the preparation and coordination of wetland bank credit withdrawal documents to support the purchase of wetland credits from a certified wetland bank (if approved by agencies) will be completed on an additional, hourly basis.
9. OWNER will pay all application fees.

F. U.S. Army Corps of Engineers Individual Permit

If the project exceeds the allowable impacts under applicable Nationwide Permits, CONSULTANT will prepare an Individual Permit application package that meets the requirements of the Federal Clean Water Act. The wetland permit application will be submitted to the USACE, and other agencies that routinely review and comment on wetland replacement plans. Please note that the timing for approval of Individual Permit approvals can exceed 12 months. The Wetland Individual Permit Application required under the USACE will include:

- A completed USACE Individual Permit Application Form
- A Project Description,
- A Wetland/Watercourses Boundary Map showing existing wetland and watercourse sizes and classifications,
- A Grading Plan depicting areas of wetland fill/excavation,
- A Wetland Replacement Plan showing mitigation bank location and credits to be used,
- Other exhibits, including a site location map, soils mapping, and alternative design(s).
- A wetland sequencing narrative (detailed alternatives, wetland avoidance, impact minimization including multiple site layouts),
- A detailed onsite wetland avoidance analysis and a detailed off-site alternate sites analysis,
- Tables summarizing wetland fill and replacement area(s),
- Evidence of ownership or development rights from the applicant

CONSULTANT will coordinate a meeting to expedite the response to comments and issue resolution. This task includes telephone and email coordination, one comment response document, and one meeting attended by one CONSULTANT staff member. Because it is difficult to predict the number and complexity of potential agency comments to the permit application, responses to agency comments beyond the efforts noted above, will be billed on an additional, hourly basis.

Assumptions

1. Agencies will agree to purchasing wetland replacement credits from an approved, off-site wetland bank rather than constructing wetlands on-site.
2. The Fort Worth District of the U.S. Army Corps of Engineers will accept the permit application with few revisions.
3. The OWNER will provide CONSULTANT with proof of property rights or ownership, and adjoining landowner contact information, if needed.
4. All applicable application fees will be paid by OWNER.
5. Any detailed Cultural Resource Reviews and Threatened/Rare Species surveys required will be completed as separate scopes of work.
6. The OWNER will provide assistance in preparing the detailed off-site alternatives analysis required under an individual Permit.

G. Threatened, Rare and Endangered Species Survey

CONSULTANT will perform a desktop and field-based habitat assessment for the Project. The habitat assessment will provide information on habitat quality and types that may support species protected under the state Endangered Species Act (state ESA), federal Endangered Species Act (ESA) and Bald and Golden Eagle Protection Act (BGEPA ("T&E species")

As such, prior to mobilization, this task includes obtaining a USFWS Information for Planning and Consultation (IPaC) report and Texas Natural Diversity Database (TNDD) natural heritage data for T&E species documented within the region and necessary for the permit.

The field work will primarily be focused on the Project Area, in which vegetative communities and landscape features such as drainages and washes, water impoundments, wetland areas, forests, and hillsides will be reviewed for their potential to support T&E species that appeared in the desktop-level review. Incidental wildlife sightings will also be documented.

A determination for probability of species occurrence (none, low, moderate, or high) will be made based on observed site conditions. Each species reviewed will conclude with a recommendation of need for further assessment of potential impacts from the proposed Project, as appropriate.

CONSULTANT will prepare a Wildlife Habitat Assessment memo. The report will include an introduction, methods, results, conclusions, tables, maps, list of special status species, and species risk factors. Exhibits will include landcover, land/water features, and habitats that may merit avoidance. The draft memo will be submitted to OWNER for review and comment. CONSULTANT will incorporate one round of OWNER comments into a final memo, and one electronic final report in PDF format will be provided to OWNER.

H. Cultural Resources Survey

This Survey will be carried out in support of a USACE non-reporting permit. Coordination with the USACE or THC will not be required, but methods will comply with appropriate agency guidelines.

While the Texas Historical Commission (THC) does not license or regulate historic preservation professionals, it does recommend that surveys be conducted by a qualified professional who meets the Secretary of the Interior's qualifications as outlined in 36CFR61. Mr. Joel Butler, who will serve as Principal Investigator for the project, meets these qualifications. He has over 20 years of archaeological and cultural resources experience. CONSULTANT routinely assists OWNERs in compliance with federal, state, and local cultural resource laws.
The scope of this work could be affected by the requirements of Section 106 of the National Historic Preservation Act of 1966 (NHPA), the National Environmental Policy Act (NEPA) and 36CFR800, procedures of the Advisory Council on Historic Preservation for the preservation of historic properties. Section 106 can be triggered if this Project is considered for federal assistance, requires a federal license or permit, or impacts land under federal jurisdiction. This Project is being carried out as an intensive survey conducted to satisfy requirements of General Condition 20 of a USACE Nationwide Permit (non-reporting) which is used to comply with Section 106 review.

Pre-field Preparation
CONSULTANT will check the Texas Archeological Sites Atlas to identify any sites already recorded in the Project vicinity and identify the types of sites that may be present.

Archaeological Fieldwork
CONSULTANT will mobilize archaeologists to carry out the survey. Fieldwork will be carried out to comply with General Condition 20 of a non-reporting USACE Nationwide Permit; should the Project come under THC or additional federal review (including USACE preconstruction notification or other reporting), additional coordination and/or fieldwork may be required.

Fieldwork will be carried out per THC guidelines and will consist of visual inspection of the entire Project supplemented with shovel testing in undisturbed areas. Any sites discovered will be shovel tested, recorded, and recommendations will be provided for their eligibility as National Register Properties. It is estimated that up to 10 tests will be excavated during fieldwork, plus additional tests should archaeological sites be encountered. Soils in the Project have archaeological potential to less than 80 cm and are not in an alluvial depositional environment, therefore, no backhoe or other deep testing is proposed.

Reporting
CONSULTANT will create a technical field survey report summarizing field findings, site descriptions, and recommendations (if necessary) for avoidance and/or further investigations. The report will be provided to the OWNER in digital format and, if requested, hard copy. Because the proposed Project is being undertaken for USACE non-reporting purposes, no federal or state agency coordination is proposed, but should satisfy USACE and THC requirements should the report be reviewed at a later date.

Assumptions

1. Field survey will take place in one mobilization.
2. The OWNER will obtain landowner access and inform CONSULTANT of any special concerns identified by the landowners.
3. Weather and general field conditions will be appropriate for work to proceed uninhibited.
4. CONSULTANT is not responsible for delays outside of their control including land access and weather/field conditions. Delays that occur once fieldwork has commenced may incur additional costs.
5. Backhoe trenching will not be carried out as part of this survey.
6. This scope assumes one archaeological site. Should additional sites be encountered, additional cost may be incurred.
7. This scope does not include NRHP/SAL testing, mitigation, or negotiations with USACE/THC for mitigation measures. Should the USACE and/or THC require further evaluations or mitigation, an additional scope and fee will be developed upon the OWNER's request.
8. It is assumed one round of edits to the report based on OWNER comments.

Compensation

Tasks 1-3 are a necessary first step to determine which of the permitting options 4-5 are needed. Tasks 7 and 8 are necessary to support permitting.

III. GEOTECHNICAL INVESTIGATION

A. Through a qualified subcontractor, CONSULTANT will perform soil investigations, including field and laboratory tests, borings, related engineering analysis and recommendations for determining soil conditions will be made.

B. Field and laboratory analysis will be made at reasonable intervals along the project alignment.

C. Earthwork recommendations, construction considerations, and a global stability analysis will be prepared based on the results.

IV. TOPOGRAPHIC SURVEY

CONSULTANT will perform an on the ground survey of the property under the direct supervision of a Registered Professional Land Surveyor.

Included in this item:

A. Location of permanent improvements on, and immediately adjacent to, the site.
B. Spot elevations on a 50-foot grid.
C. Contours on one-foot intervals.

D. Top of curb and gutter elevations for paving on, and immediately adjacent to, the site.
E. Locations, common name and trunk diameter of trees over #-inches in caliper or the outline of heavily wooded areas.
F. Location of visible utilities and appurtenances.
G. Location and sizes of underground utilities based on available record information.
H. CONSULTANT will graphically plot, if any, the Special Flood Hazard Area from the Flood Insurance Rate Map (FIRM), published by Federal Emergency Management Agency (FEMA), for this area.
I. Graphical depiction of site boundaries adjacent to the survey area based upon the current deed or plat. If the site is platted, we will graphically show easements defined on the plat. This depiction is approximate and the work does not include boundary research or review of found monumentation.

Not included in this item:
A. Species names of trees.
B. Trees less than #-inches in diameter.
C. Tree locations and identification in heavily wooded areas.
D. Boundary surveying.
E. Research or review of easements that may affect the subject tract.
F. Subsurface utility engineering services.
G. Parking spaces in parking garages.
H. Location of irrigation control valves.

V. TOPOGRAPHIC SURVEY

Based on a boundary survey of the site prepared by our office, Westwood will prepare separate instrument dedication documents for water, sanitary sewer, storm sewer, drainage, public utility, and/or franchise utility easements required as a part of development of the site.

Included in this item:
A. Dedication statements, survey exhibits and metes and bounds descriptions for each easement.
B. Coordination with City and/or franchise utility company staff for review and approval of each easement.
C. Coordination with Owners attorney regarding preparation of “Front End” legal documents to be prepared by the attorney.

Not included in this item:
A. Coordination with property owners.
B. Monumentation of easement corners.
C. Preparation of “Front End” legal documents (to be provided by Owner’s attorney).

EXHIBIT D

COMPENSATION FOR SPECIAL ENGINEERING SERVICES
FOR
HILL LANE DRAINAGE IMPROVEMENTS

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

Special Services	
Drainage Analysis & Channel Design Services	$ 50,000.00
Onsite Wetland Delineation	$ 4,000.00
AJD Request	$ 2,500.00
Pre-Application Meeting with USACE	$ 3,500.00
Geotechnical Engineering	$ 18,200.00
Design Survey	$ 10,000.00
Easement Documents (5 @ 2,500)	$ 12,500.00
TOTAL	**$100,700.00**
Special Services if needed	
Non-Reporting Nationwide Permitting Permitting Memo	$ 7,500.00
U.S. Army Corps of Engineers Pre-Construction Notification Package Submittal	$ 8,500.00
U.S. Army Corps of Engineers Individual Permit Package Submittal	$ 45,000.00
Threatened, Rare and Endangered Species	$ 10,100.00
Cultural Resources Survey	$ 10,100.00
TOTAL	**$ 81,200.00**

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.

Date:	12/05/2023
Agenda Item #:	4. M.
Department:	Administrative Services
Strategic Goal:	Provide a safe and welcoming environment for Little Elm residents and visitors
Staff Contact:	Paul Rust, Fire Chief

AGENDA ITEM:

Consider Action to Approve an **Annual Interlocal Cooperative Agreement for Fire Protection Services with Denton County for Unincorporated Areas Around Town Limits.**

DESCRIPTION:

This contract allows the Town of Little Elm Fire Department to extend fire protection services into unincorporated areas as indicated in Exhibit A. There are no substantial changes presented with this year's renewal. Estimated fire call volume for the coming year is 200 calls, with an expected revenue paid to the Town of Little Elm of $150,000.

BUDGET IMPACT:

No additional fire department operational budget impact.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

ICA Fire - Denton County

THE COUNTY OF DENTON §
§ **TOWN OF LITTLE ELM**
§ **FIRE DEPARTMENT**
STATE OF TEXAS §

INTERLOCAL COOPERATION AGREEMENT FIRE PROTECTION SERVICES

THIS AGREEMENT, which has an effective date of October 1, 2023, is made and entered into by and between Denton County, Texas ("the **COUNTY**"), and the Town of Little Elm Fire Department, ("the **AGENCY**").

WHEREAS, the **COUNTY** is a duly organized political subdivision of the State of Texas engaged in the administration of county government and related services for the benefit of the citizens of Denton County; and

WHEREAS, the **AGENCY** is a municipal corporation, duly organized and operating under the laws of the State of Texas and engaged in the provision of fire protection services and related services for the benefit of the citizens of the Town of Little Elm; and

WHEREAS, the **AGENCY** is the owner and operator of certain fire protection vehicles and other equipment designed for the extinguishing of fire and prevention of damage to property and injury to persons from fire and has in its employ trained personnel whose duties are related to the use of such vehicles and equipment; and

WHEREAS, the **COUNTY** and the **AGENCY** mutually desire to be subject to and contract pursuant to provisions of the Texas Government Code, Chapter 791 and the Texas Local Government Code, Chapter 352, and

NOW, THEREFORE, the **COUNTY** and the **AGENCY**, for the mutual promises, covenants, Agreements and consideration stated herein, agree as follows:

I.
TERM

The term of this Agreement shall be for the period beginning of October 1, 2023, and ending September 30, 2024.

II.
SERVICES

The services to be rendered in accordance with this Agreement by the **AGENCY** are the fire protection services normally rendered by the **AGENCY** to citizens of the Town of Little Elm in circumstances of emergency, but which services will now be extended to all citizens of the

COUNTY residing in the unincorporated areas of the **COUNTY** within the operating territory or jurisdiction of the **AGENCY,** as agreed to by the **AGENCY** and the **COUNTY** in this Agreement and as set forth in "Exhibit A," attached hereto and incorporated herein by reference. These services are rendered in consideration of the basic funding and the separate per call fee set forth in this Agreement for the common good and benefit and to serve the public convenience and necessity of the citizens of the **COUNTY** who are not otherwise protected with respect to fire prevention, extinguishment, safety and rescue services. The services to be rendered are as follows:

A. The **AGENCY** shall make available and provide emergency fire prevention, extinguishment, safety and rescue services within the agreed or specified territory or jurisdiction of the **AGENCY**.

B. The **AGENCY** shall respond to requests for fire protection services made within the portion of the **COUNTY** designated as *"**Little Elm**"* as set out in Exhibit "A".

C. The **COUNTY** agrees that, in the event a fire in the **AGENCY**'s unincorporated designated area which the **AGENCY** considers to be of an incendiary nature and upon request by the **AGENCY**, the County Fire Marshal will dispatch investigation personnel to the fire scene within a response time sufficient to legally maintain and protect all evidence of said fire and will conduct all appropriate investigation and assist in the prosecution of any case of arson. The **AGENCY** shall not be responsible for investigations of suspected incendiary fires in the unincorporated areas, but shall cooperate with the County Fire Marshal in immediately relating all pertinent information possible to the investigator(s).

D. The **COUNTY** agrees that the County Fire Marshal may assist in the conduct of appropriate investigations of a fire which the **AGENCY** considers to be of incendiary nature in the **AGENCY**'s incorporated area upon request of the **AGENCY**.

E. The **AGENCY** shall submit monthly statements on the Texas Fire Incident Reporting System's standardized forms to the Denton County Fire Marshal, 3900 Morse St., 2nd Floor, Texas 76208. This form will serve as the billing statement to the **COUNTY** for reimbursement of calls made in the unincorporated area. The Denton County Fire Marshal shall provide the forms upon request from the **AGENCY**.

F. The **AGENCY,** in the performance of its duties and responsibilities under this Agreement, shall have the responsibility, within the sole discretion of the officers and employees of the **AGENCY,** except as otherwise determined by the Denton County Fire Marshal, to determine priorities in the dispatching and use of the **AGENCY's** equipment and personnel, and the judgment of any such officer or employee as to such matters shall be the final determination.

The **COUNTY** shall designate the County Judge to act on behalf of the **COUNTY** and to serve as "Liaison Officer" between the **COUNTY** and the **AGENCY**. The County Judge, or his designated substitute, shall devote sufficient time and attention to insure the performance of all duties and obligations of the **COUNTY** under this Agreement and shall provide immediate and direct supervision of employees, agents, contractors, sub-contractors and/or laborers of the **COUNTY** engaged in the performance of this Agreement for the mutual benefit of the **COUNTY** and the **AGENCY**.

III.
PERFORMANCE OF SERVICE

The **AGENCY** shall devote sufficient time and attention to insure the performance of all duties and obligations of the **AGENCY** under this Agreement and shall provide immediate and direct supervision of the **AGENCY's** employees, agents, contractors, sub-contractors and/or laborers engaged in the performance of this Agreement for the mutual benefit of the **AGENCY** and the **COUNTY**.

IV.
COMPENSATION

The **COUNTY** agrees to pay to the **AGENCY** for the full performance of services as provided in this Agreement the sum of **$10,000.00,** payable upon execution of this Agreement, and further agrees to pay the sum of **$700.00** per fire call in the designated unincorporated areas of the **COUNTY** from October 1, 2023, to September 30, 2024. The **COUNTY** anticipates the **AGENCY** to run approximately **200** fire calls for a total funding of **$140,000.00** for fire calls. The total payments by the **COUNTY** to the **AGENCY** pursuant to this Agreement are estimated to be **$150,000.00**. The **COUNTY** will make no payment to the **AGENCY** for service provided outside the agreed service district whether by Mutual Aid Agreement or otherwise. The **AGENCY** understands and agrees that payment by the **COUNTY** to the **AGENCY** shall be made in accordance with the normal and customary processes and business procedures of the **COUNTY** and in conformance with applicable state law.

V.
FINANCIAL RECORDS

The **AGENCY** agrees to make its financial records available for audit and/or review by the **COUNTY**, upon request by the **COUNTY**.

VI.
RESPONSIBILITY OF THE COUNTY

The **COUNTY**, to the extent permitted by law, shall be responsible for the acts, negligence and omissions of all officers, employees and agents of the **COUNTY** who are engaged in the performance of this Agreement.

VII.
RESPONSIBILITY OF THE AGENCY

The **AGENCY,** to the extent permitted by law, shall be responsible for the acts, negligence and omissions of all officers, employees and agents of the **AGENCY** who are engaged in the performance of this Agreement.

VIII.
APPLICABLE LAW

The **COUNTY** and the **AGENCY** understand and agree that liability under this contract is governed by the Texas Government Code, Chapter 791 and the Texas Local Government Code, Chapter 352. This Agreement is made in contemplation of the applicability of these laws to the Agreement. Insofar as legally possible the **COUNTY** and the **AGENCY** agree to be bound by the above mentioned statutes as they exist as of the date of this Agreement.

IX.
DEFAULT

In the event of default of any of the covenants herein contained, this Agreement may be terminated at the discretion of the non-defaulting party if such default continues for a period of ten (10) days after notice to the other party in writing of such default and the intent to terminate this Agreement due to the default. Unless the default is cured, this Agreement shall terminate.

X.
TERMINATION

This Agreement may be terminated any time, by either the **COUNTY** or the **AGENCY** by giving sixty (60) days advance written notice to the other party. In the event of termination by either party, the **AGENCY** shall be compensated pro rata for all services performed to the termination date together with reimbursable expenses then due as authorized by this Agreement. In the event of such termination, should the **AGENCY** be overcompensated on a pro rata basis for all services performed to the termination date and/or be overcompensated reimbursable expenses, the **COUNTY** shall be reimbursed pro rata for all such overcompensation.

Acceptance of such reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.

XI.
GOVERNMENTAL IMMUNITY

The fact that the **COUNTY** and the **AGENCY** accept certain responsibilities relating to the rendition of fire protection services under this Agreement as part of their responsibility for providing protection for the public health makes it imperative that the performance of these vital services be recognized as a governmental function and that the doctrine of governmental immunity shall be, and it is hereby, invoked to the extent permitted by law. Neither the **AGENCY,** nor the **COUNTY** waive, nor shall be deemed to have hereby waived, any immunity or defense that would otherwise be available to it against claims arising from the exercise of government powers and functions.

XII.
ENTIRE AGREEMENT

This Agreement represents the entire Agreement between the **COUNTY** and the **AGENCY** and supersedes all prior negotiations representations and Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

XIII.
LAW OF CONTRACT

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The venue for any dispute, or matter, arising under this Agreement shall lie in Denton County, Texas.

XIV.
SEVERABILITY

In the event that any portion of this Agreement shall be found to be contrary to law, it is the intent of the parties hereto that the remaining portions shall remain valid and in full force and effect to the fullest extent possible.

XV.
AUTHORITY

The undersigned officer or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties.

XVI.
SERVICE AREA

Acceptance of this Agreement constitutes approval of the service area set out in attached Exhibit "A".

EXECUTED this _____ day of _____, 20____.

Denton County, Texas
1 Courthouse Drive, Suite 3100
Denton, Texas 76208

By _____
Andy Eads
Denton County Judge

Town of Little Elm
100 W. El Dorado Parkway
Little Elm, Texas 75068

By _____
Name _____
Little Elm Fire Chief

ATTEST:

By: _____
Denton County Clerk

APPROVED AS TO CONTENT:

By: _____
Denton County Fire Marshal

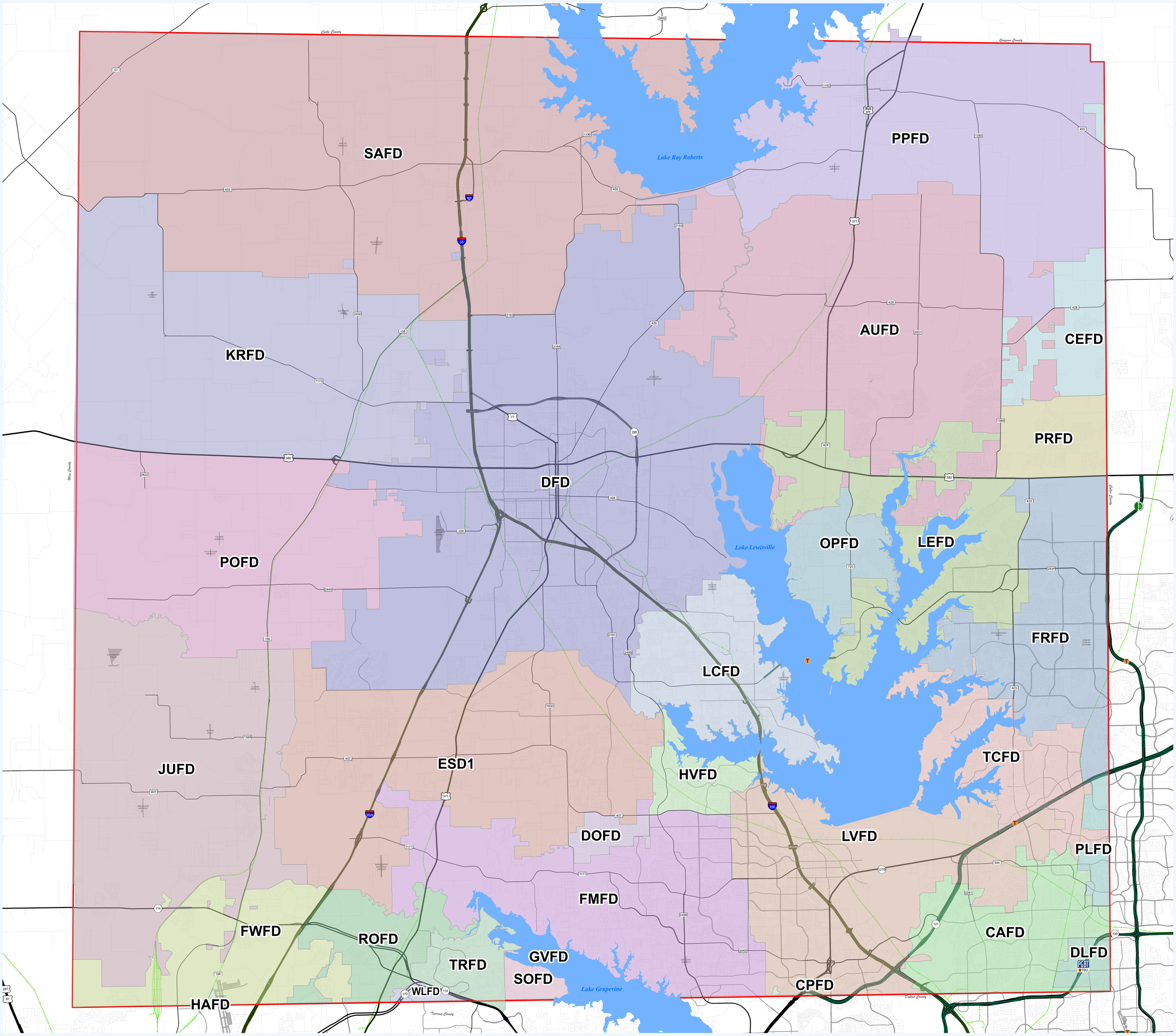
AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of $_____ to accomplish and pay the obligation of Denton County under this Agreement.

_____
Denton County Auditor

DENTON COUNTY

Exhibit A - Fire



Andy Eads - County Judge
Ryan Williams - Commissioner Precinct 1
Kevin Falconer - Commissioner Precinct 2
Bobbie J. Mitchell - Commissioner Precinct 3
Dianne Edmondson - Commissioner Precinct 4

INTERSTATE
U.S. HIGHWAY
STATE HIGHWAY
FARM TO MARKET
MAJOR THOROUGHFARES
MINOR ROADS
RAILROADS
AIRPORTS
LAKES & PONDS
County Boundary

City Population

Denton > 100,000
Lewisville 40,000- 100,000
Corinth 10,000- 39,999
Sanger 2,000- 9,999
Ponder < 2,000

NAD 1983 StatePlane
(Zone 5351)
Texas North Central
Lambert Conformal Conic

1:100,000

October 17, 2023

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Denton County does not guarantee the correctness or accuracy of any features on this product and assumes no responsibility in connection therewith. This product may be revised at any time without notification to any user.

CONTACT INFORMATION
LANDMARK MAP: gis.dentoncounty.gov
E-MAIL: gis@dentoncounty.gov

Overview Map

Date:	12/05/2023
Agenda Item #:	4. N.
Department:	Administrative Services
Strategic Goal:	Provide a safe and welcoming environment for Little Elm residents and visitors
Staff Contact:	Paul Rust, Fire Chief

AGENDA ITEM:

Consider Action to Approve an **Annual Interlocal Cooperative Agreement for EMS/ambulance services with Denton County for Unincorporated Areas Around Town Limits.**

DESCRIPTION:

This contract allows the Town of Little Elm Fire Department to extend emergency medical/ambulance services into unincorporated areas as indicated in Exhibit A. There are no substantial changes presented with this year's renewal. Annual revenue from this agreement is estimated to be $62,447.46.

BUDGET IMPACT:

No additional impact on the fire department operational budget.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

ICA EMS - Denton County

THE COUNTY OF DENTON §
§ **TOWN OF LITTLE ELM**
§ **AMBULANCE SERVICES**
STATE OF TEXAS §

INTERLOCAL COOPERATION AGREEMENT AMBULANCE SERVICE

THIS AGREEMENT, which has an effective date of October 1, 2023, is made and entered into by and between Denton County, Texas ("the **COUNTY**"), and the Town of Little Elm, Texas ("the **AGENCY**").

WHEREAS, the **COUNTY** is a duly organized political subdivision of the State of Texas engaged in the administration of county government and related services for the benefit of the citizens of Denton County; and

WHEREAS, the **AGENCY** is a municipal corporation, duly organized and operating under the laws of the State of Texas and engaged in the provision of ambulance services and related services for the benefit of the citizens of the Town of Little Elm; and

WHEREAS, the **AGENCY** is an owner and operator of certain ambulance vehicles and other equipment designed for the transportation of persons who are sick, infirmed or injured and has in its employ trained personnel whose duties are related to the treatment of said individuals and the use of such vehicles and equipment; and

WHEREAS, the **COUNTY** desires to obtain emergency ambulance and related services for the benefit of residents of the **COUNTY** living in unincorporated areas of the **COUNTY** which the **AGENCY** is capable of providing; and

WHEREAS, the provision of emergency ambulance and related services is a governmental function that serves the public health and welfare and is of mutual concern to both the **COUNTY** and the **AGENCY;** and

WHEREAS, the **COUNTY** desires to enter into an exclusive agreement with the **AGENCY** to provide efficient emergency ambulance service; and

WHEREAS, the **COUNTY** desires to expend County funds to defray the expense of establishing, operating and maintaining emergency ambulance services in the County; and

WHEREAS, the **COUNTY** and the **AGENCY** mutually desire to be subject to and contract pursuant to the provisions of Texas Government Code, Chapter 791 and Texas Health and Safety Code, Section 774.003, and

NOW THEREFORE, the **COUNTY** and the **AGENCY,** in consideration of the mutual promises, covenants, and Agreements stated herein, agree as follows:

I.
TERM

The term of this Agreement shall be for the period beginning of October 1, 2023, and ending on September 30, 2024.

II.
DEFINITIONS

As used herein, the words and phrases hereinafter set forth shall have the meanings as follows:

A. "Emergency" shall mean any circumstance that calls for immediate action and in which the element of time in transporting the sick, wounded or injured for medical treatment is essential to the health or life of a person or persons. Whether an emergency, in fact, exists is solely up to the discretion of the **AGENCY**. For dispatch purposes only, "emergency" shall include, but not be limited to:

1. The representation by the individual requesting ambulance service that an immediate need exists for the transportation of a person from any location within the agreed operating area of the **AGENCY** to a place where emergency medical treatment may be obtained; or

2. The representation by the individual requesting ambulance service that an immediate need exists for the transportation of a person from any location within the agreed operating area of the **AGENCY** to the closest medical facility.

B. “Rural area” means any area within the boundaries of the **COUNTY,** but outside the corporate limits of all incorporated cities, towns and villages within the **COUNTY**.

C. “Urban area” means any area within the corporate limits of an incorporated city, town or village within the **COUNTY.**

D. “Emergency ambulance call” means a response to a request for ambulance service by the personnel of the **AGENCY** in a situation involving an emergency, as defined above, by an ambulance vehicle. A single response to a call may involve the transportation of more than one person at a time, but shall be considered as only one call.

III.
SERVICES

The services to be rendered under this Agreement by the **AGENCY** are the ambulance services normally rendered by the **AGENCY** to citizens of Town of Little Elm in circumstances of emergency, but which services will now be extended to all citizens of the **COUNTY** residing in the unincorporated areas of the **COUNTY** within the operating territory or jurisdiction of the **AGENCY,** as agreed to by the **AGENCY** and the **COUNTY** in this Agreement and as set forth in "Exhibit A," attached hereto and incorporated herein by reference.

It is recognized that the officers and employees of the **AGENCY** have the duty and responsibility of rendering ambulance services to citizens of the **AGENCY** and the **COUNTY**. In the performance of these duties and responsibilities, it shall be within the sole responsibility and discretion of the officers and employees of the **AGENCY** to determine priorities in the dispatching and use of such equipment and personnel and the judgment of the officer or employee shall be final.

The **COUNTY** shall designate the County Judge to act on behalf of the **COUNTY** and to serve as "Liaison Officer" between the **COUNTY** and the **AGENCY**. The County Judge, or his designated substitute, shall devote sufficient time and attention to insure the performance of all duties and obligations of the **COUNTY** under this Agreement and shall provide for the immediate and direct supervision of employees, agents, contractors, sub-contractors and/or laborers of the **COUNTY** engaged in the performance of this Agreement.

IV.
PERFORMANCE OF SERVICES

The **AGENCY** shall devote sufficient time and attention to insure the performance of all duties and obligations of the **AGENCY** under this Agreement and shall provide immediate and direct supervision of the **AGENCY's** employees, agents, contractors, sub-contractors and/or laborers engaged in the performance of this Agreement for the mutual benefit of the **AGENCY** and the **COUNTY.**

V.
COMPENSATION

COUNTY agrees to pay to the **AGENCY** an estimated fee of $62,447.00 (amount rounded to the nearest dollar) based on a funding formula as follows:

1. A fixed sum based on a population percentage .4601 per capita; said sum computes to $25,733.47.

2. A fixed sum of $254.7139 per ambulance transport for an estimated maximum amount of $34,386.37. Said sum is based upon 135 transports made by the **AGENCY** in fiscal year 2023.

3. A fixed sum based on 3.12 rural miles in the agreed operating territory; said sum computes to $2,327.62.

The first and third sums are based upon population and mileage figures obtained from the North Central Texas Council of Governments. The second sum is based upon the definition of an "ambulance call" for purposes of this Agreement. Payment shall not be allowed for any instance in which a patient is not transported. Consistent with the reporting procedures described below, the **AGENCY** shall receive payment for transporting the patient regardless of the service delivery area in which the call originated.

Requests for payment shall be submitted on the standardized ambulance transportation reporting form approved and provided by the **COUNTY.** It shall be the responsibility of the **AGENCY** to fully complete the forms and to provide complete and accurate patient information. Requests for payment shall be submitted within five (5) days of the performance of service by the **AGENCY**. Requests not timely submitted shall not be considered for payment. Requests for payment may be submitted by personal delivery, U.S. Mail, facsimile or computer telephone link to the office of the Denton County Fire Marshal. The date of submission shall be the date the fully documented request is received in said office.

VI.
FINANCIAL RECORDS

The **AGENCY** agrees to make its financial records available for audit and/or review by the **COUNTY,** upon request by the **COUNTY**.

VII.
RESPONSIBILITY OF THE COUNTY

The **COUNTY,** to the extent permitted by law, shall be responsible for the acts, omissions and negligence of all officers, employees and agents of the **COUNTY** who are engaged in the performance of this Agreement.

VIII.
RESPONSIBILITY OF THE AGENCY

The **AGENCY,** to the extent permitted by law, shall be responsible for the acts, omissions and negligence of all officers, employees and agents of the **AGENCY** who are engaged in the performance of this Agreement.

IX.
APPLICABLE LAW

The **COUNTY** and the **AGENCY** understand and agree that liability under this contract is governed by Texas Government Code, Chapter 791 and Texas Health and Safety Code, Section 774.003. This Agreement is made in contemplation of the applicability of these laws to the Agreement. Insofar as legally possible the **COUNTY** and the **AGENCY** agree to be bound by the above mentioned statutes as they exist as of the date of this Agreement.

X.
DEFAULT

In the event of default of any of the covenants herein contained, this Agreement may be terminated at the discretion of the non-defaulting party if such default continues for a period of ten (10) days after notice to the other party in writing of such default and the intent to terminate this Agreement due to the default. Unless the default is cured, this Agreement shall terminate.

XI.
TERMINATION

This Agreement may be terminated at any time by either the **COUNTY** or the **AGENCY** by giving sixty (60) days advance written notice to the other party. In the event of termination by either party, the **AGENCY** shall be compensated pro rata for all services performed to termination date together with reimbursable expenses then due as authorized by this Agreement. In the event of such termination, should the **AGENCY** be overcompensated on a pro rata basis for all services performed to the termination date and/or be overcompensated for reimbursable expenses, the **COUNTY** shall be reimbursed pro rata for all such overcompensation.

Acceptance of such reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.

XII.
GOVERNMENTAL IMMUNITY

The fact that the **COUNTY** and the **AGENCY** accept certain responsibilities relating to the rendering of ambulance services under this Agreement as a part of their responsibility for providing protection for the public health makes it imperative that the performance of these vital services be recognized as a governmental function and that the doctrine of governmental immunity shall be, and is hereby, invoked to the extent permitted under the law. Neither the **AGENCY**, nor the **COUNTY** waive, nor shall be deemed to have hereby waived any immunity or defense that would otherwise be available to it against claims arising from the exercise of governmental powers and functions.

XIII.
ENTIRE AGREEMENT

This Agreement represents the entire Agreement between the **COUNTY** and the **AGENCY** and supersedes all prior negotiations, representations and Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

XIV.
LAW OF CONTRACT

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The venue for any dispute, or matter, arising under this Agreement shall lie in Denton County, Texas.

XV.
SEVERABILITY

In the event that any portion of this Agreement shall be found to be contrary to law, it is the intent of the parties hereto that the remaining portions of this Agreement shall remain valid and in full force and effect to the fullest extent possible.

XVI.
AUTHORITY

The undersigned officer or agents of the parties are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties**.**

XVII.
SERVICE AREA

Acceptance of this Agreement constitutes approval of the service area set out in attached Exhibit "A".

EXECUTED this _____ day of _____, 20____.

COUNTY:

Denton County, Texas
1 Courthouse Drive, Suite 3100
Denton, Texas 76208

By:_____
Andy Eads
Denton County Judge

AGENCY:

Town of Little Elm
100 W. Eldorado Parkway
Little Elm, Texas 75068

By:_____
Name _____
Title _____

ATTEST:

By:_____
Denton County Clerk

APPROVED AS TO CONTENT:

By: _____
Denton County Fire Marshal

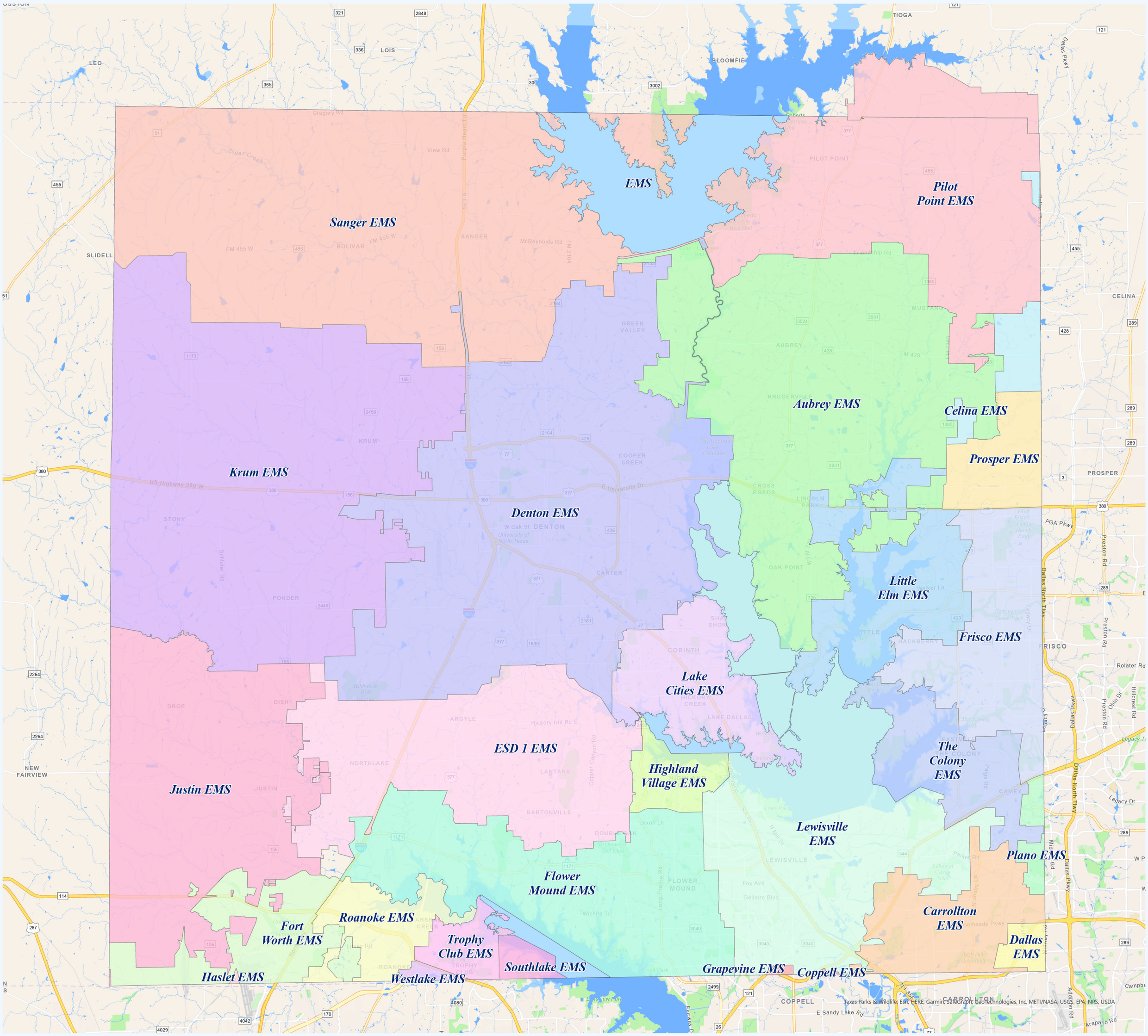
AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of $_____ to accomplish and pay the obligation of Denton County under this Agreement.

_____
Denton County Auditor

DENTON COUNTY

Exhibit A - EMS



DENTON COUNTY 1846

Andy Eads - County Judge
Ryan Williams - Commissioner Precinct 1
Kevin Falconer - Commissioner Precinct 2
Bobbie J. Mitchell - Commissioner Precinct 3
Dianne Edmondson - Commissioner Precinct 4

INTERSTATE
U.S. HIGHWAY
STATE HIGHWAY
FARM TO MARKET
MAJOR THOROUGHFARES
MINOR ROADS
RAILROADS
AIRPORTS
LAKES & PONDS
County Boundary

City Population
Denton > 100,000
Lewisville 40,000- 100,000
Corinth 10,000- 39,999
Sanger 2,000- 9,999
Ponder < 2,000

NAD 1983 StatePlane
(Zone 5351)
Texas North Central
Lambert Conformal Conic

N
W E
S

1:108,212
November 15, 2023

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Denton County does not guarantee the correctness or accuracy of any features on this product and assumes no responsibility in connection therewith. This product may be revised at any time without notification to any user.

CONTACT INFORMATION
LANDMARK MAP: gis.dentoncounty.gov
E-MAIL: gis@dentoncounty.gov

Overview Map

Date:	12/05/2023
Agenda Item #:	4. O.
Department:	Police
Strategic Goal:	Provide a safe and welcoming environment for Little Elm residents and visitors
Staff Contact:	Rodney Harrison, Police Chief

AGENDA ITEM:

Consider Action to Accept a **Grant Award from the Office of Community Oriented Policing Services for a De-Escalation Grant in the amount of $92,588.**

DESCRIPTION:

This grant will pay for a virtual reality simulator and training for our officers that includes de-escalation and negotiation tactics. We will be the first agency in Texas with this particular virtual simulator.

BUDGET IMPACT:

There are no matching funds for this grant.

RECOMMENDED ACTION:

Staff recommends approval.

Date:	12/05/2023
Agenda Item #:	4. P.
Department:	Economic Development Corporation
Strategic Goal:	Maximize community recreation and leisure activities
Staff Contact:	Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Consider Action to Approve an **Agreement for Fireworks to be sold on the Limited Purpose Annexation (LPA) Property for the purpose of Collecting Sales Tax during the Season of December 20, 2023 - January 1, 2024.**

DESCRIPTION:

Per **Ordinance 740** which was approved on November 15, 2005, the Annexation of approximately 44.204 acres of land be annexed by the Town of Little Elm, and **Ordinance 745**, also approved on November 15, 2005, allowing for a Strategic Partnership Agreement with Denton County Fresh Water District No. 10 which designates certain tracts of land for commercial use for the purpose of imposing a sales and use tax within such commercial tracts.

This Fireworks Stand will be located on property at 26878 East University Drive and is approximately 2.191 acres. The owner of this land is **380 Savana LLC , V&T Real Estate, LLC and PC Real Estate, LLC, ("Owner")** and they have entered into a License Agreement with the owner of the Fireworks Stand, **Simple Kicking Solutions, LLC ("Licensee").**

This agreement allows the **Licensee** to operate with the proper permits from the county and state, during the season which is from **December 20, 2023, until midnight of January 1, 2024,** with forty-eight (48) hours granted to vacate the property. Licensee also agrees to submit or cause to be submitted to the Texas State Comptroller's office **all sales and use taxes collected** from the fireworks stand location on the property under the **Taxpayer ID number 3-20594-5312-9,** which will be remitted to the Town of Little Elm.

BUDGET IMPACT:

There is no budget impact to this item other than the sales tax that will be collected by the sale of fireworks at this location.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Agreement - Simply Kicking Solutions

AGREEMENT

This **AGREEMENT** (this "Agreement") is made and entered into by and between the **TOWN OF LITTLE ELM, TEXAS,** a Texas home-rule municipality ("hereinafter referred to as the "Town"); **380 SAVANA, LLC**, a Texas limited liability company, **PC REAL ESTATE, LLC**, a Texas limited liability company; **V&T REAL ESTATE, LLC**, a Texas limited liability company (hereinafter referred to as the "Owner"); and **SIMPLE KICKING SOLUTIONS, LLC**, a Texas limited liability company (hereinafter referred to as "Licensee"), for the purposes and considerations stated below:

WHEREAS, the Licensee has entered into a Texas Fireworks Lease Agreement with the Owner, a copy of which is attached hereto as ***Exhibit A***, concerning a fireworks stand located on certain real property at 26878 East University Drive, 2.191 acres within the Town's extraterritorial jurisdiction, Denton County, Texas, (hereinafter referred to as the "Property"); and

WHEREAS, on or about November 15, 2005, the Town approved Ordinance No. 740, providing for the Limited Purpose Annexation of a 44.204-acre tract of Land; and

WHEREAS, the Town, Owner, and Licensee now desire to extend the ability to sell fireworks from the Property for one winter season from **December 20, 2023** to **January 1, 2024**.

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

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date and shall continue thereafter until midnight on **January 1, 2024,** with forty-eight (48) hours granted to vacate said property at the conclusion of the winter firework season, unless terminated sooner under the provisions of this Agreement.

SECTION 3. DEFINITIONS.

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

(a) **Agreement**. The word "Agreement" means this Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.

(b) **Effective Date.** The words "Effective Date" mean the date of the latter to execute this Agreement by and between the Town, Owner, and Licensee.

(c) **Event of Default**. The words "Event of Default" mean and include any of the Events of Default set forth below in the section entitled "Events of Default."

(d) **Licensee.** The word "Licensee" means Simple Kicking Solution, LLC, a Texas limited liability company, whose address is 3634 Granada Avenue, Dallas, Texas 75205.

(e) **Owner.** The word "Owner" means Buckman Partnership, Ltd, a Texas limited partnership, whose address for purposes of this Agreement is 7400 Gaylord Parkway, 3rd Floor, Frisco, Texas 75034.

(f) **Property.** The word "Property" means the fireworks stand generally located at 26878 East University Drive, 2.191 acres within the Town's extraterritorial jurisdiction, Denton County, Texas.

(g) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.

(h) **Town.** The word "Town" means the Town of Little Elm, Texas, a Texas home-rule municipality, whose address is 100 W. Eldorado Parkway, Little Elm, Texas 75068.

SECTION 4. OBLIGATIONS OF OWNER AND LESSEE.

Owner and Lessee covenant and agree with the Town that, while this Agreement is in effect, it shall comply with the terms and conditions listed below:

(a) **Sales of Fireworks from the Property.** Owner and Lessee agrees that the current fireworks stand located on the Property shall not exceed the boundaries of said property. Further, the Owner and Licensee agree that consistent with Section 2154.202 of the Texas Occupations Code that the Owner and Licensee may sell fireworks from the Property for the following firework seasons:

(1) beginning **December 20, 2023** and ending at midnight on **January 1, 2024**.

(b) **Cease Sale of Fireworks.** Owner and Licensee agree that the Owner and Licensee shall cease the sale of fireworks from the Property, and shall not be authorized to sell fireworks from the Property following the conclusion of this Agreement.

(c) **Compliance with State Rules and Regulations.** Owner and Licensee agree to comply with all state rules and regulations regarding the sale of fireworks including Title 28, Chapter 34, Rules 34.80 to 34.832 of the Texas Administrative Code, and Chapter 2154 of the Texas Occupations Code, as amended.

(d) **Texas Sales and Use Tax Permit.** Licensee agrees to submits or cause to be submitted to the Texas State Comptroller's office all sales and use taxes collected from the fireworks stand located on the Property under Taxpayer number 3-20594-5312-9 or other Texas sales

and use tax permit approved by the Town. This includes the State's sales tax at the rate of 6.25%, the Town of Little Elm's local sales and use tax at the rate of 1.00%, the Little Elm Type A economic development sales tax at the rate of 0.50%, and the Little Elm Type B economic development sales tax at the rate of 0.25%, and the Little Elm street maintenance sales and use tax at the rate of 0.25%, for a total sale and use rate of 8.25%.

SECTION 5. OBLIGATIONS OF TOWN.

The Town covenants and agrees with Owner and Lessee that, while this Agreement is in effect, it shall allow the Owner and Lessee to sell fireworks at the fireworks stand currently located on the Property during the Term of this Agreement, with proof of proper permit from Denton County.

SECTION 6. MUTUAL RELEASE.

In consideration of the premises, mutual promises and covenants contained herein, Town, Owner and Licensee and their predecessors, successors. assigns, affiliates, elected officials, employees, consultants, agents and legal representatives hereby release and forever discharge each other, jointly and severally, each and all of them, of and from any and all debts, liabilities, claims, controversies, causes of action and demands of every kind and character whatsoever that they may now have against each other civil or criminal, currently existing and arising out of any events or dealings between said parties prior to the execution of this Agreement relating to the issues, claims, counterclaims, defenses and allegations which were raised or could have been raised in connection with Property, or which could be raised in the future following the conclusion of this Agreement concerning the enforcement of the Town's ordinance prohibiting the sale of fireworks from the Property.

SECTION 7. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

(b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.

(c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.

(d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Owner warrants and represents that the individual

or individuals executing this Agreement on behalf of Owner has full authority to execute this Agreement and bind Owner to the same. Licensee warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same. Town warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

(e) **Caption Headings**. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(g) **Notices**. Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Town:	Town of Little Elm, Texas 100 W. Eldorado Parkway Little Elm, Texas 75068 Attn: Matt Mueller, Town Manager 214.975.0405
If to Owner:	Buckman Partnership, Ltd. 7400 Gaylord Parkway, 3rd Floor Frisco, Texas 75034. Attn: _____ Telephone: _____
If to Licensee:	Simple Kicking Solutions, LLC 3634 Granada Avenue Dallas, Texas 75205 Attn: James Hairston Jr., Owner 214.707.8780

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

(i) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

[The Remainder of this Page Intentionally Left Blank]

THE PARTIES ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND THE PARTIES AGREE TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.

TOWN:

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

By: _____
Curtis Cornelious, Mayor
Date: _____

ATTEST:

_____
Caitlan Biggs, Town Secretary

APPROVED AS TO FORM:

_____
Robert F. Brown, Town Attorney

STATE OF TEXAS §
§
COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Curtis Cornelious, Mayor of the Town of Little Elm, Texas, a Texas home-rule municipality, on behalf of the Texas municipality.

_____
Notary Public, State of Texas

OWNER:

BUCKMAN PARTNERSHIP, LTD.,
a Texas limited partnership,

By: _____
Name: _____
Title: _____
Date Signed: _____

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

This instrument was acknowledged before me on the ____ day of _____, 2023, by ____ _____ , _____ of Buckman Partnership, Ltd., a Texas limited partnership, on behalf of said partnership.

_____
Notary Public, State of Texas

LICENSEE:

SIMPLE KICKING SOLUTIONS, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____
Date: _____

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

This instrument was acknowledged before me on the ____ day of _____, 2023, by James Hairston, Jr., owner of Simple Kicking Solutions, LLC, a Texas limited liability company, on behalf of said Texas company.

_____
Notary Public, State of Texas

Exhibit A

[License Agreement]

Date:	12/05/2023
Agenda Item #:	4. Q.
Department:	Development Services
Strategic Goal:	Maximize community recreation and leisure activities
Staff Contact:	Wesley Brandon, Town Engineer

AGENDA ITEM:

Consider Action to Award a **Professional Services Contract to Geotex Engineering to Perform Materials Testing Services for the Cottonwood Park Phase 1 Project.**

DESCRIPTION:

In September 2023, Town Council approved a Request for Qualifications (RFQ) for materials testing and geotechnical services. This RFQ allows for work-order contracting for services related to Town projects. Geotex Engineering (formerly D&S Engineering Labs, LLC), one of the three selected firms, has submitted a proposal for construction materials testing services associated with the Cottonwood Park Phase 1 project. These services include soil density and concrete testing, as well as inspections of reinforcing steel and concrete foundations.

The Cottonwood Park Project is located at the southern end of Lobo Lane, near the existing Cottonwood Creek Marina. The project will include amenities and improvements as listed in the "Lakefront Park" phase of the Cottonwood Park Master Plan, such as pavilion structures, expanded shoreline activities (playground, picnic and lawn game areas), walking trails, parking areas, and restrooms.

BUDGET IMPACT:

Funding for the project is allocated within the capital improvement program budget, with additional funding provided by a grant awarded by the Texas Parks and Wildlife Department.

$	108,196	Proposed Budget
$	10,000	Contingency
$	**118,196**	**Total Funding Request**

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Proposal
Master Plan Excerpt

formerly D&S
GEOTEX ENGINEERING

October 16, 2023
23-0319

Wesley Brandon, P.E.
Town of Little Elm
wbrandon@littleelm.org

Subject: **Construction Materials Testing Services**
Cottonwood Park Phase 1
Little Elm, Texas

Dear Ms. Brandon:

Geotex Engineering is pleased to submit this proposal for construction materials testing for the above-referenced project. We understand that the project entails the improvements to the existing Cottonwood Park located at 900 Lobo Lane in Little Elm, Texas.

Based on our understanding that we have been selected due to our qualifications, we have prepared a budget estimate for your use.

This budget estimate is based on landscape, and civil permit set plans dated August 27, 2021; and geotechnical report by Alliance dated July 11, 2022.

PROJECT INFORMATION

Based on our review of the project plans and specifications, we understand that the project will consist of the following:

- Building (approximately 27 Slabs):
  - 7 slabs with Moisture conditioned subgrade (5-7 feet with a 2-foot select fill cap)
  - Slabs approximately 800 square feet, each
  - Slab-on-grade floor system with grade beams
- Paving and sidewalks:
  - 8-inch re-compacted sidewalk subgrade
  - 8-inch re-compacted paving subgrade
  - 8-inch Portland cement concrete paving
- Miscellaneous:
  - Utility trench backfill

SCOPE OF SERVICES

The following scope of services is based on our review of the project documents and is limited to providing testing and/or observations for the previously mentioned construction. ***We do request that your construction representative provide us with a 24-hour notice for scheduling purposes. Same-day***

call-ins will be billed at premium rates. As such, we agree to provide the appropriate personnel to perform the below construction materials services.

Earthwork

- Obtain and perform laboratory moisture/density relations (ASTM D698) and soil classification tests (liquid limit, plastic limit, and percent finer than no. 200 sieve analysis) for each soil type
- Perform in-place moisture/density tests at the proposed rate of 1/2,500 square feet for the building pad, 1/5,000 square feet or 1/300 linear feet for paving and sidewalk areas, and 1/100 linear feet for trench utility backfill and grade beam backfill per lift, with a minimum of 3 tests per lift

Reinforcing Steel

- Perform reinforcing steel observation which will include:
  - verify the number and size of bars
  - verify clearance between bars and spacing
  - verify securing, tying, and chairing of bars

Cast-In-Place Concrete

- Perform testing during concrete placements, which will include:
  - perform ambient and concrete temperature determinations
  - perform entrained air content determination
  - perform slump determination
- Cast concrete test cylinders at the proposed rate of 5/100 cubic yards of concrete placed for pavement and 5/100 cubic yards for building concrete, or a fraction thereof placed per day
- Compressive strength determination of concrete test cylinders with one tested at 7 days, three tested at 28 days, and one held in reserve

Masonry

- Perform testing during masonry operations which will include:
  - Ambient, mortar, and grout temperature determinations
- Cast grout prisms at the proposed rate of 4 per set shall be made during the first day of masonry work and for every 5,000 SF of wall (or less) thereafter
- Compressive strength determination of grout prisms with one tested at 7 days and three tested at 28 days

Notes and Qualifications:

Preparation of a compliance letter or other tasks and services that will require Professional Engineering (PE) hours will be billed at the PE's rate of $185/hour.

COMPENSATION

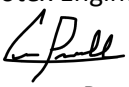
While testing is dependent on the construction sequence, contractor performance and efficiency, weather conditions, and the actual testing performed, we suggest an **estimated budget of $108,196.00.** The invoicing for this project will use the attached Fee Schedule **and *the actual quantity of work performed***. The estimated budget will not be exceeded without prior approval. Services provided by

Geotex Engineering will be consistent with the engineering standards prevailing at the time and in the area that the work is performed; no other warranty, express or implied, is intended. Estimates are valid for 60 days. Any additional testing that the client requests will be billed

A Letter of Agreement for your execution will be forwarded to your office upon your approval of this budget estimate and should you be awarded the contract for this project.

We appreciate the opportunity to provide you with our services. Please call if you have any questions or wish to discuss the budget estimate.

Sincerely,
Geotex Engineering, LLC



Cameron Pannell
Project Manager

Attachments: Budget Estimate

formerly D&S
GEOTEX ENGINEERING

Geotex Engineering
1101 Shady Oaks Drive
Denton, Texas 76205
Phone: 903.735.3733

Budget Estimate for Construction Materials

Testing & Observation Services

Cottonwood Park Phase 1

Little Elm, Texas

23-0319

Item	Quantity	Unit	Unit Rate	Total
Earthwork Observation & Testing Paving & Utilities				
Moisture Density Relations (ASTM D698 - Method A or B)	6	each	$185.00	$1,110.00
Moisture Density Relations (ASTM D1557- Method A or B)	1	each	$225.00	$225.00
Atterberg Limits (ASTM 4318)	7	each	$85.00	$595.00
Minus 200 Sieve Analysis	7	each	$45.00	$315.00
In-Place Moisture-Density Tests (Paving) Min 3 Per Trip	195	each	$15.00	$2,925.00
In-Place Moisture-Density Tests (Utilities) Min 3 Per Trip	45	each	$15.00	$675.00
Certified Engineering Soils Technician - Paving (Min. 4 hrs. per trip)	260	hour	$60.00	$15,600.00
Certified Engineering Soils Technician - Utilities (Min. 4 hrs. per trip)	40	hour	$60.00	$2,400.00
Trip Charge	75	trip	$50.00	$3,750.00
Project Manager	24	hour	$115.00	$2,760.00
Project Administration	n/a	%	10	$3,036.00
Estimated Total for Earthwork Services for Paving & Utilities:				**$33,391.00**

Item	Quantity	Unit	Unit Rate	Total
Concrete Observation & Testing - Paving				
Concrete Test Cylinders (4 x 8 inch)	335	each	$20.00	$6,700.00
(Includes: ambient & concrete temperatures, slump, air & unit weight)				
Certified Engineering Concrete Technician (Min. 4 hrs. per trip)	255	hour	$60.00	$15,300.00
(Includes reinforcing observation & cylinder pick up)				
Certified Engineering Concrete Technician (Estimated overtime)	51	hour	$90.00	$4,590.00
Trip Charge	51	trip	$50.00	$2,550.00
Project Manager	26	hour	$115.00	$2,990.00
Project Administration	n/a	%	10	$3,213.00
Estimated Total for Concrete Services for Paving:				**$35,343.00**

Item	Quantity	Unit	Unit Rate	Total
Earthwork Observation & Testing Building Pad				
In-Place Moisture-Density Tests, Min 3 per trip	120	each	$15.00	$1,800.00
Certified Engineering Soils Technician (Min. 4 hrs. per trip)	160	hour	$60.00	$9,600.00
Certified Engineering Soils Technician (Estimated overtime)	40	hour	$90.00	$3,600.00
Trip Charge	40	trip	$50.00	$2,000.00
Project Manager	15	hour	$115.00	$1,725.00
Project Administration	n/a	%	10	$1,873.00
Estimated Total for Earthwork Services:				**$20,598.00**

Item	Quantity	Unit	Unit Rate	Total
Concrete Observation & Testing Building				
Concrete Test Cylinders (4 x 8 inch)	105	each	$20.00	$2,100.00
(Includes: ambient & concrete temperatures, slump, air & unit weight)				
Certified Engineering Concrete Technician (Min. 4 hrs. per trip)	116	hour	$60.00	$6,960.00
(Includes reinforcing observation & cylinder pick up)				
Trip Charge	32	trip	$50.00	$1,600.00
Project Manager	10	hour	$115.00	$1,150.00
Project Administration	n/a	%	10	$1,181.00
Estimated Total for Concrete Services:				**$12,991.00**

formerly D&S
GEOTEX ENGINEERING

Geotex Engineering
1101 Shady Oaks Drive
Denton, Texas 76205
Phone: 903.735.3733

Item	Quantity	Unit	Unit Rate	Total
Masonry Observation & Testing				
Mortar Cubes (6 per set)	3	each	$25.00	$75.00
Grout Prisms (4 per set)	3	each	$35.00	$105.00
Certified Engineering Technician (Min. 4 hrs. per trip)	30	hour	$65.00	$1,950.00
(Includes observation and masonry pickup)				
Trip Charge	9	trip	$50.00	$450.00
Project Manager	3	hour	$115.00	$345.00
Project Administration	n/a	%	10	$293.00
			Estimated Total for Masonry Services:	**$3,218.00**

Item	Quantity	Unit	Unit Rate	Total
Project Setup Fee	1	each	$250.00	$250.00
Allowance for Sr. Engineer	13	hour	$185.00	$2,405.00
				$2,655.00

Estimated Total for Above Services: $108,196.00

SCHEDULED ASSUMPTIONS AND NOTES

Sanitary Sewer Bury Depth assumed to be 4 feet maximum
Grading for all paving and building areas to be cut
No testing required on the stabilized decomposed granite sections
Pavement placement will be completed in 18 trips at a rate of 300 cubic yards per pour
Sidewalk placement will be completed in 16 trips at a rate of 60 cubic yards per pour
No Visual structural steel inspections required
Performance pavilion slab will be complete in 1 trip
Restroom building slabs will be completed in 2 trips
Lighthouse structure footing and elevated slabs will be completed in 6 trips
Group Pavilion slabs will be completed in 2 trips
The Boardwalk structure is not being built at this time
Day Use Shelter slabs will be completed at a rate of 4 per trip
Day Use Shelter slabs will not require moisture conditioning as outlined in section 5.6 of the Geotechnical Report

NOT INCLUDED IN REQUIREMENTS OR THE BUDGET

Tests in excess of above stated quantities or additional tests not listed
Retesting of any failed tests / observation
Temporary site curing facility
Project compliance letter

The fees listed above for field and laboratory tests, include the equipment necessary to accomplish the task. Fees not listed above are available upon request. Estimates are valid for 60 days. Any additional testing that the client requests will be billed. There will be a 50% surcharge to the standard testing fees on all testing performed on rush orders. All services and personnel fees are subject to a minimum fee of four hours per trip for all scheduled inspections, site visits and for cancellations (on-site or in route) unless noted otherwise. Hourly rates quoted are portal to portal and apply to standard work days, Monday through Friday 7:00 am to 6:00 pm. Overtime rate of 1.5 times the quoted rate will be applied outside of the standard work hours, over 8 hours a day and on Saturday. Sundays and Holidays will be billed at 2 times the quoted rates. Fees listed above are per unit/hour, unless otherwise noted. Same-day call-ins to be billed at 1.5 times the hourly rate of the available personnel, up to and including the project manager's rate. Fees listed are for informational use only and are subject to change.

Lakefront Park Features:

- Signature Pavilion Structures
- Expanded Shoreline Activities
  - *Waterside Playground*
  - *Picnicking / Day Use*
  - *Open Lawn / Lawn Games*
- New Parking in Close Proximity
- Restroom

Date:	12/05/2023
Agenda Item #:	4. R.
Department:	Development Services
Strategic Goal:	Promote and expand Little Elm's identity
Staff Contact:	Olga Chernomorets, Planning Manager

AGENDA ITEM:

Consider Action to Approve a **Development Agreement Associated with the Lakefront Residential Overlay District, between the Town of Little Elm and Gurpreet Singh & Sukhnandan Kaur, Property Owners of 222 East Park Drive.**

DESCRIPTION:

Lakefront Residential Overlay District. The future land use section of the 2017 Comprehensive Plan calls for an objective within the recommendations section of the Lakefront District to plan for redevelopment and expansion of the district. In working with Council, staff has identified the residential areas surrounding the Lakefront Zoning District as areas prime for redevelopment. The purpose for the overlay is to establish zoning for residential areas around the existing Lakefront District within the context of redevelopment. The associated standards and visual examples will function to create a residential area that provides flexibility and variety in unique architectural design and high-quality alternative materials.

The goal is to expand on the Town's targeted "lakeside community character" by creating flexibility in residential architectural design, promoting the utilization of a variety of high-quality building materials, encouraging residential redevelopment, and providing unique development standards.

The intent of the Overlay District is to expand upon the Lakefront District's desire to provide a comfortable and attractive environment that will provide a unique, yet compatible residential neighborhood by encouraging redevelopment that is distinct from traditional residential subdivisions.

The proposed design was reviewed based on the architectural design criteria provided within the Overlay District.

(d) Architectural elements.

(1) Architectural variety. No facade may be repeated within any five adjacent lots or across the street from those lots. A request to vary from this standard shall be reviewed and

approved by the LRDC.
(2) Tripartite architecture. The exterior facades of homes shall be broken up into three distinct sections (base, middle, top) utilizing different primary and accent materials, colors, and/or general orientation of materials.
(3) Gifts to the street. Homes shall provide a minimum of two gifts to the street. Proposed features not noted in the definition for "gifts to the street" shall be approved at the discretion of the LRDC.
(4) Fences. Fences adjacent to public parks, open space, drainage areas or floodplains shall be constructed of black tubular (wrought iron) fencing. All other fencing shall adhere to the residential fences section (section 106.06.32) of the zoning ordinance.
(5) Roofs. Roofs shall be constructed with architectural grade shingles, or better. Seamed metal, clay and slate tile roofs (cement based) are permitted. Flat roofs may be utilized so long as they can properly drain which will be determined by the building official.
(6) Windows. Openings and panes shall be vertically proportioned or square and be separated with trim.
(7) Gutters. Gutters shall be copper, galvanized steel, aluminum or painted if exposed.
(8) Chimneys. If chimneys are located on a street-facing wall, they shall extend to the ground.
(9) Concealed items. HVAC units, trash storage, and utility meters shall be concealed.

The Lakefront Residential Design Committee has reviewed the proposed development plans and determined that they meet the vision and intent of the Overlay District.

Town Council approval of the attached Development Agreement and associated exhibits is the final step in allowing this project to begin its residential building permit review.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

The Lakefront Residential Design Committee recommends approval of the attached development plans and associated exhibits as presented.

Attachments

Development Agreement

STATE OF TEXAS	**§**	**DEVELOPMENT AGREEMENT FOR**
	§	**805 HILLSIDE BEACH DRIVE**
COUNTY OF DENTON	**§**	

This Development Agreement for 805 Hillside Beach ("**Agreement**") is entered into between Gurpreet Singh & Sukhnandan Kaur, the property owners, ("**Developer**"), whose address for purposes of this Agreement is 805 Hillside Beach, Little Elm TX 75068, and the Town of Little Elm, Texas ("**Town**"), whose address for purposes of this Agreement is 100 W Eldorado Pkwy, Little Elm, Texas 75068. Developer and the Town are sometimes referred herein together as the "**Parties**" and individually as a "**Party**."

Recitals:

1. The .2008 acres is generally located at 805 Hillside Beach Drive, on the west side of Hillside Beach, approximately 370 feet north of Lakeshore Drive, identified as Hillside Beach Lot 39, in the Town of Little Elm, Texas (the "**Property")**, which Property is more particularly described in **Exhibit A** attached hereto.

2. In furtherance of the development of the Property, the Parties have negotiated certain matters regarding the Property as set forth in this Agreement.

3. The Parties seek to memorialize these negotiated matters and to include them in this contractually-binding Agreement.

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the benefits to each of the Parties from this Agreement, and other good and valuable consideration, the sufficiency of which is hereby acknowledged and agreed, the Parties do hereby agree as follows:

Section 1. Incorporation of Premises. The above and foregoing Recitals are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Term. This Agreement shall be effective as of the date of execution of this Agreement by the last of the Parties to do so ("**Effective Date**"). This Agreement shall remain in full force and effect from the Effective Date until terminated by the mutual agreement of all of the Parties in writing, or until all obligations in the Agreement have been fulfilled ("**Term**").

Section 3. Agreements. The Parties agree as follows:

A. The negotiated and agreed upon development plans attached hereto as **Exhibit B**, which incorporate by reference the general zoning regulations of the Town's zoning ordinance, are hereby adopted and incorporated into this agreement as contractually-binding obligations of the Developer.

Section 4. Miscellaneous.

A. Applicability of Town Ordinances. When the Property is developed, Developer shall construct all structures on the Property, in accordance with all applicable Town

ordinances and building/construction codes, whether now existing or arising prior to such construction in the future.

B. **Default/Mediation**. No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. If either Party is in default under this Agreement, the other Party shall have the right to enforce the Agreement in accordance with applicable law, provided, however, in no event shall any Party be liable for consequential or punitive damages. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

C. **Venue**. This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its conflict of law rules. In the event of any dispute or action under this Agreement, venue for any and all disputes or actions shall be instituted and maintained in Denton County, Texas.

D. **Relationship of Parties**. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership, joint venture, joint enterprise, or other relationship between or among the Parties.

E. **Severability**. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

F. **Cumulative Rights and Remedies**. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law statute, ordinance, or otherwise. The failure by any Party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such Party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. Any rights and remedies any Party may have with respect to the other arising out of this

Agreement shall survive the cancellation, expiration or termination of this Agreement, except as otherwise expressly set forth herein.

G. **Exhibits**. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

H. **Surviving Rights**. 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.

I. **Applicable Laws**. This Agreement is made subject to the existing provisions of the Charter of the Town of Little Elm, its present rules, regulations, procedures and ordinances, and all applicable laws, rules, and regulations of the State of Texas and the United States.

J. **Authority to Execute**. 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.

K. **Amendments**. This Agreement may be only amended or altered by written instrument signed by the Parties.

L. **Headings**. The headings and captions used in this Agreement are for the convenience of the Parties only and shall not in any way define, limit or describe the scope or intent of any provisions of this Agreement.

M. **Entire Agreement**. This Agreement is the entire agreement between the Parties with respect to the subject matters covered in this Agreement. There are no other collateral oral or written agreements between the Parties that in any manner relates to the subject matter of this Agreement, except as provided or referenced in this Agreement.

N. **Filing in Deed Records**. This Agreement shall be recorded in the real property records of Denton County, Texas. This Agreement and all of its terms, conditions, and provisions is and shall constitute a restriction and condition upon the development of the Property and all portions thereof and a covenant running with the Property and all portions thereof, and is and shall be binding upon Developer and all of Developer's heirs, successors, and assigns and the future owners of the Property and any portion thereof; provided, however, this Agreement shall not constitute an obligation of or be deemed a restriction or encumbrance with respect to any final platted residential lot upon which a completed home has been constructed.

O. **Notification of Sale or Transfer; Assignment of Agreement**. Developer shall notify the Town in writing of any sale or transfer of all or any portion of the Property, within ten (10) business days of such sale or transfer. Developer has the right (from time to time without the consent of the Town, but upon written notice to the Town) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Developer under this Agreement, to any person or entity (an "**Assignee**") that is or will

become an owner of any portion of the Property or that is an entity that is controlled by or under common control with Developer. Each assignment shall be in writing executed by Developer and the Assignee and shall obligate the Assignee to be bound by this Agreement with respect to the portion of the Property transferred to Assignee. If the Property is transferred or owned by multiple parties, this Agreement shall only apply to, and be binding on, such parties to the extent of the Property owned by such successor owner, and if the Developer or any Assignee is in default under this Agreement, such default shall not be an event of default for any non-defaulting Assignee which owns any portion of the Property separate from the defaulting Developer or Assignee. A copy of each assignment shall be provided to the Town within ten (10) business days after execution. Provided that the successor developer assumes the liabilities, responsibilities, and obligations of the assignor under this Agreement with respect to the Property transferred to the successor developer, the assigning party will be released from any rights and obligations under this Agreement as to the Property that is the subject of such assignment, effective upon receipt of the assignment by the Town. No assignment by Developer shall release Developer from any liability that resulted from an act or omission by Developer that occurred prior to the effective date of the assignment. Developer shall maintain true and correct copies of all assignments made by Developer to Assignees, including a copy of each executed assignment and the Assignee's Notice information.

P. **Sovereign Immunity**. The Parties agree that the Town has not waived its sovereign immunity from suit by entering into and performing its obligations under this Agreement.

Q. **Exactions/Infrastructure Costs**. Developer has been represented by legal counsel, or has had an opportunity to do so, in the negotiation of this Agreement, and been advised, or has had the opportunity to have legal counsel review this Agreement and advise Developer, regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town in this Agreement are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Developer specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with § 212.904 of the Texas Local Government Code; however, notwithstanding the foregoing, Developer hereby releases the Town from any and all liability under § 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure requirements imposed by this Agreement.

R. **Waiver of Texas Government Code § 3000.001 et seq**. With respect to the improvements constructed on the Property pursuant to this Agreement, Developer hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005.

S. **Rough Proportionality**. Developer hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution with respect to infrastructure requirements imposed by this Agreement. Developer and the Town further agree to waive and release all claims one may have

against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement, with respect to infrastructure requirements imposed by this Agreement.

T. Form 1295 Certificate. The Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the Town, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

U. Undocumented Workers Provision. The Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120th day after the date the Town notifies Developer of the violation.

V. Non-Boycott of Israel Provision. In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars ($100,000.00). Unless Developer is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Developer verifies that Developer does not boycott Israel and will not boycott Israel during the Term of this Agreement.

W. Prohibition on Contracts with Certain Companies Provision. In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

X. Report Agreement to Comptroller's Office. Town covenants and agrees to report this Agreement to the State Comptroller's office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021). [For Chapter 380 Agreements]

Y. Verification Against Discrimination of Firearm or Ammunition Industries. Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19,

87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the Town, the Developer represents that: (1) the Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Developer will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.

Z. Verification Against Discrimination Developer Does Not Boycott Energy Companies. Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 13, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the Town, the Developer represents that: (1) the Developer does not boycott energy companies; and (2) the Developer will not boycott energy companies during the Term of this Agreement.

EXECUTED by the Parties on the dates set forth below, to be effective as of the date first written above.

DEVELOPER

_____

By: _____

Date:_____

TOWN OF LITTLE ELM, TEXAS

By:_____
Matt Mueller
Town Manager

Date:_____

ATTEST:

By:_____
Caitlan Biggs
Town Secretary

87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the Town, the Developer represents that: (1) the Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Developer will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.

Z. Verification Against Discrimination Developer Does Not Boycott Energy Companies. Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 13, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the Town, the Developer represents that: (1) the Developer does not boycott energy companies; and (2) the Developer will not boycott energy companies during the Term of this Agreement.

EXECUTED by the Parties on the dates set forth below, to be effective as of the date first written above.

DEVELOPER

Iron Kross Construction
Tyler Ellis

By: _____

Date: 11.29.23

TOWN OF LITTLE ELM, TEXAS

By: _____
Matt Mueller
Town Manager

Date: _____

ATTEST:

By: _____
Caitlan Biggs
Town Secretary

STATE OF TEXAS §
§
COUNTY OF DENTON §

Before me, the undersigned authority, on this _____ day of _____, 2023, personally appeared MATT MUELLER, Town Manager of the Town of Little Elm, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[Seal]

By:_____
Notary Public, State of Texas

My Commission Expires:_____

STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned authority, on this _____ day of _____, 2023, personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity of a duly authorized representative of _____.

[Seal]

By:_____
Notary Public, State of Texas

My Commission Expires:_____

STATE OF TEXAS §
§
COUNTY OF DENTON §

Before me, the undersigned authority, on this _____ day of _____, 2023, personally appeared MATT MUELLER, Town Manager of the Town of Little Elm, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[Seal]

By:_____
Notary Public, State of Texas

My Commission Expires:_____

STATE OF TEXAS §
§
COUNTY OF Collin §

Before me, the undersigned authority, on this 30th day of Nov., 2023, personally appeared Gurpreet Singh, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity of a duly authorized representative of Self.

[Seal]

JACOB FOOTER
Notary Public, State of Texas
Comm. Expires 09-09-2025
Notary ID 133322796

By: Jacob Footer
Notary Public, State of Texas

My Commission Expires: 09/09/2025

STATE OF TEXAS §
§
COUNTY OF DENTON §

Before me, the undersigned authority, on this _____ day of _____, 2023, personally appeared MATT MUELLER, Town Manager of the Town of Little Elm, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[Seal]

By:_____
Notary Public, State of Texas

My Commission Expires:_____

STATE OF TEXAS §
§
COUNTY OF Collin §

Before me, the undersigned authority, on this 30th day of Nov., 2023, personally appeared Sukhwinder Kaur, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity of a duly authorized representative of Self.

[Seal]

JACOB FOOTER
Notary Public, State of Texas
Comm. Expires 09-09-2025
Notary ID 133322796

By: Jacob Footer
Notary Public, State of Texas

My Commission Expires: 09/09/2025

EXHIBIT A

Property Description

SITE PLAN GENERAL NOTES:

1. NEW SITE PAVING AND/OR SIDEWALK WORK SHOWN ON SITE PLAN IS FOR GENERAL INFORMATION ONLY. RED ARCHITECTURE + PLANNING, LLC IS NOT RESPONSIBLE FOR THESE SCOPES OF WORK MEETING ACCESSIBILITY REQUIREMENTS. SITE MODIFICATIONS SHALL MEET ACCESSIBILITY REQUIREMENTS AND THE OWNER IS TO ASSIGN THIS RESPONSIBILITY.

2. GENERAL CONTRACTOR TO VERIFY ALL EXISTING ELEVATIONS AND BUILDING CONDITIONS IN FIELD PRIOR TO START OF CONSTRUCTION.

3. PROVIDE DETECTABLE WARNING AT TRANSITION FROM SIDEWALK TO DRIVE AISLE.

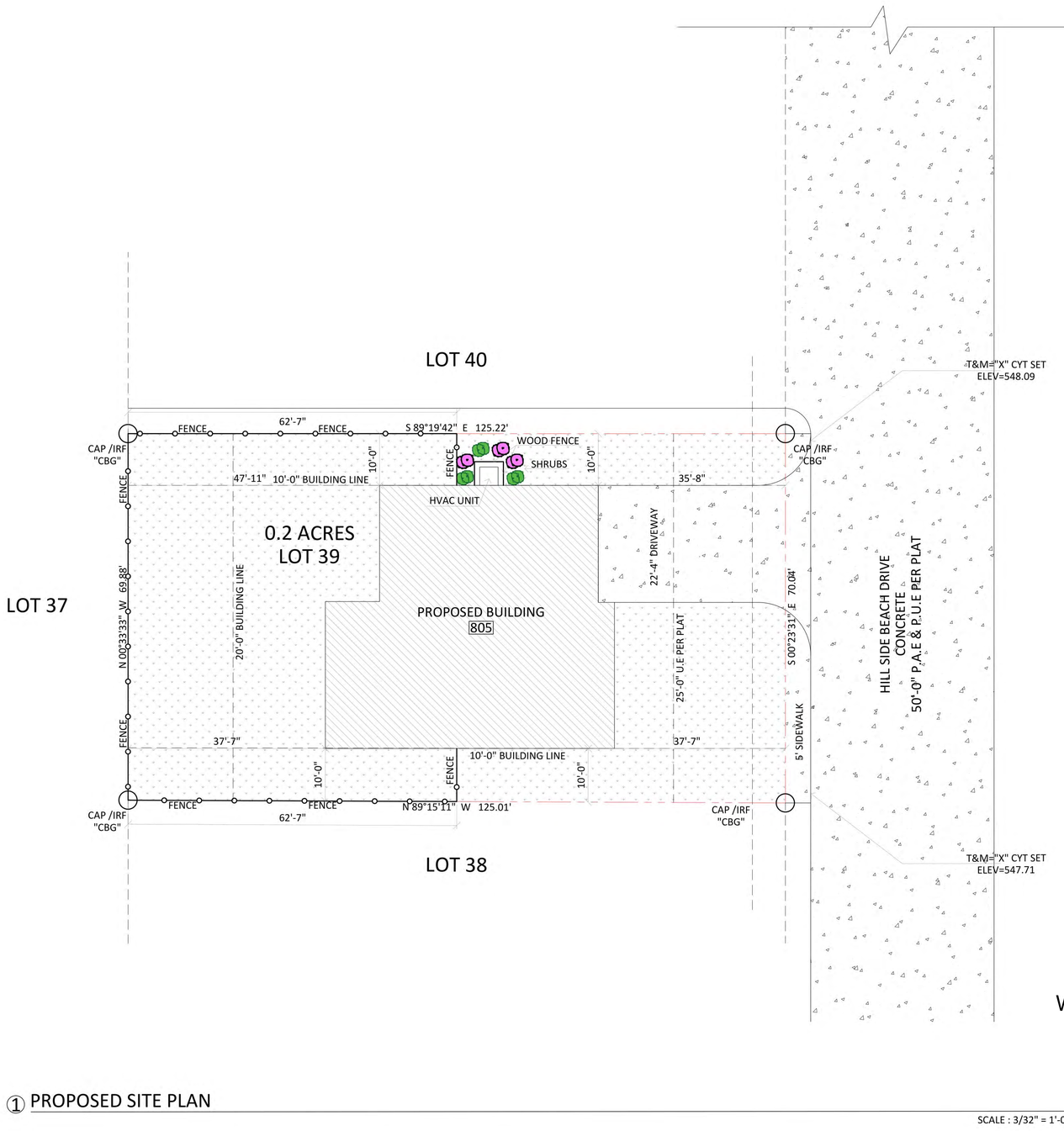
4. ACCESSIBLE PARKING SPACES AND ACCESS AISLES SHALL HAVE A SURFACE SLOPE NOT TO EXCEED 2% IN ALL DIRECTIONS.

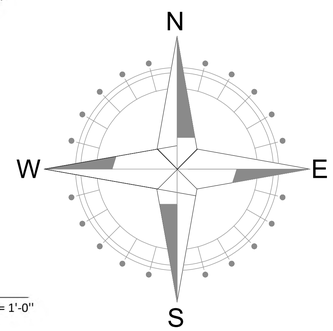
5. CROSS SLOPE ALONG ENTIRE LENGTH OF ACCESSIBLE ROUTE NOT TO EXCEED 2%.

6. REFER TO ELECTRICAL DRAWINGS FOR SITE RELATED ELECTRICAL SLOPE.

7. SCRAPE AND REPAINT ALL EXISTING PAINTED SITE FEATURES, INCLUDING, BUT NOT LIMITED TO CURBS, BOLLARDS, RAILINGS, & SITE LIGHTING BASES. 8. REFER TO OWNER'S BID NOTES FOR SITE LIGHTING SCOPE.

SITE NAME: 805 HILL SIDE BEACH DRIVE, LITTLE ELM TX.





① PROPOSED SITE PLAN

SCALE : 3/32" = 1'-0"

GENERAL NOTES:

STATE OF TEXAS
BENEDICT N. ILOANYA
143717
LICENSED
PROFESSIONAL ENGINEER

Benedict N. Iloanya

11/14/23

SHEET TITLE:
SITE PLAN

DRAWING TITLE:

DRAWN BY:

CHECKED BY:

CLIENT NAME:

DATE:
11/14/23

COMPANY NAME:

PROJECT NAME:
805 HILL SIDE BEACH DRIVE,LITTLE ELM TX.

ARCHITECT:

SHEET NO:
A-1

DRAWING NO:

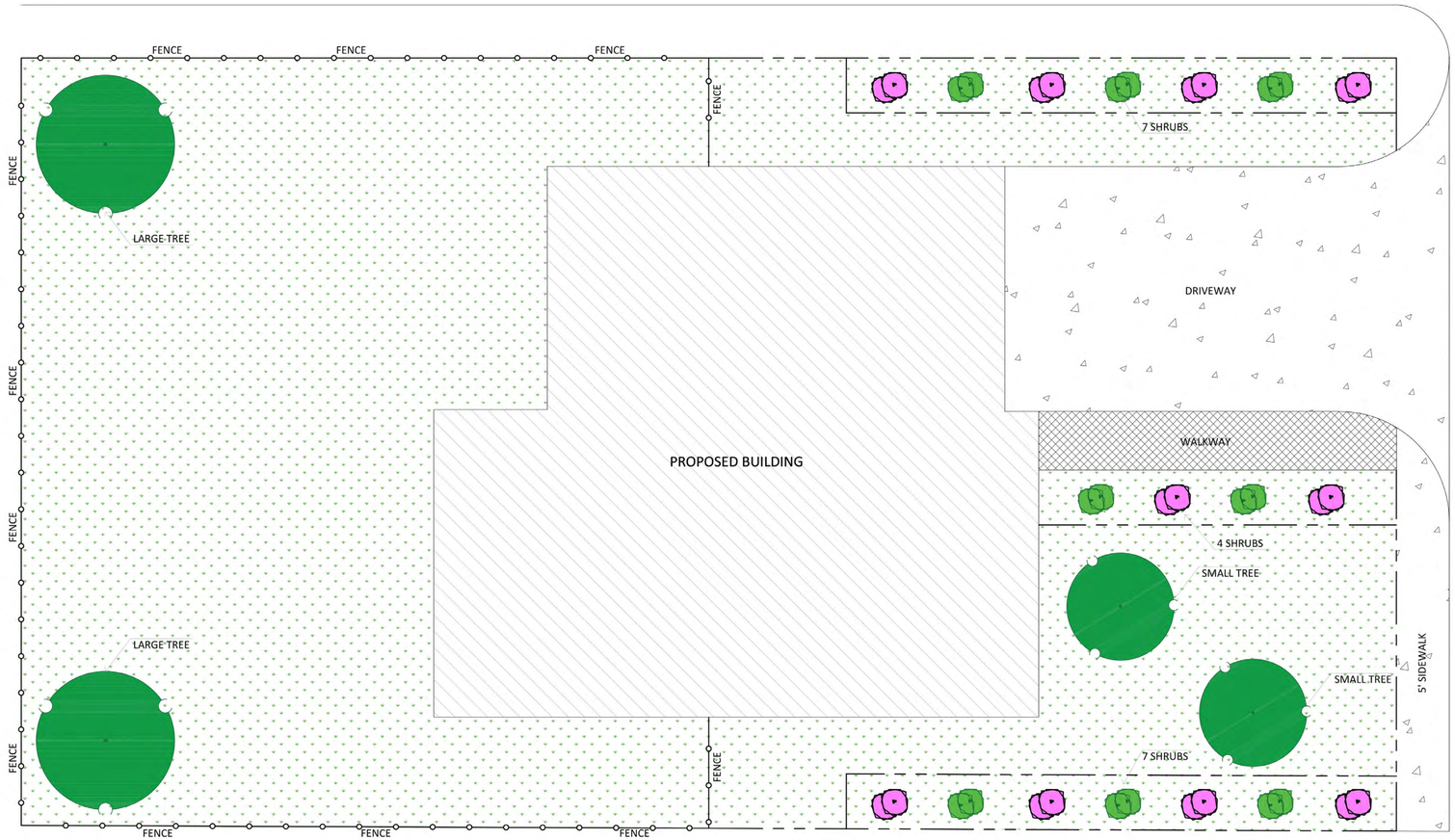
REVISION:

Scale:
3/32" = 1'

EXHIBIT B

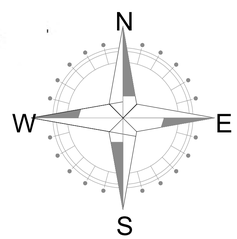
Development Plans

SITE NAME: 805 HILL SIDE BEACH DRIVE, LITTLE ELM TX.



① PROPOSED LANDSCAPE PLAN

SCALE : 3/16" = 1'-0"



GENERAL NOTES:

STATE OF TEXAS
BENEDICT N. ILOANYA
143717
LICENSED
PROFESSIONAL ENGINEER

Benedict N. Iloanya
11/14/23

SHEET TITLE:
SITE PLAN

DRAWING TITLE:

DRAWN BY:

CHECKED BY:

CLIENT NAME:

DATE:
11/14/23

COMPANY NAME:

PROJECT NAME:
805 HILL SIDE BEACH DRIVE,LITTLE ELM TX.

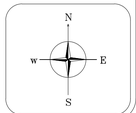
ARCHITECT:

SHEET NO:
A-1

DRAWING NO:

REVISION:

Scale:
3/16" = 1'



BUILDING LAYOUT NOTES:

Control, Grades, and Elevation:

1. All finished concrete surfaces shall be a minimum of 1 inch above the finished grade.

Veneer Walls (Stone and Brick):

2. Brick: Modular thin veneer, Grade SW brick, alternately stacked (unless noted otherwise).
3. Stucco: Standard three coat with fine texture finish. Control joints according to elevations, 20' o.c. max.
4. Tile: All exterior wall tile to be ceramic.
5. Place ladder type horizontal reinforcement at every other course.
6. Mortar joints: all joints shall be a tuck point concave tooled joint with a 3/8" width.
7. Construction Joints: Vertical masonry movement joints to be 20' o.c. max, unless noted otherwise, and shall not cross lintels or brick shelf angles.
8. Approval: Architect reserves the right to reject any work that does not satisfy the design intent.
9. Cutting of masonry blocks: all cutting, trimming, or shaping shall be done by a motorized masonry saw. Breaking or splitting will not be accepted.
10. Weep holes: Provide at 24" o.c. at the base of the masonry facade one course above the foundation and immediately above all other flashing.
11. Flashing: Provide stainless steel flashing at the base of the masonry facade one course above the foundation. Provide flashing above all bond beams and openings.
12. Sealant: All masonry surfaces to be coated with Behr Premium Waterproofer and Protector No. 980 or equivalent.

Stud Walls:

13. Wood Studs: All exterior wall and demising wall studs to be 2"x6" spaced at 16" on center. All other interior walls to be 2"x4" studs spaced at 16" on center. Refer to Structural Drawings for load bearing stud layout, sections, and details.
14. Fasteners: All exterior stud screws and fasteners to be stainless steel with neoprene washers.
15. Sheathing: All exterior sheathing used in Cavity Walls to be Wood Structural Panel (ex: OSB).
16. Vapor Barrier: Vapor barrier used over sheathing to be wrapped above flashing at the base and above window locations.

AREA SUMMARY FIRST FLOOR	
AC AREA	1630 SFT
COVERED PORCH	200 SFT
COVERED PATIO	158 SFT
GARAGE	470 SFT
TOTAL SLAB	2458 SFT

DOOR SCHEDULE

◯ DENOTES DOOR

MK.	QT.	Door Size	Notes
1	3	3'-0" x 7'-0"	Flush Door
2	7	2'-6" x 7'-0"	Flush Door
3	3	2'-0" x 7'-0"	Flush Door
4	1	4'-0" x 7'-0"	Double Door
5	1	5'-0" x 7'-0"	Double Door
6	1	4'-0" x 7'-0"	Double Pocket Door
7	1	3'-0" x 7'-0"	Sliding Door
7	1	6'-0" x 7'-0"	Sliding Door
7	1	18'-0" x 7'-0"	Garage Door

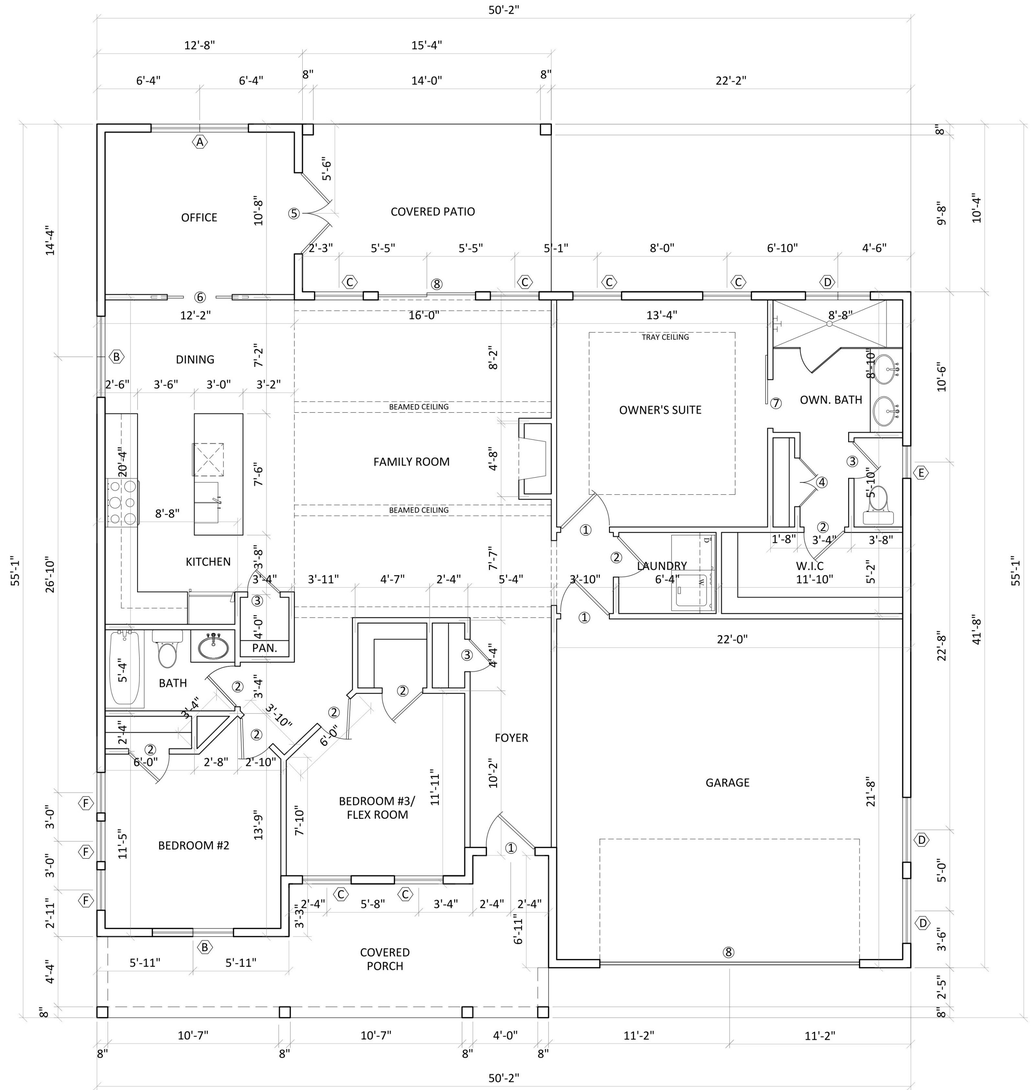
*ALL EXTERIOR DOORS ARE SOLID CORE

FRONT DOOR & GARAGE DOOR CONSIST OF RED WOOD

WINDOW SCHEDULE

◇ DENOTES WINDOW

MK.	QT.	Window Size	Notes
A	1	6'-0" x 5'-0"	CASEMENT
B	2	5'-0" x 5'-0"	CASEMENT
C	7	3'-0" x 5'-0"	CASEMENT
D	3	4'-0" x 2'-6"	Sliding
E	1	2'-0" x 2'-0"	Sliding
F	3	2'-6" x 5'-0"	CASEMENT



① FIRST FLOOR PLAN

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

GENERAL NOTES:

STATE OF TEXAS
BENEDICT N. ILOANYA
143717
LICENSED
PROFESSIONAL ENGINEER

Benedict N. Iloanya
11/14/23

SHEET TITLE:
FIRST FLOOR PLAN

DRAWING TITLE:

DRAWN BY:

CHECKED BY:

CLIENT NAME:

DATE:
11/14/23

COMPANY NAME:
BLU STEP

PROJECT NAME:
805 HILL SIDE BEACH DRIVE,
LITTLE ELM TX.

ARCHITECT:

SHEET NO:
A-1

DRAWING NO:

REVISION:

Scale:
1/4" = 1'

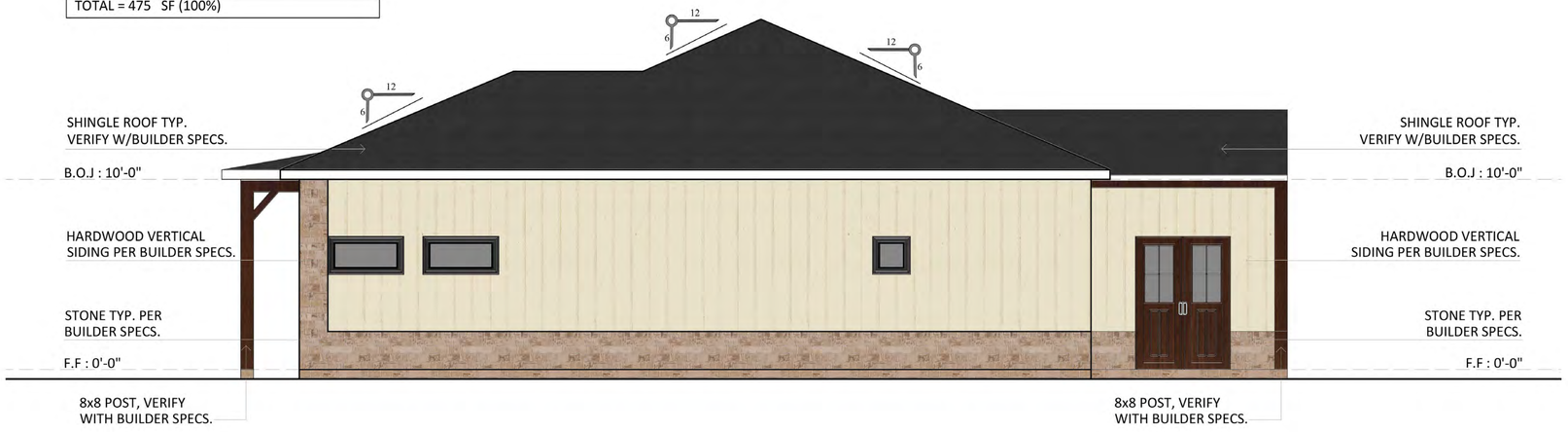
N
W
E
S

FRONT FACADE MATERIAL TOTAL = 273 SF (100%)
SIDING = 135 SF (49.45%)
STONE = 138 SF (50.55%)
TOTAL = 273 SF (100%)

① EXTERIOR ELEVATION : FRONT

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

RIGHT FACADE MATERIAL TOTAL = 475 SF (100%)
SIDING = 369 SF (77.68%)
STONE = 106 SF (22.32%)
TOTAL = 475 SF (100%)



② EXTERIOR ELEVATION : RIGHT

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

GENERAL NOTES:

STATE OF TEXAS
BENEDICT N. ILOANYA
143717
LICENSED
PROFESSIONAL ENGINEER

Benedict N. Iloanya
11/14/23

SHEET TITLE:
EXTERIOR ELEVATION

DRAWING TITLE:

DRAWN BY:

CHECKED BY:

CLIENT NAME:

DATE:
11/14/23

COMPANY NAME:
BLU STEP

PROJECT NAME:
805 HILL SIDE BEACH DRIVE,
LITTLE ELM TX.

ARCHITECT:

SHEET NO:
A-2

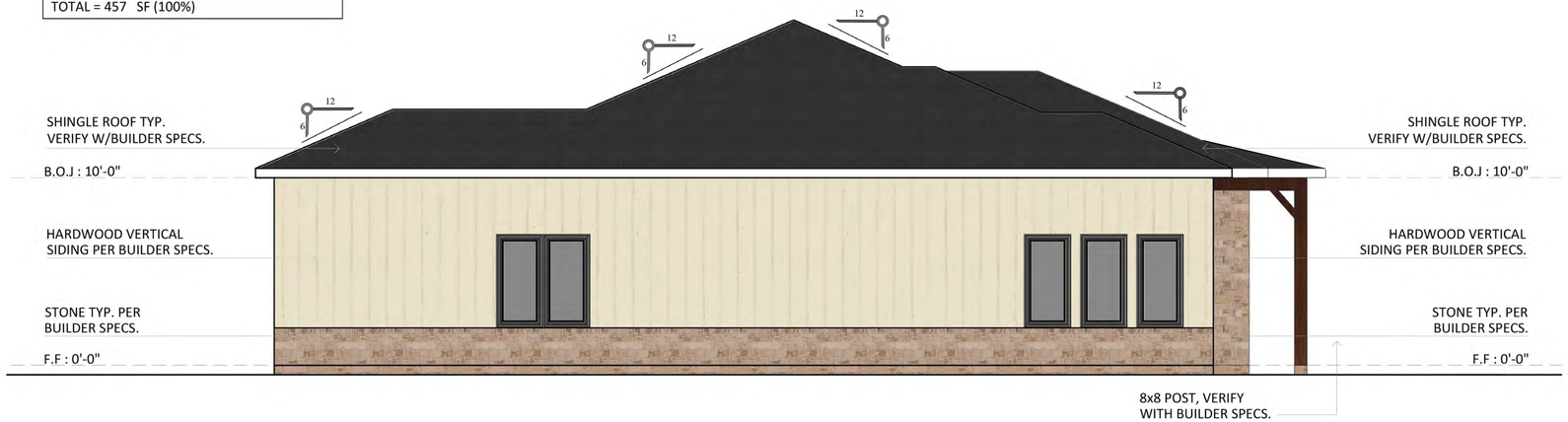
DRAWING NO:

REVISION:

Scale:
1/4" = 1'

N
W
E
S

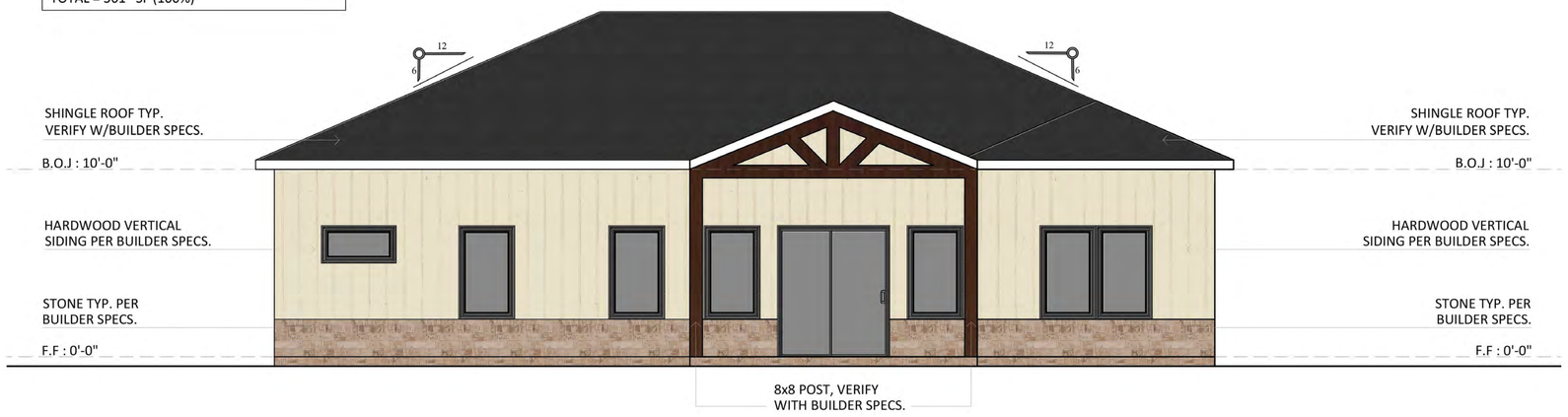
LEFT FACADE MATERIAL TOTAL = 457 SF (100%)
SIDING = 348 SF (76.14%)
STONE = 119 SF (23.86%)
TOTAL = 457 SF (100%)



① EXTERIOR ELEVATION : LEFT

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

REAR FACADE MATERIAL TOTAL = 361 SF (100%)
SIDING = 273 SF (75.62%)
STONE = 88 SF (24.38%)
TOTAL = 361 SF (100%)



② EXTERIOR ELEVATION : REAR

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

GENERAL NOTES:

STATE OF TEXAS
BENEDICT N. ILOANYA
143717
LICENSED
PROFESSIONAL ENGINEER

Benedict N. Iloanya
11/14/23

SHEET TITLE:
EXTERIOR ELEVATION

DRAWING TITLE:

DRAWN BY:

CHECKED BY:

CLIENT NAME:

DATE:
11/14/23

COMPANY NAME:

BLU STEP

PROJECT NAME:
805 HILL SIDE BEACH DRIVE,
LITTLE ELM TX.

ARCHITECT:

SHEET NO:
A-3

DRAWING NO:

REVISION:

Scale:
1/4" = 1'

N
W
E
S

FRAMING NOTES:

Stud Walls:

1. All exterior wall studs shall be 2"x6" at 16" on centers unless noted otherwise.
2. All interior wall studs shall be 2"x4" at 16" on centers, with 5/8" gypsum board on both sides, unless noted otherwise.

Columns, Beams and Headers:

3. All columns are to be (3) 2x6 studs, back to back, unless noted otherwise.
4. Beam to Column connections to use Simpson Strong-Tie LCE4 or equal.
5. All headers (H) are to be - (2) 2x10 unless noted otherwise.

Shear Walls, Deck, & Trusses:

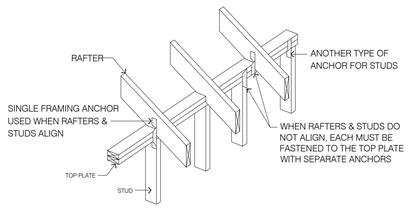
6. Continuously sheathed wood structural panel method used. Minimum sheathing thickness is 1/2".
7. All floor joists shall be 2-1/2" x 12" TJI joists.
8. Roof deck to be 3/4" exterior grade plywood sheathing.
9. All roof members shall be 2"x8", unless noted otherwise.
10. Roof members to be spaced a maximum of 1'-4" on
11. centers.

    All connector plates to be 16 ga. Simpson Strong-Tie or approved equal. See details for nailing patterns.

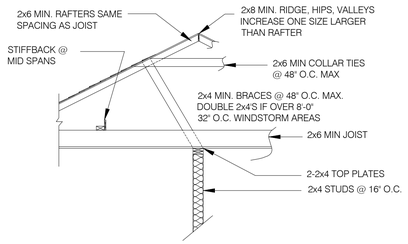
General Notes:

12. All lumber to be Grade No. 1, unless noted otherwise
13. Contractor must verify all of the dimensions prior to construction.
14. It is the contractor's responsibility to provide any and all shop drawings and ask for Owner/Engineer approval prior to construction.
15. Work required by the Contract Documents for which no separate bid item has been provided in the Bid Proposal, shall be provided for as required by the Contractor. Cost for such work shall be considered subsidiary to the total amount bid. No separate payment will be made for subsidiary work.
16. Work provided by the Contractor to facilitate the successful completion of the project for which no bid item has been provided, should also be considered as
17. subsidiary to the total amount bid or the item it pertains to.
18. All work procedures should be supervised by a licensed structural engineer(s) to ensure safety and quality.
19. Contractor to be covered with all required and industry recommended insurance coverages.

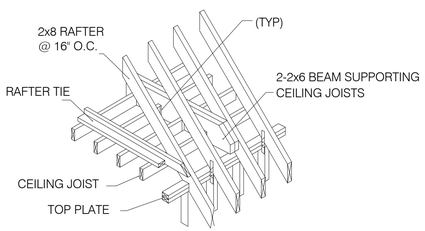
    Contractor to follow all required ACI, ASCI, ASTM, and IBC codes.



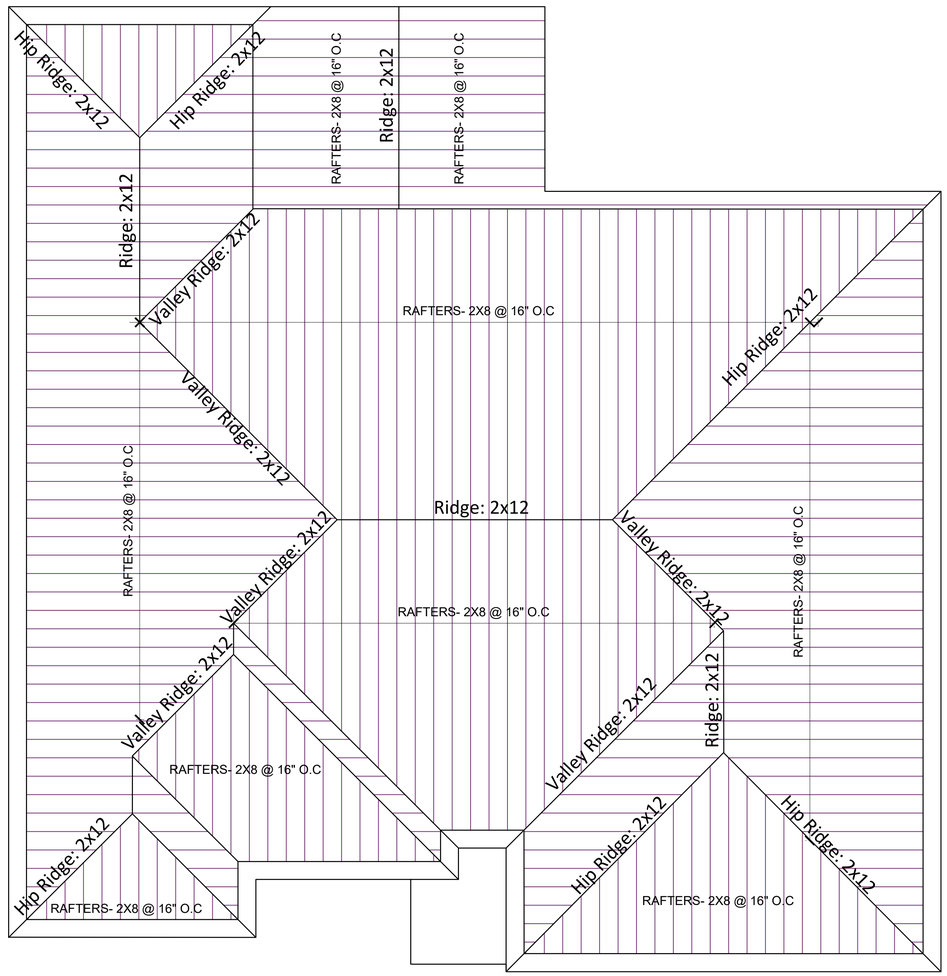
④ DETAIL: Rafter to Wall Connection



③ DETAIL: Typical Ridge



② DETAIL: Beam & Rafter Tie



① FRAMING PLAN: Roof

0 4'-0" 8'-0" 12'
1/4" = 1'

BLU STEP DESIGN, LLC.

Prj. #22155 ISSUE RECORD		
DATE:	ISSUED FOR:	COMMENTS:
Drawing File:		

STAMP: BENEDICT N. ILOANYA, 142717, LICENSED PROFESSIONAL ENGINEER, STATE OF TEXAS
11/14/23

LEGEND:
Ex. = Existing
OTC = Original Town Commercial
T.O.P. = Top of Parapet
BFR = Barrier Free Ramp
FH = Fire Hydrant
R.O.W. = Right of Way
SSMH = Sanitary Sewer Manhole
FDC = Fire Department Connection
Conc. = Concrete
Sq. Ft. = Square Feet

CONTACTS:
OWNER/AGENT:
APPLICANT:
ENGINEER:

Construction Plans for
Single Family Residence located at
805 HILLSIDE BEACH DRIVE,
LITTLE ELM TX.

Framing Plan - Roof

Date: 11/14/23
Scale: 1/4" = 1'-0"
Drawn By: H.S.S
Page: S4
6 of 9

Hardwood vertical siding for reference.

Date:	12/05/2023
Agenda Item #:	4. S.
Department:	Finance
Strategic Goal:	Maintain operational integrity and viability
Staff Contact:	Kelly Wilson, Chief Financial Officer

AGENDA ITEM:

Consider Action to Approve **Ordinance No. 1738 Amending the FY 2023-2024 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.**

DESCRIPTION:

The town charter requires that when the budget is amended that the amendment be by ordinance. This budget amendment addresses several items discussed below.

"The legal level of budgetary control is at the fund level. The Town Manager is authorized to transfer budgeted amounts between departments within any fund. Any revisions that increases the total expenditures of any fund greater than the original budget must be approved by ordinance of Town Council."

BUDGET IMPACT:

General Fund:

The Town has received various grants that were not budgeted in nature for adopted budget due to supplanting and unknowns for grant application approvals. See below the various grants that the budget amendment is increasing revenue and expenditures due to the efforts by staff to approve grants.

- American Library Association $7,500 for digital literacy
- US DOJ CPD Law Enforcement Agency $92,588 for a virtual reality simulator and training of officers
- Dept of Health and Human Services, Admin for Community Living (ACL) $10,000 to provide COVID-19 and flu vaccine outreach and vaccinations to older adults and people with disabilities
- OOG-Police Body Warn Camera Program $117,213.06 allows the Police agency to purchase 92 body cams. The Town will match $39,071.02 for a total purchase of $156.284.08

During the FY2024 budget development, Finance anticipated an increase in property and casualty

insurance premiums. The budget increased 15% but due to the increase in property values and claims, the Town's insurance premium increased 26%. This budget amendment is requesting an increase of $48,511.00 to cover the increase.

During the FY2024 budget development, a supplement for the Assistant Fire Marshall excluded the purchase of a new vehicle. The supplement requested $104,900 and this budget amendment is requesting to establish the full request.

At the end of FY2023, the Town Manager and CFO reviewed the General Fund to compare actuals to estimated actuals when the FY2024 budget was prepared. Due to strong revenues and expense savings, the Fund Balance grew more than expected. This budget amendment requests transfer $3M to CIP reserves for future projects and/or cost overruns.

In an effort to provide safety to all parks, we have purchased AEDs that was not planned in the adopted 2024 budget. We are requesting an increase for this purchase and funding is being allocated from the Town Manager's contingency for $22,120.02.

Facilities experienced an unexpected drain line repair at Fire Station #3 in the amount of $33,539. This budget amendment is requesting an increase in building maintenance to offset this repair. Funding will come from the Town Manager's contingency.

Donation Fund:
The Library received a donation from CoServ Charitable Foundation for assistance with stem materials and light bright wall in the amount of $5,098.93. This budget amendment is reflecting an increase for Library to purchase such items.

Construction In Progress Funds:

There have been several CIP projects where the funding needs to be identified.

- Wood Family Dog Park - $350,000 funding from CDC $50,000 and Escrow (donation) $300,000
- Green Ribbon Phase II – project taken to Council 10/17/2023 to reflect the Town's portion of $700,000
- PW Dewatering/Clarifying Project-reestablish WW Impact Fees transfer of $755,800
- West side water improvements land acquisition-funding from the 2021 CO Bonds $1,000,000
- Mansell 24" Transmission Line-reestablishing the CIP budget for engineering services
- Hill Lane-design change order #2 from South Roadway Impact Fees
- Spiritas Parkway ROW acquisition - funding from Denton County and MM Little Elm 548, LLC

PO Roll Forward:

The Town of Little Elm continues to utilize the purchase order system to encumber funds and at the end of September 30, 2023, the balances of open purchase orders require an amendment to the FY 2023-2024 budget by increasing the relevant line items in the new fiscal year by shifting budget authority from last fiscal year. The PO roll forward is related to capital projects, contract for services, or orders not received that cross multiple years. Per Charter, the unencumbered balance of each appropriation shall revert to the fund from which it was appropriated and shall be subject to future appropriations, but appropriations may be made in furtherance of improvements or other objects of work of the Town, which will not be completed within the current year. Another advantage of PO roll forward allows for efficiency in tracking capital projects on the same purchase

order.

RECOMMENDED ACTION:
Staff recommends approval.

Attachments

Ordinance No. 1738 FY2023-2024 Budget Amendment
Exhibit A FY2023-2024 Budget Amendment
Purchase Order Roll Forward Detailed Listing

ORDINANCE NO. 1738

AN ORDINANCE OF THE TOWN COUNCIL OF LITTLE ELM, TEXAS ("TOWN"), AUTHORIZING CERTAIN BUDGET AMENDMENT PERTAINING TO THE FISCAL YEAR 2023-2024 BUDGET; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town is required by the Town Charter to approve a budget amendment by ordinance and upon approval such amendment shall become an attachment to the original budget; and

WHEREAS, a budget amendment has been prepared for certain appropriations and expenditures in the FY 2023-2024 Budget and submitted to the Town Council for approval and a true and correct copy is attached as Exhibit A.

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

SECTION 1. Pursuant to the Town Charter requirements of the Town of Little Elm, Texas, in the year 2023-2024, a Budget Amendment attached as Exhibit A is hereby authorized and approved.

SECTION 2. This Ordinance shall take effect immediately from and after its passage as the law in such cases provides.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, Texas this the 5th day of December, 2023.

APPROVED:

_____
Curtis J Cornelious
Mayor

ATTEST:

_____
Caitlan Biggs
Town Secretary

Ordinance 1738
EXHIBIT "A"
BUDGET AMENDMENT
FISCAL YEAR 2023-2024
December 5, 2023

GENERAL FUND	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ 51,537,540	$ 51,537,540	$ 51,757,341	$ 219,801
Total Revenue	**$ 51,537,540**	**$ 51,537,540**	**$ 51,757,341**	**$ 219,801**
Expenditures:				
Total Expenditures	$ 51,138,545	$ 51,138,545	$ 55,323,122	$ 4,184,577
Total Transfers Out	3,490,783	3,490,783		
Total Expenditures	**$ 54,629,328**	**$ 54,629,328**	**$ 55,323,122**	**$ 4,184,577**

Utility Fund	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ 23,834,485	$ 23,834,485	$ 23,834,485	$ -
Total Revenue	**$ 23,834,485**	**$ 23,834,485**	**$ 23,834,485**	**$ -**
Expenditures:				
Total Expenditures	$ 16,433,630	$ 16,433,630	$ 17,187,137	$ 753,507
Total Debt Service	$ 1,776,870	$ 1,776,870	$ 1,776,870	-
Total Transfers Out	8,705,134	8,705,134	8,705,134	-
Total Expenditures	**$ 26,915,634**	**$ 26,915,634**	**$ 27,669,141**	**$ 753,507**

Donation Fund	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ 10,500	$ 10,500	$ 10,500	$ -
Total Revenue	**$ 10,500**	**$ 10,500**	**$ 10,500**	**$ -**
Expenditures:				
Total Expenditures	$ 21,500	$ 21,500	$ 26,599	$ 5,099
Total Transfers Out	-	-	-	-
Total Expenditures	**$ 21,500**	**$ 21,500**	**$ 26,599**	**$ 5,099**

Governmental CIP Fund	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ 14,966,024	$ 14,966,024	$ 23,702,254	$ 8,736,230
Total Revenue	**$ 14,966,024**	**$ 14,966,024**	**$ 23,702,254**	**$ 8,736,230**
Expenditures:				
Total Expenditures	$ 24,994,203	$ 24,994,203	$ 34,171,954	$ 9,177,751
Total Transfers Out	-	-		
Total Expenditures	**$ 24,994,203**	**$ 24,994,203**	**$ 34,171,954**	**$ 9,177,751**

Utility CIP Fund	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ 23,414,712	$ 23,414,712	$ 25,170,512	$ 1,755,800
Total Revenue	**$ 23,414,712**	**$ 23,414,712**	**$ 25,170,512**	**$ 1,755,800**
Expenditures:				
Exepnditures	$ 6,665,567	$ 6,665,567	$ 10,582,890	3,917,323
Total Transfers Out	-	-	-	-
Total Expenditures	**$ 6,665,567**	**$ 6,665,567**	**$ 10,582,890**	**$ 3,917,323**

WW Impact Fee Fund	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ 100,000	$ 100,000	$ 100,000	$ -
Total Revenue	**$ 100,000**	**$ 100,000**	**$ 100,000**	**$ -**
Expenditures:				
Total Expenditures	$ -	$ -	$ -	$ -
Total Transfers Out	-	-	755,800	755,800
Total Expenditures	**$ -**	**$ -**	**$ 755,800**	**$ 755,800**

Ordinance 1738
EXHIBIT "A"
BUDGET AMENDMENT
FISCAL YEAR 2023-2024
December 5, 2023

Roadway Impact Fee Fund	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ 175,000	$ 175,000	$ 175,000	$ -
Total Revenue	**$ 175,000**	**$ 175,000**	**$ 175,000**	**$ -**
Expenditures:				
Total Expenditures	$ 700,000	$ 700,000	$ 700,000	$ -
Total Transfers Out	-	-	100,700	100,700
Total Expenditures	**$ 700,000**	**$ 700,000**	**$ 800,700**	**$ 100,700**

Park and Rec Fund	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ 5,296,500	$ 5,296,500	$ 5,296,500	$ -
Total Revenue	**$ 5,296,500**	**$ 5,296,500**	**$ 5,296,500**	**$ -**
Expenditures:				
Total Expenditures	$ 5,645,714	$ 5,645,714	$ 5,651,762	$ 6,048
Total Transfers Out	1,400	1,400	1,400	-
Total Expenditures	**$ 5,647,114**	**$ 5,647,114**	**$ 5,653,162**	**$ 6,048**

Street Maintenance Fund	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ 1,879,465	$ 1,879,465	$ 1,879,465	$ -
Total Revenue	**$ 1,879,465**	**$ 1,879,465**	**$ 1,879,465**	**$ -**
Expenditures:				
Total Expenditures	$ 1,850,000	$ 1,850,000	$ 1,866,725	$ 16,725
Total Transfers Out	-	-	-	-
Total Expenditures	**$ 1,850,000**	**$ 1,850,000**	**$ 1,866,725**	**$ 16,725**

Landscape Fund	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ 504,013	$ 504,013	$ 504,013	$ -
Total Revenue	**$ 504,013**	**$ 504,013**	**$ 504,013**	**$ -**
Expenditures:				
Total Expenditures	$ 818,000	$ 818,000	$ 833,577	$ 15,577
Total Transfers Out	-	-	-	-
Total Expenditures	**$ 818,000**	**$ 818,000**	**$ 833,577**	**$ 15,577**

TIRZ #3	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ 1,097,080	$ 1,097,080	$ 1,097,080	$ -
Total Revenue	**$ 1,097,080**	**$ 1,097,080**	**$ 1,097,080**	**$ -**
Expenditures:				
Total Expenditures	$ 681,200	$ 681,200	$ 724,950	$ 43,750
Total Transfers Out	150,000	150,000	150,000	-
Total Expenditures	**$ 831,200**	**$ 831,200**	**$ 874,950**	**$ 43,750**

Ordinance 1738
EXHIBIT "A"
BUDGET AMENDMENT
FISCAL YEAR 2023-2024
December 5, 2023

VERF	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ 2,655,434	$ 2,655,434	$ 2,655,434	$ -
Total Revenue	**$ 2,655,434**	**$ 2,655,434**	**$ 2,655,434**	**$ -**
Expenditures:				
Total Expenditures	$ 2,683,895	$ 2,683,895	$ 3,457,654	$ 773,759
Total Transfers Out	-	-	-	-
Total Expenditures	**$ 2,683,895**	**$ 2,683,895**	**$ 3,457,654**	**$ 773,759**

CDC	Original Budget	Current Budget	Amended Budget	Increase (Decrease)
Revenue:				
All Revenue Sources	$ 1,809,465	$ 1,809,465	$ 1,809,465	$ -
Total Revenue	**$ 1,809,465**	**$ 1,809,465**	**$ 1,809,465**	**$ -**
Expenditures:				
Total Expenditures	$ 603,700	$ 603,700	$ 663,700	$ 60,000
Total Transfers Out	65,000	65,000	65,000	-
Total Expenditures	**$ 668,700**	**$ 668,700**	**$ 728,700**	**$ 60,000**

Total Revenue	**$ 10,711,831**
Total Expenditures	**$ 19,810,617**
Net Effect All Funds	**$ (9,098,786)**

PO Number	Fiscal Year	Description	PO/Contract Balance	Vendor Name	Department
230761	2023	ERP Consultant Services	$101,488.12	P&M HOLDING GROUP, LLP	FINANCE
230000010	2023	Implementation Consultant fees	$172,757.40	TYLER TECHNOLOGIES, INC.	CIP ENGINEERING
230014	2023	Munis ERP	$325,000.00	TYLER TECHNOLOGIES, INC.	FINANCE
230857	2023	Tyler software conversion SAAS & PM Fees	$10,565.37	TYLER TECHNOLOGIES, INC.	FINANCE
231277	2023	Netsync add Court to Call Center	$6,494.80	NETSYNC NETWORK SOLUTIONS	INFORMATION TECHNOLOGY
230827	2023	Access Control Project	$2,072.00	DAC Inc.	INFORMATION TECHNOLOGY
231102	2023	Door Access Control Additions	$53,339.00	DAC Inc.	INFORMATION TECHNOLOGY
220447	2023	Wayfinding	$2,000.00	FD2S, INC	DEVELOPMENT SERVICES
230635	2023	Facility Study	$17,800.00	HIDELL & ASSOCIATES ARCHITECTS	CIP ENGINEERING
230816	2023	Facility Study Task 1	$11,497.00	HIDELL & ASSOCIATES ARCHITECTS	DEVELOPMENT SERVICES
231370	2023	Witt Road Traffic Analysis	$4,380.00	LEE ENGINEERING, L.L.C.	CIP ENGINEERING
231310	2023	Police Evidence Drying Cabinet	$4,776.55	GRAINGER	POLICE DEPARTMENT
231149	2023	Police Portable Radio Spare Batteries	$3,890.30	MOTOROLA SOLUTIONS	POLICE DEPARTMENT
230955	2023	APX 8000 ALL BAND PORTABLE MODEL 2.5 RADIOS	$94,676.67	MOTOROLA SOLUTIONS	FIRE DEPARTMENT
231199	2023	TRANSMISSION REPAIRS F-9462	$3,127.73	James Wood Autopark	PW - FLEET MAINTENANCE
231186	2023	The Cove - blower shaft bearings	$6,048.00	CEC FACILITIES GROUP, LLC	CS - AQUATICS
220899	2023	ENGINEERING SERVICES: woodrow side street design	$16,725.40	PACHECO KOCH CONSULTING ENG.	CIP ENGINEERING
230000018	2023	Wayfinding Signage Contract	$15,576.90	IMAGE MANUFACTURING GROUP, LLC	CIP ENGINEERING
231231	2023	Holiday tree	$43,750.00	DECOR IQ	CS - SPECIAL EVENTS
230761	2023	ERP Consultant Services	$101,488.13	P&M HOLDING GROUP, LLP	FINANCE
230000010	2023	Implementation Consultant fees	$172,757.40	TYLER TECHNOLOGIES, INC.	CIP ENGINEERING
230857	2023	Tyler software conversion SAAS & PM Fees	$10,565.37	TYLER TECHNOLOGIES, INC.	FINANCE
230014	2023	Munis ERP	$325,000.00	TYLER TECHNOLOGIES, INC.	FINANCE
230895	2023	Little Elm Park Meter and Backflow Design	$17,783.84	FREESE AND NICHOLS	PW - PUBLIC WORKS UTILITY
231165	2023	LINE LOCATOR AND 3M NEAR SURFACE MARKERS	$10,277.50	FERGUSON WATERWORKS	PW - PUBLIC WORKS UTILITY
231242	2023	Replacement pump for Lift Station 5, putting in fo	$31,987.00	PUMP SOLUTIONS, INC.	PW - PUBLIC WORKS UTILITY
231274	2023	Ammonia and DO probe repair, Sole Source	$11,648.00	GK TECHSTAR, LLC	PW - PUBLIC WORKS UTILITY
220737	2023	Phase 2.0 (Development of Data to Generate Geometr	$72,000.00	NEWEDGE SERVICES, LLC	DEVELOPMENT SERVICES
230000014	2023	Little Elm Public Works Expansion project	$1,098,401.88	AUI Partners	PW - PUBLIC WORKS UTILITY
220735	2023	PW Remodel Design	$16,651.13	HIDELL & ASSOCIATES ARCHITECTS	PW - PUBLIC WORKS UTILITY
220848	2023	McCord project - easement	$4,000.00	TRC SOLUTIONS, INC.	CIP ENGINEERING
220691	2023	Grant Mgmt Reuse Water Main Infrastructure Proj	$6,582.60	BLAIS & ASSOCIATES, INC.	CIP ENGINEERING
220255	2023	Witt Road	$13,700.00	TRC SOLUTIONS, INC.	CIP ENGINEERING
220888	2023	Utility and Roadway impact fee study	$34,049.25	FREESE AND NICHOLS	CIP ENGINEERING
220327	2023	King Rd Reconstruction West	$10,037.50	ALLIANCE GEOTECHNICAL GROUP IN	CIP ENGINEERING
2412	2023	King Road Water and Sewer Impr	$325,140.00	Canary	CIP ENGINEERING
210621	2023	The Lawn at The Lakefront Project Design	$7,497.73	DUNAWAY ASSOCIATES, LP	CIP ENGINEERING
230977	2023	King Road Design	$16,298.75	TEAGUE NALL AND PERKINS INC	CIP ENGINEERING
210719	2023	West Side Water System Study	$23,345.11	FREESE AND NICHOLS	PW - PUBLIC WORKS UTILITY
231218	2023	Engineering review and design for new water lines	$90,000.00	FREESE AND NICHOLS	PW - PUBLIC WORKS UTILITY
230000017	2023	Fine Bar Screen Addition Bid 2023-08	$24,947.19	Felix Construction	PW - PUBLIC WORKS UTILITY
220440	2023	design of WWTP UV Disinfection System Upgrade	$30,600.00	TRC SOLUTIONS, INC.	PW - PUBLIC WORKS UTILITY
230673	2023	WWTP Dewatering Improvement Design	$180,272.09	FREESE AND NICHOLS	CIP ENGINEERING

PO Number	Fiscal Year	Description	PO/Contract Balance	Vendor Name	Department
231217	2023	Emergency Warning Sirens	$101,661.85	JOE GODDARD ENTERPRISES LLC	CIP ENGINEERING
210702	2023	Grant Mgmt TP&W Outdoor Rec Program	$19,261.25	BLAIS & ASSOCIATES, INC.	CIP ENGINEERING
230355	2023	Engineering Services for W/WW System SCADA Improve	$38,052.75	SIGNATURE AUTOMATION, LLC	CIP ENGINEERING
230000001	2023	Construction of The Lawn CMAR Project Bid 2022-10	$76,041.27	AUI Partners	CIP ENGINEERING
230000002	2023	CMAR - Lakeside Youth Sports Construction 2022-12	$170,331.38	AUI Partners	CIP ENGINEERING
231072	2023	Water Tower Lighting	$80,369.23	Inception Lighting	CIP ENGINEERING
230000015	2023	FM 423 Green Ribbon Phase 1	$10,400.10	Central North Construction	CIP ENGINEERING
220892	2023	Materials Testing for Lakeside Ballfield Sports Co	$1,693.50	ALLIANCE GEOTECHNICAL GROUP IN	CIP ENGINEERING
231092	2023	Cameras for Lakeside	$8,470.79	NETWORK CABLING SERVICES, INC	CIP ENGINEERING
231213	2023	Lakeside Network Switch	$1,159.40	TECHNOLOGY ASSETS, LLC	CIP ENGINEERING
220690	2023	TOLE Primitive Camping Design	$148,830.40	DUNAWAY ASSOCIATES, LP	CIP ENGINEERING
220888	2023	Utility and Roadway impact fee study	$34,049.26	FREESE AND NICHOLS	CIP ENGINEERING
220327	2023	King Rd Reconstruction West	$10,037.50	ALLIANCE GEOTECHNICAL GROUP IN	CIP ENGINEERING
230977	2023	King Road Design	$169,112.00	TEAGUE NALL AND PERKINS INC	CIP ENGINEERING
210635	2023	Grant Mgmt for Lobo Lane Technology Park	$84,121.05	BLAIS & ASSOCIATES, INC.	CIP ENGINEERING
230000000	2023	Lobo Lane Tech Park Improvements	$308,372.80	Quality Excavation	CIP ENGINEERING
230775	2023	Lobo Lane Materials Testing	$4,624.87	GEOTEX ENGINEERING LLC	CIP ENGINEERING
210636	2023	Design of Lobo Lane	$6,950.00	TRC SOLUTIONS, INC.	CIP ENGINEERING
220421	2023	Hill Lane Paving Design	$175,401.25	PACHECO KOCH CONSULTING ENG.	CIP ENGINEERING
230900	2023	Public Safety Annex Design	$1,183,804.70	BROWN REYNOLDS WATFORD ARCHITE	CIP ENGINEERING
231362	2023	Public Safety Annex Preconstruction	$15,000.00	CROSSLAND CONSTRUCTION	CIP ENGINEERING
220543	2023	Signal Modification Study - Oak Grove @ Eldorado P	$6,025.00	LEE ENGINEERING, L.L.C.	CIP ENGINEERING
231265	2023	Main St Signal Design	$37,751.00	WESTWOOD PROFESSIONAL SERVICES, INC.	CIP ENGINEERING
230760	2023	2023 Enterprise Vehicles	$327,915.60	ENTERPRISE FM TRUST	PW - FLEET MAINTENANCE
230062	2023	2023 Ambulance, CV515 Ambulance Q3264-01	$326,230.00	RUSH ENTERPRISES	FIRE DEPARTMENT
230334	2023	Cottonwood Park Bidding & Construction Phase Svs	$6,300.00	DUNAWAY ASSOCIATES, LP	CIP ENGINEERING
230480	2023	FS #2 80kW Diesel Generator; per quote #112822-003	$113,313.00	WAUKESHA-PEARCE INDUSTRIES LLC	CS - FACILITES MAINTENANCE
231400	2023	Parks Master Plan (2023 portion)	$60,000.00	DUNAWAY ASSOCIATES, LP	CS - PARKS MAINTENANCE

Date:	12/05/2023
Agenda Item #:	4. T.
Department:	Administrative Services
Strategic Goal:	Maintain operational integrity and viability
Staff Contact:	Doug Peach, Deputy Town Manager

AGENDA ITEM:

Consider Action to Approve an **Interlocal Agreement between Denton County and the Town of Little Elm for the Purpose of Providing Engineering, Right-of-Way Acquisition, Utility Relocation, Inspections, and Construction of Hill Lane.**

DESCRIPTION:

Denton County has prepared the proposed ICA between Denton County and the Town for the design, ROW acquisition, utility relocation, inspections, and construction of Hill Lane as a two-lane divided roadway with underground drainage enhanced landscaping, and sidewalks between Oak Grove Parkway and Dickson Lane. The estimated cost of the project is $10,468,000. In this ICA Denton County is agreeing to reimburse the Town 100% of the cost associated with the completion of the project up to $10,468,000. This funding is being provided from the first sale of bonds for the Denton County TRIP 2022 Bond Program. Town Staff is well underway with the design for the project and has begun ROW acquisition.

BUDGET IMPACT:

Project has been identified in the Capital Improvement Program and in the FY2024 Adopted Budget.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

ICA Hill Lane

THE STATE OF TEXAS §
§
COUNTY OF DENTON §

INTERLOCAL COOPERATION AGREEMENT BETWEEN DENTON COUNTY, TEXAS, AND THE TOWN OF LITTLE ELM, TEXAS

THIS AGREEMENT is made, entered into and executed by and between Denton County, Texas, a duly organized political subdivision of the State of Texas, hereinafter "the County"; and the Town of Little Elm, Texas, a duly organized political subdivision of the State of Texas, hereinafter "the Town." The County and the Town are collectively referred to herein as "the Parties."

WHEREAS, the County and the Town mutually desire to enter into this Agreement for the purpose of providing engineering, right-of-way acquisition, utility relocations, inspections, and construction of Hill Lane as a two-lane divided roadway with underground drainage, enhanced landscaping and sidewalks between Oak Grove Parkway and Dickson Lane, located entirely within the municipal limits of the Town and in Denton County Commissioner Precincts #1 and #2, hereinafter "the Project"; and

WHEREAS, the estimated cost of completion for the Project is TEN MILLION FOUR HUNDRED SIXTY-EIGHT THOUSAND AND NO/100 DOLLARS ($10,468,000.00), with the County contribution toward satisfactory completion of the Project in an amount which shall not exceed TEN MILLION FOUR HUNDRED SIXTY-EIGHT THOUSAND AND NO/100 DOLLARS ($10,468,000.00), and

WHEREAS, the Interlocal Cooperation Act, Texas Government Code Chapter 791, hereinafter "the Act," provides authorization for a local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act, and the County and the Town hereby mutually agree to be subject to the provisions of the Act; and

WHEREAS, the County and the Town value the timely completion of the Project which involves roads which are an integral part of the County's road system, and the Parties are undertaking the Project to facilitate safe travel on an improved roadway; and

NOW, THEREFORE, this Agreement is hereby made and entered into by the County and the Town upon and for the mutual consideration stated herein:

WITNESSETH:

I.

Pursuant to Texas Government Code §791.011, the County and the Town hereby enter into this Agreement in order to perform certain governmental functions and services in the area of streets, roads, and drainage. The purpose of this Agreement is to provide a governmental function or service that each party is authorized to perform individually.

II.

The County and the Town hereby agree that the scope of the Project shall consist of engineering, right-of-way acquisition, utility relocations, inspections, and construction of Hill Lane as a two-lane divided roadway with underground drainage, enhanced landscaping and sidewalks between Oak Grove Parkway and Dickson Lane, at an estimated cost of TEN MILLION FOUR HUNDRED SIXTY-EIGHT THOUSAND AND NO/100 DOLLARS ($10,468,000.00), whereby the County agrees to make a contribution toward satisfactory completion of the Project in an amount which shall not exceed TEN MILLION FOUR HUNDRED SIXTY-EIGHT THOUSAND AND NO/100 DOLLARS ($10,468,000.00). The Project is located entirely within the municipal limits of the Town and in Denton County Commissioner Precincts #1 and #2.

III.

The County hereby agrees to make a contribution toward satisfactory completion of the project in an amount which shall not exceed TEN MILLION FOUR HUNDRED SIXTY-EIGHT THOUSAND AND NO/100 DOLLARS ($10,468,000.00), provided that any and all funding is approved by formal action of the Denton County Commissioners Court.

IV.

The Town agrees to manage all engineering, right-of-way acquisition, utility relocations, inspections, and maintenance of the Project. The Town shall timely provide the County with all invoices and requested documentation in an amount which shall not exceed TEN MILLION FOUR HUNDRED SIXTY-EIGHT THOUSAND AND NO/100 DOLLARS ($10,468,000.00).

V.

This exchange of in-kind services between the County and the Town is deemed adequate consideration for the obligations exchanged by the Parties herein.

VI.

As the Town proceeds with the completion of the Project, the Town shall submit all invoices for reimbursement to the Denton County Auditor, Mr. Jeff May, 1 Courthouse Drive, Suite 2000, Denton, Texas 76208, c/o Mr. John Polster, Innovative Transportation Solutions, Inc., 2701 Valley View Lane, Farmers Branch, Texas 75234. The Town shall submit invoices on a monthly basis, and the County shall reimburse the Town on a pro rata basis for all approved expenses related to the Project within thirty calendar days of receipt of an invoice from the Town, provided that all expenditures are made in a manner which is consistent with the terms of this Agreement. Upon satisfactory completion of the Project, the County and the Town shall prepare and complete a full audit of the Project.

VII.

As required by Texas Transportation Code §251.012 and as evidenced by the signature of the Town's representative below, the governing body of the Town by the execution of and approval of this Agreement hereby approves of the expenditure of County money to finance the construction, improvement, maintenance, or repair of a street or alley in the County that is located in the Town.

VIII.

This agreement may be terminated in whole, or in part, by the County or the Town upon thirty days written notice to the other party. In the event of termination by the County, the County shall pay all approved invoices submitted up to and including the date of termination.

IX.

This Agreement represents the entire integrated agreement between the County and the Town and supersedes all prior negotiations, representations, and agreements, either oral or written. This Agreement may be amended only by written instrument signed by both of the Parties. Notices shall be directed as follows:

For Town: Honorable Curtis J. Cornelious, Mayor
Town of Little Elm, Texas
100 W. Eldorado Parkway
Little Elm, Texas 75068

Copy To: Kathy Phillips, Town Secretary
Town of Little Elm, Texas
100 W. Eldorado Parkway
Little Elm, Texas 75068

For County: Honorable Andy Eads, Denton County Judge
1 Courthouse Drive, Suite 3100
Denton, Texas 76208
andy.eads@dentoncounty.com
holly.sadlowski@dentoncounty.com

Copy To: Denton County District Attorney's Office - Civil Division
1450 East McKinney Street, Suite 3100
Denton, Texas 76209
john.feldt@dentoncounty.gov
cio@dentoncounty.gov

X.

The covenants, terms, and conditions herein are to be construed under the laws of the State of Texas and are performable by the Parties in Denton County, Texas. The Parties mutually agree that venue for any obligation arising from this Agreement shall lie in Denton County, Texas.

XI.

The Town agrees and understands that the Town, its employees, servants, agents or representatives shall at no time represent themselves to be employees, servants, agents or representatives of the County.

XII.

The Town agrees to accept full responsibility for the acts, negligence and omissions of all Town employees, agents, subcontractors or contract laborers and for all other persons doing work under a contract or agreement with the Town.

XIII.

This Agreement is not intended to extend the liability of the Parties beyond that provided for by law. Neither the County nor the Town waive, nor shall be deemed to have hereby waived, any immunity or defense that would otherwise be available to it against claims made by third parties.

XIV.

In the event that any portion of this Agreement shall be found to be contrary to law, it is the intent of the Parties hereto that the remaining portions shall remain valid and in full force and effect to the fullest extent possible.

XV.

The undersigned officers and agents of the Parties hereto are the properly authorized officials 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 resolutions extending said authority have been duly passed and are now in full force and effect.

XVI.

This Agreement becomes effective when signed by the last party whose signing makes the respective agreement fully executed, and the term of this Agreement is for the life of the Project beginning on the date of execution of this Agreement and continuing until the Project is completed.

Executed this _____ day of _____, 2023.

DENTON COUNTY, TEXAS
1 Courthouse Drive, Suite 3100
Denton, Texas 76209

By: _____
Honorable Andy Eads
Denton County Judge
Acting by and on behalf of the authority
of the Denton County Commissioners Court

ATTEST:

By: _____
Denton County Clerk

TOWN OF LITTLE ELM, TEXAS
100 W. Eldorado Parkway
Little Elm, Texas 75068

By:_____
Honorable Curtis J. Cornelious
Mayor of the Town of Little Elm, Texas
Acting by and on behalf of the authority
of the Town of Little Elm, Texas

ATTEST:

By: _____
Town Secretary

COUNTY AUDITOR'S CERTIFICATE

I hereby certify funds are available to accomplish and pay the obligation of Denton County, Texas, under this Agreement.

_____
Denton County Auditor

APPROVAL OF INTERLOCAL COOPERATION AGREEMENT

Denton County, Texas, acting by and through the Denton County Commissioners Court, hereby gives its specific written approval to the following Project, prior to beginning of the Project in satisfaction of Texas Government Code §791.014. The scope of the Project shall consist of engineering, right-of-way acquisition, utility relocations, inspections, and construction of Hill Lane as a two-lane divided roadway with underground drainage, enhanced landscaping and sidewalks between Oak Grove Parkway and Dickson Lane, with an estimated cost of completion of TEN MILLION FOUR HUNDRED SIXTY-EIGHT THOUSAND AND NO/100 DOLLARS ($10,468,000.00). The Project shall be located entirely within the municipal limits of the Town of Little Elm and in Denton County Commissioner Precincts #1 and #2.

The County hereby agrees to make a contribution toward satisfactory completion of the project in an amount which shall not exceed TEN MILLION FOUR HUNDRED SIXTY-EIGHT THOUSAND AND NO/100 DOLLARS ($10,468,000.00), provided that any and all funding is approved by formal action of the Denton County Commissioners Court.

The local governments which requested the Project and with whom the Agreement is by and between are Denton County, Texas, and the Town of Little Elm, Texas.

By vote on the date below, the Denton County Commissioners Court has approved the project identified above and authorized execution of this document by the presiding officer of the Denton County Commissioners Court.

Date: _____

By: _____
Presiding Officer of the Denton
County Commissioners Court

Date:	12/05/2023
Agenda Item #:	4. U.
Department:	Administrative Services
Strategic Goal:	Maintain operational integrity and viability
Staff Contact:	Doug Peach, Deputy Town Manager

AGENDA ITEM:

Consider Action to **Ratify the Settlement Agreement for Condemnation Cases between the Town of Little Elm and BKDK, LP, Dogwood Timber, Inc. 401K Plan 251, and David Kirk for the Acquisition of Real Property and Water and Sewer Line Easement Necessary for the Construction of the French Settlement Road Improvement Project in the amount of $60,000.**

DESCRIPTION:

In accordance with direction from Town Council in executive session at the September 19th, 2023 Council meeting Town Staff and the Town Attorney negotiated, prepared and executed a settlement agreement for the condemnation lawsuits with BKDK, LP; Dogwood Timber, Inc. 401K Plan 251 and David Kirk. The three lawsuits were settled for the amount of $60,000. The real property and utility easements were necessary for the construction of a right turn lane and water and sewer improvements for the French Settlement Road Improvement Project. All improvements have been previously constructed with a right of entry extended to the Town by the property owners.

BUDGET IMPACT:

Funding for purchase of property has been identified in the Capital Improvement Program.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Settlement Agreement

Filed: 11/6/2023 4:48 PM
Juli Luke
Denton County Clerk
By: Karen Wright, Deputy

BROWN & HOFMEISTER, L.L.P.

740 East Campbell Road
Suite 800
Richardson, Texas 75081

ROBERT F. BROWN
(214) 747-6130
rbrown@bhlaw.net

Telephone: (214) 747-6100
Telecopier: (214) 747-6111
www.bhlaw.net

November 6, 2023

TEX. R. CIV. P. RULE 11 SETTLEMENT LETTER

Garon R. Horton
Horton & Archibald, PC
965 W. Ralph Hall Parkway
Rockwall, Texas 75032

VIA EMAIL MAIL ONLY

Re: *Town of Little Elm, Texas, v. BKDK, LP, a Texas Limited Partnership*; Cause No. PR-2019-01253; Condemnation of approximately 971 square feet in fee simple for right-of-way use and 700 square feet for a permanent water/sewer line easement out of approximately .646 acre located at 1909 West Eldorado Parkway in the Town of Little Elm, Denton County, Texas.

Town of Little Elm, Texas, v. Dogwood Timber, Inc. 401K Plan 251; Cause No. PR-2019-01253; Condemnation of approximately 815 square feet in fee simple for right-of-way use and 714 square feet for a permanent water/sewer line easement (out of approximately .421 acre located at 1905 West Eldorado Parkway in the Town of Little Elm, Denton County, Texas.

Town of Little Elm, Texas, v. David Kirk; Cause No. PR-2019-01251; Condemnation of approximately 1,325 square feet in fee simple for right-of-way use and 1,347 square feet for a permanent water/sewer line easement out of approximately one acre located at 1901 West Eldorado Parkway in the Town of Little Elm, Denton County, Texas.

Dear Garon:

This Rule 11 Agreement is presented pursuant to Texas Rule of Civil Procedure 11 to memorialize the terms of our settlement of the three above-referenced condemnation cases ("**Condemnation Cases**") which my client, the Town of Little Elm, Texas ("**Town**"), has filed against your clients, BKDK, LP; Dogwood Timber, Inc. 401K Plan 251; and David Kirk (the "**Property Owners**") to acquire the property interests described in the Condemnation Cases (the "**Required Property Interests**").

This Rule 11 Agreement is entered into pursuant to Texas Rule of Civil Procedure 11 and, once executed by both you and me, will be filed with the court as a legally binding agreement between the Town and Property Owners (the "**Parties**"). The Town has agreed to pay to the Property Owners, collectively, the total sum of Sixty-Thousand Dollars ($60,000) ("**Cash Consideration**") to acquire the Required Property Interests more particularly described in the petitions for condemnation filed in the Condemnation Cases. In exchange, the Property Owners will execute right-of-way deeds

and water/sewer line easements in a form acceptable to the Parties, and the Town will promptly, and in any event within seven (7) days thereafter, record the same in the Real Property Records of Denton County and deliver to the Parties recorded copies thereof along with the Cash Consideration.

Upon the successful recordation by the Town of the required right-of-way deeds and water/sewer line easements with the Real Property Records of Denton County, the Town will promptly, and in any event within seven (7) days thereafter, file appropriate pleadings in the Condemnation Cases to dismiss the Condemnation Cases. The Parties agree that they will bear their own respective costs and attorney's fees, and that no additional sums of money are required to be paid by the Town to the Property Owners as a result of the dismissal of the Condemnation Cases. If required by the court, the Parties agree to join in any filings to dismiss and resolve the pending Condemnation Cases.

Upon the dismissal of the Condemnation Cases, the Town will promptly, and in any event within seven (7) days thereafter, file with the Real Property Records of Denton County documentation to release all instruments, other than the right-of-way deeds and water/sewer easements contemplated to be executed and recorded pursuant to this agreement, recorded by or on behalf of the Town relating to the subject matter of the Condemnation Cases, including but not limited to the Lis Pendens, and the Non-Revocable Right of Entry, Use and Possession agreements, recorded against the Properties, and provide to the Parties recorded copies thereof.

Sincerely yours,

Robert F. Brown

RFB: rfb

AGREED:

Garon R. Horton, Attorney for Defendants

Date: 11-6-23

cc: **VIA EMAIL ONLY**

Doug Peach, Deputy Town Manager
Wesley Brandon, P.E., CFM, Town Engineer

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Stacey Shelby on behalf of Robert Brown
Bar No. 03164725
sshelby@bhlaw.net
Envelope ID: 81357444
Filing Code Description: No Fee Documents
Filing Description: Rule 11 Settlement Letter
Status as of 11/7/2023 8:36 AM CST

Associated Case Party: Town Of Little Elm, Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Robert Brown		rbrown@bhlaw.net	11/6/2023 4:48:54 PM	SENT

Associated Case Party: BKDK, LP, A Texas Limited Partnership

Name	BarNumber	Email	TimestampSubmitted	Status
Garon R.Horton		garon@garonhorton.com	11/6/2023 4:48:54 PM	SENT

Date:	12/05/2023
Agenda Item #:	4. V.
Department:	Administrative Services
Strategic Goal:	Maintain operational integrity and viability
Staff Contact:	Doug Peach, Deputy Town Manager

AGENDA ITEM:

Consider Action to Approve a **Property Purchase Contract for Lot 5 Block A, Southside Acres, Little Elm, Texas, in the amount of $207,000.**

DESCRIPTION:

The Town Staff with the assistance of Specialty Land Services, LLC have entered into a real estate contract for the purchase of Lot 5 Block A, Southside Acres, Little Elm, Texas. The agreed upon sales price is $207,000.00 not including settlement cost. This was done in accordance with the direction provided by Town Council in executive session at the regular Town Council Meeting on September 19 th, 2023. Town Staff has completed all due diligence for the property purchase. The purpose for this land is to construct a new water pump station on the west side of the Little Elm Bridge to provide increased water pressure and volume for current and future development.

BUDGET IMPACT:

Funding for this purchase is from the Utility CIP Fund.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Contract
Assignment of Property Contract
Commitment for Title
Land Title Survey

DocuSign Envelope ID: 4E384802-4FD0-4341-8267-494CF1B35BF5

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 11-07-2022

UNIMPROVED PROPERTY CONTRACT

NOTICE: Not For Use For Condominium Transactions

1. **PARTIES:** The parties to this contract are **Warren Dean Stringer** & Larry Contreras (Seller) and **Specialty Land Services LLC** (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. **PROPERTY:** Lot **5**, Block **A**, **Southside Acres** Addition, City of **Little Elm**, County of **Denton**, Texas, known as _____ (address/zip code), or as described on attached exhibit together with all rights, privileges and appurtenances pertaining thereto (Property).
RESERVATIONS: Any reservation for oil, gas, or other minerals, water, timber, or other interests is made in accordance with an attached addendum.

3. **SALES PRICE:**
   A. Cash portion of Sales Price payable by Buyer at closing . . . . . $ ~~475,000.00~~ 207500
   The term "Cash portion of the Sales Price" does not include proceeds from borrowing of any kind or selling other real property except as disclosed in this contract.
   B. Sum of all financing described in the attached: ☐ Third Party Financing Addendum, ☐ Loan Assumption Addendum, ☐ Seller Financing Addendum . . . . . $
   C. Sales Price (Sum of A and B) . . . . . $ 207500 ~~475,000.00~~

4. **LEASES:**
   A. Except as disclosed in this contract, Seller is not aware of any leases affecting the Property. After the Effective Date, Seller may not, without Buyer's written consent, create a new lease, amend any existing lease, or convey any interest in the Property.
   B. NATURAL RESOURCE LEASES: "Natural Resource Lease" means an existing oil and gas, mineral, water, wind, or other natural resource lease affecting the Property to which Seller is a party. Seller ☐ is ☐ is not a party to a Natural Resource Lease. If Seller is a party to a Natural Resource Lease, check one of the following:
   ☐ (1) Seller has delivered to Buyer a copy of all the Natural Resource Leases.
   ☒ (2) Seller has not delivered to Buyer a copy of all the Natural Resource Leases. Seller shall provide to Buyer a copy of all the Natural Resource Leases within 3 days after the Effective Date. Buyer may terminate the contract within _____ days after the date the Buyer receives all the Natural Resource Leases and the earnest money shall be refunded to Buyer.

5. **EARNEST MONEY AND TERMINATION OPTION:**
   A. DELIVERY OF EARNEST MONEY AND OPTION FEE: Within 3 days after the Effective Date, Buyer must deliver to ~~Kathy Haynes - Chicago Title~~ Rep. Title - Plano (Escrow Agent) at ~~100 E Prosper Tr, Prosper, TX~~ 8920 Coit rd #200, Plano (address): $ **2,000.00** as earnest money and $ **100.00** as the Option Fee. The earnest money and Option Fee shall be made payable to Escrow Agent and may be paid separately or combined in a single payment.
      (1) Buyer shall deliver additional earnest money of $_____ to Escrow Agent within _____ days after the Effective Date of this contract.
      (2) If the last day to deliver the earnest money, Option Fee, or the additional earnest money falls on a Saturday, Sunday, or legal holiday, the time to deliver the earnest money, Option Fee, or the additional earnest money, as applicable, is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday.
      (3) The amount(s) Escrow Agent receives under this paragraph shall be applied first to the Option Fee, then to the earnest money, and then to the additional earnest money.
      (4) Buyer authorizes Escrow Agent to release and deliver the Option Fee to Seller at any time without further notice to or consent from Buyer, and releases Escrow Agent from liability for delivery of the Option Fee to Seller. The Option Fee will be credited to the Sales Price at closing.
   B. TERMINATION OPTION: For nominal consideration, the receipt of which Seller acknowledges, and Buyer's agreement to pay the Option Fee within the time required, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within **30** days after the Effective Date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If Buyer gives notice of termination within the time prescribed: (i) the Option Fee will not be refunded and Escrow Agent shall release any Option Fee remaining with Escrow Agent to Seller; and (ii) any earnest money will be refunded to Buyer.

C. FAILURE TO TIMELY DELIVER EARNEST MONEY: If Buyer fails to deliver the earnest money within the time required, Seller may terminate this contract or exercise Seller's remedies under Paragraph 15, or both, by providing notice to Buyer before Buyer delivers the earnest money.

D. FAILURE TO TIMELY DELIVER OPTION FEE: If no dollar amount is stated as the Option Fee or if Buyer fails to deliver the Option Fee within the time required, Buyer shall not have the unrestricted right to terminate this contract under this Paragraph 5.

E. TIME: **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

6. TITLE POLICY AND SURVEY:

A. TITLE POLICY: Seller shall furnish to Buyer at [X] Seller's [ ] Buyer's expense an owner's policy of title insurance (Title Policy) issued by ~~Chicago Title - Prosper~~ Repbulic Title - Plano (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:

(1) Restrictive covenants common to the platted subdivision in which the Property is located.
(2) The standard printed exception for standby fees, taxes and assessments.
(3) Liens created as part of the financing described in Paragraph 3.
(4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
(5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
(6) The standard printed exception as to marital rights.
(7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
(8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements:
[X] (i) will not be amended or deleted from the title policy; or
[ ] (ii) will be amended to read, "shortages in area" at the expense of [ ] Buyer [ ] Seller.
(9) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.

B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or 3 days before the Closing Date, whichever is earlier. If the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)

[ ] (1) Within **21** days after the Effective Date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at [X] Seller's [ ] Buyer's expense no later than 3 days prior to Closing Date.

[ ] (2) Within _____ days after the Effective Date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.

[ ] (3) Within _____ days after the Effective Date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to (i) defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; or disclosed in the Commitment other than items 6A(1) through (9) above; (ii) any portion of the Property lying in a special flood hazard area (Zone V or A) as shown on the current Federal Emergency Management Agency map; or (iii) any exceptions which prohibit the following use or activity: _____

Buyer must object the earlier of (i) the Closing Date or (ii) **5** days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure any timely objections of Buyer or any third party lender within 15 days after Seller receives the objections (Cure Period) and the Closing Date will be extended as necessary. If objections are not cured within the Cure Period, Buyer may, by delivering notice to Seller within 5 days after the end of the Cure Period: (i) terminate this contract and the earnest money will be refunded to Buyer; or (ii) waive the objections. If Buyer does not terminate

within the time required, Buyer shall be deemed to have waived the objections. If the Commitment or survey is revised or any new Exception Document(s) is delivered, Buyer may object to any new matter revealed in the revised Commitment or survey or new Exception Document(s) within the same time stated in this paragraph to make objections beginning when the revised Commitment, survey, or Exception Document(s) is delivered to Buyer.

E. TITLE NOTICES:

(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): The Property ☐ is ☒ is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2 in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and all dedicatory instruments governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk. **You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of the Property.**

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used.

(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

(4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.

(5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

(6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

(7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, Seller must give Buyer written notice as required by §5.014, Property Code. An addendum containing the required notice shall be attached to this contract.

(8) TEXAS AGRICULTURAL DEVELOPMENT DISTRICT: The Property ☐ is ☒ is not located in a Texas Agricultural Development District. For additional information, contact the Texas Department of Agriculture.

(9) TRANSFER FEES: If the Property is subject to a private transfer fee obligation, §5.205, Property Code requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.

(10) PROPANE GAS SYSTEM SERVICE AREA: If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.

(11) NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

(12) REQUIRED NOTICES: The following notices have been given or are attached to this contract (for example, MUD, WCID, PID notices): _____

_____.

7. PROPERTY CONDITION:

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect.
NOTICE: Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.

B. ACCEPTANCE OF PROPERTY CONDITION: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is under Paragraph 7B (1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.
(Check one box only)

☒ (1) Buyer accepts the Property As Is.

☐ (2) Buyer accepts the Property As Is provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____

_____.

(Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs and treatments.)

C. COMPLETION OF REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs and treatments prior to the Closing Date and obtain any required permits. The repairs and treatments must be performed by persons who are licensed to provide such repairs or treatments or, if no license is required by law, are commercially engaged in the trade of providing such repairs or treatments. Seller shall: (i) provide Buyer with copies of documentation from the repair person(s) showing the scope of work and payment for the work completed; and (ii) at Seller's expense, arrange for the transfer of any transferable warranties with respect to the repairs and treatments to Buyer at closing. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Buyer may exercise remedies under Paragraph 15 or extend the Closing Date up to 5 days, if necessary, for Seller to complete repairs and treatments.

D. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

E. SELLER'S DISCLOSURE:

(1) Seller ☐ is ☒ is not aware of any flooding of the Property which has had a material adverse effect on the use of the Property.

(2) Seller ☐ is ☒ is not aware of any pending or threatened litigation, condemnation, or special assessment affecting the Property.

(3) Seller ☐ is ☒ is not aware of any environmental hazards that materially and adversely affect the Property.

(4) Seller ☐ is ☒ is not aware of any dumpsite, landfill, or underground tanks or containers now or previously located on the Property.

(5) Seller ☐ is ☒ is not aware of any wetlands, as defined by federal or state law or regulation, affecting the Property.

(6) Seller ☐ is ☒ is not aware of any threatened or endangered species or their habitat affecting the Property.

(7) Seller ☐ is ☒ is not aware that the Property is located ☐ wholly ☐ partly in a floodplain.

(8) Seller ☐ is ☒ is not aware that a tree or trees located on the Property has oak wilt.

If Seller is aware of any of the items above, explain (attach additional sheets if necessary): _____

_____.

8. BROKERS AND SALES AGENTS:

A. BROKER OR SALES AGENT DISCLOSURE: Texas law requires a real estate broker or sales agent who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the broker or sales agent owns more than 10%, or a trust for which the broker or sales agent acts as a trustee or of which the broker or sales agent or the broker or sales agent's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: **Buyer is a licensed Texas Real Estate Broker**.

B. BROKERS' FEES: All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

9. CLOSING: 15 AC WS BM

A. The closing of the sale will be on or before **~~30~~ Days after Option period**, _____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

(1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.

(2) Buyer shall pay the Sales Price in good funds acceptable to the Escrow Agent.

(3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents, transfer of any warranties, and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.

(4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.

(5) Private transfer fees (as defined by Chapter 5, Subchapter G of the Texas Property Code) will be the obligation of Seller unless provided otherwise in this contract. Transfer fees assessed by a property owners' association are governed by the Addendum for Property Subject to Mandatory Membership in a Property Owners Association.

10. POSSESSION: Seller shall deliver to Buyer possession of the Property in its present or required condition upon closing and funding.

11. SPECIAL PROVISIONS: (This paragraph is intended to be used only for additional informational items. An informational item is a statement that completes a blank in a contract form, discloses factual information, or provides instructions. Real estate brokers and sales agents are prohibited from practicing law and shall not add to, delete, or modify any provision of this contract unless drafted by a party to this contract or a party's attorney. **Buyer may assign this contract without notice to seller**.

12. SETTLEMENT AND OTHER EXPENSES:

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed $ **N/A** to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS AND ROLLBACK TAXES:

A. PRORATIONS: Taxes for the current year, interest, rents, and regular periodic maintenance fees, assessments, and dues (including prepaid items) will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.

B. ROLLBACK TAXES: If this sale or Buyer's use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Assessments are imposed because of Seller's use or change in use of the Property prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

14. CASUALTY LOSS: If any part of the Property is damaged or destroyed by fire or other casualty after the Effective Date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds, if permitted by Seller's insurance carrier, and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

15. DEFAULT: If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller fails to comply with this contract, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

16. MEDIATION: It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

17. ATTORNEY'S FEES: A Buyer, Seller, Listing Broker, Other Broker, or Escrow Agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

18. ESCROW:

A. ESCROW: The Escrow Agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as Escrow Agent. Escrow Agent may require any disbursement made in connection with this contract to be conditioned on Escrow Agent's collection of good funds acceptable to Escrow Agent.

B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, Escrow Agent may: (i) require a written release of liability of the Escrow Agent from all parties before releasing any earnest money; and (ii) require payment of unpaid expenses incurred on behalf of a party. Escrow Agent may deduct authorized expenses from the earnest money payable to a party. "Authorized expenses" means expenses incurred by Escrow Agent on behalf of the party entitled to the earnest money that were authorized by this contract or that party.

C. DEMAND: Upon termination of this contract, either party or the Escrow Agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the Escrow Agent. If either party fails to execute the release, either party may make a written demand to the Escrow Agent for the earnest money. If only one party makes written demand for the earnest money, Escrow Agent shall promptly provide a copy of the demand to the other party. If Escrow Agent does not receive written objection to the demand from the other party within 15 days, Escrow Agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and Escrow Agent may pay the same to the creditors. If Escrow Agent complies with the provisions of this paragraph, each party hereby releases Escrow Agent from all adverse claims related to the disbursal of the earnest money.

D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the Escrow Agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

E. NOTICES: Escrow Agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by Escrow Agent.

19. REPRESENTATIONS: All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

20. FEDERAL TAX REQUIREMENTS: If Seller is a "foreign person," as defined by Internal Revenue Code and its regulations, or if Seller fails to deliver an affidavit or a certificate of non-foreign status to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by fax or electronic transmission as follows:

To Buyer at: **1341 S PrestonRd**	**To Seller at:** Larry Contreras Warren Stringer
Celina, TX 75009	
Phone: **(972)679-9488**	Phone: 45692232727
E-mail/Fax: **buddy@specialtyland.com**	E-mail/Fax: approvedme@gmail.com
E-mail/Fax:	E-mail/Fax:
With a copy to Buyer's agent at:	With a copy to Seller's agent at: The Perez Team jtp@jntperezteam.com

22. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- ☐ Third Party Financing Addendum
- ☐ Seller Financing Addendum
- ☐ Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- ☐ Buyer's Temporary Residential Lease
- ☐ Seller's Temporary Residential Lease
- ☐ Addendum for Reservation of Oil, Gas and Other Minerals
- ☐ Addendum for "Back-Up" Contract
- ☐ Addendum Concerning Right to Terminate Due to Lender's Appraisal
- ☐ Addendum containing Notice of Obligation to Pay Improvement District Assessment
- ☐ Addendum for Coastal Area Property
- ☐ Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- ☐ Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- ☐ Addendum for Sale of Other Property by Buyer
- ☐ Addendum for Property in a Propane Gas System Service Area
- ☒ Other (list): Disclosure of relationship

23. CONSULT AN ATTORNEY BEFORE SIGNING: TREC rules prohibit real estate brokers and sales agents from giving legal advice. READ THIS CONTRACT CAREFULLY.

Buyer's Attorney is:	Seller's Attorney is:
Phone:	Phone:
Fax:	Fax:
E-mail:	E-mail:

DocuSign Envelope ID: 4E384802-4FD0-4341-8267-494CF1B35BF5

EXECUTED the 16th **day of** November, **2023** **(Effective Date).**
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

Authentisign
Buddy Minett
Buyer
Specialty Land Services LLC

DocuSigned by:
Warren Stringer
Seller
Warren Dean Stringer

DocuSigned by:
Larry Contreras
Buyer
Seller Larry Contreras

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (http://www.trec.texas.gov) TREC NO. 9-16. This form replaces TREC NO. 9-15.

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201 www.lwolf.com Southside Acres

DocuSign Envelope ID: 4E384802-4FD0-4341-8267-494CF1B35BF5

BROKER INFORMATION
(Print name(s) only. Do not sign)

Specialty Land Services LLC 900809	**Coldwell Banker Apex Realtors**
Other Broker Firm License No.	Listing Broker Firm License No.
represents [X] Buyer only as Buyer's agent	represents [ ] Seller and Buyer as an intermediary
[ ] Seller as Listing Broker's subagent	[X] Seller only as Seller's agent
Buddy Minett **0522235**	**Jose Perez** **640861**
Associate's Name License No.	Listing Associate's Name License No.
Team Name	**The Perez Team** Team Name
buddy@specialtyland.com **(972)679-9488**	**jtp@jntperezteam.com** **(469)441-0192**
Associate's Email Address Phone	Listing Associate's Email Address Phone
Licensed Supervisor of Associate License No.	Licensed Supervisor of Listing Associate License No.
1341 S Preston Rd	**7705 San Jacinto Place #200** **(972)208-8797**
Other Broker's Address Phone	Listing Broker's Office Address Phone
Celina **TX** **75009**	**Plano** **TX** **75024**
City State Zip	City State Zip
	Selling Associate's Name License No.
	Team Name
	Selling Associate's Email Address Phone
	Licensed Supervisor of Selling Associate License No.
	Selling Associate's Office Address
	City State Zip

Disclosure: Pursuant to a previous, separate agreement (such as a MLS offer of compensation or other agreement between brokers), Listing Broker has agreed to pay Other Broker a fee (**3% of Contract Price**). This disclosure is for informational purposes and does not change the previous agreement between brokers to pay or share a commission.

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DocuSign Envelope ID: 4E384802-4FD0-4341-8267-494CF1B35BF5

OPTION FEE RECEIPT

Receipt of $ 100.00 (Option Fee) in the form of DD CK# 1269 is acknowledged.

_____ 11/16/23
Escrow Agent **Kathy Haynes - Chicago Title** Date

EARNEST MONEY RECEIPT

Receipt of $ 2000.00 Earnest Money in the form of DD CK# 1269 is acknowledged.

_____ 11/16/23 10:31 AM.
Escrow Agent Date/Time

_____ **RYAN JEFFREY** _____
Address Asst. Vice President/Escrow Officer Phone
8920 Coit Road #200
_____ Plano, TX 75025 • 972-618-4711 _____
City REPUBLIC TITLE® rjeffrey@republictitle.com Fax

CONTRACT RECEIPT

Receipt of the Contract is acknowledged.

_____ 11/16/23 _____
Escrow Ar Date

_____ **RYAN JEFFREY** _____
Address Asst. Vice President/Escrow Officer Phone
8920 Coit Road #200
_____ Plano, TX 75025 • 972-618-4711 _____
City REPUBLIC TITLE® rjeffrey@republictitle.com Fax

ADDITIONAL EARNEST MONEY RECEIPT

Receipt of $_____ additional Earnest Money in the form of _____ is acknowledged.

_____ _____ _____
Escrow Agent Received by Email Address Date/Time

_____ _____
Address Phone

_____ _____ _____ _____
City State Zip Fax

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ASSIGNMENT OF PROPERTY CONTRACT

THIS ASSIGNMENT OF PURCHASE AND SALE CONTRACT (this "Assignment") is executed by and between **Specialty Land Services LLC** ("Assignor"), **and Town of Little Elm, TX** ("Assignee(s)").

RECITALS:

A. **Marcus Farahani and Sandra Farahani,** as seller, and Assignor, as buyer, entered into that certain Contract dated August 30th, 2023, (hereinafter referred to as the "Contract"), for the sale and purchase of **Lot 3 & 4 Block A Southside Acres Addition of Little Elm TX** (as more particularly described in the Contract, the "Property"). The sale and purchase of the Property shall hereinafter be referred to as the "Transaction."

B. Assignor desires to assign its interest under the Contract to Assignee, and Assignee desires to accept such assignment and assume Assignor's interest in the Contract as hereinafter provided.

C. Assignor and/or its agents and affiliates have acted for the benefit of Assignee and have incurred certain expenses under the Contract.

D. There exists no impediment to the assignment of Assignor's interest in the Contract under the terms of the Contract.

NOW, THEREFORE, in consideration of the Recitals, the promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

This Assignment is made pursuant to the following terms and conditions:

1. Independent Examination of Contract. Assignee hereby acknowledges that it is thoroughly familiar with all terms and provisions of the Contract and accepts the same.

2. Reimbursement of Assignor for Certain Costs. Assignment costs are covered under a separate agreement.

3. Performance by Assignee. Assignor hereby sells, assigns, transfers and conveys all of its right, title, and interest in and to the Contract to Assignee, its successors and assigns, and authorizes and empowers Assignee to enforce performance of all covenants and conditions contained in the Contract and to demand and receive the Special Warranty Deed covenanted to be given in the Contract in the same manner and with the same effect as Assignor could have done had this Assignment not been made. Assignee hereby assumes all of Assignor's obligations, duties and liabilities under the Contract.

4. Counterparts. This Assignment may be executed in more than one counterpart with the same effect as if all parties had executed the same document. Each counterpart will be deemed an original and the counterparts, taken together, will constitute one and the same document. This Assignment may be executed, and will be effective, with signatures transmitted by facsimile.

5. Indemnity of Assignor. Assignee hereby accepts the assignment of rights provided for herein without recourse on Assignor, and Assignee hereby agrees to indemnify, defend and hold Assignor harmless from and against any and all claims, causes of action, and expense (including, but not limited to, attorneys' fees, litigation expenses and court costs) in connection with or pursuant to the Contract or this Assignment.

EXECUTED effective as of the 19th day of October, 2023.

ASSIGNOR:

Buddy Minett

Buddy Minett – President Specialty Land Services

ASSIGNEE(s):

Matt Mueller – Town Manager

WARNING! WIRE FRAUD ADVISORY

DON'T FALL VICTIM TO CYBER CRIMINALS! Wire fraud and email/phishing attacks are on the rise! Cyber criminals are hacking email accounts and sending emails with fraudulent wiring instructions to parties in real estate transactions. These emails are often sophisticated and convincing, resulting in the diversion of wired funds to the fraudster's account. Losses due to this type of fraud are staggering – don't fall victim!

BUYERS:

- Once requested by you, we will send our wiring instructions directly to you in a secure email with **[rtt-secure]** in the subject line. **THESE INSTRUCTIONS WILL NEVER CHANGE!!!**
- If you receive an email containing NEW or REVISED wiring instructions, DO NOT RESPOND to the email. Instead, **call** your Republic Title closing team member immediately, using a previously known and trusted phone number. DO NOT use any contact information provided in the suspected phishing email!
- Before you initiate your purchase money wire, please call your closing team using a number you have called before or can otherwise verify to confirm the wiring instructions. Alternatively, a cashier's check may be the safer option.

If you are ever in doubt about an email or wiring instructions, please call your closing team at Republic Title using a previously verified number. For contact information, please go to www.republictitle.com.

SELLERS:

- Bring your banking information to the closing table. We will give you a wiring instructions form for your completion and for your signature. We will only wire your sales proceeds based on those written instructions.
- If you do not attend closing in person, please include your original signed wiring instructions form along with the fully executed closing documents when you return your closing package to us.

The following resources can provide additional tips or assist you in reporting an incident of wire fraud:

FEDERAL BUREAU OF INVESTIGATION:
http://www.fbi.gov

INTERNET CRIME COMPLAINT CENTER
http://www.ic3.gov

REPUBLIC TITLE®

First American Title Guaranty Company Commitment	Commitment For Title Insurance T-7 ISSUED BY **First American Title Guaranty Company**

THE FOLLOWING COMMITMENT FOR TITLE INSURANCE IS NOT VALID UNLESS YOUR NAME AND THE POLICY AMOUNT ARE SHOWN IN SCHEDULE A, AND OUR AUTHORIZED REPRESENTATIVE HAS COUNTERSIGNED BELOW.

We FIRST AMERICAN TITLE GUARANTY COMPANY will issue our title insurance policy or policies (the Policy) to You (the proposed insured) upon payment of the premium and other charges due, and compliance with the requirements in Schedule C. Our Policy will be in the form approved by the Texas Department of Insurance at the date of issuance, and will insure your interest in the land described in Schedule A. The estimated premium for our Policy and applicable endorsements is shown on Schedule D. There may be additional charges such as recording fees, and expedited delivery expenses.

This Commitment ends ninety (90) days from the effective date, unless the Policy is issued sooner, or failure to issue the Policy is our fault. Our liability and obligations to you are under the express terms of this Commitment and end when this Commitment expires.

First American Title Guaranty Company

Sally French Tyler, President

Lisa W. Cornehl, Secretary

By its issuing agent, Republic Title of Texas, Inc.

Authorized Signatory
Ryan Jeffrey, Asst. Vice President/Escrow Officer

REPUBLIC TITLE®
8920 Coit Road, Suite 200
Plano, TX 75025
(972)618-4711
(972)618-3809

TEXAS TITLE INSURANCE INFORMATION

Title insurance insures you against loss resulting from certain risks to your title. The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.	El seguro de título le asegura en relaciõn a pérdidas resultantes de ciertos riesgos que pueden afectar el título de su propiedad. El Compromiso para Seguro de Título es la promesa de la compañía aseguradora de titulos de emitir la póliza de seguro de título. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y enterderlo completamente antes de la fecha para finalizar su transacciõn.

Your Commitment for Title Insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.
Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the Title Insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

- **MINERALS AND MINERAL RIGHTS** may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.
When your Policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below.

- **EXCEPTIONS** are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.
- **EXCLUSIONS** are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.
- **CONDITIONS** are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at 1-888-632-1642 or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.
You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.
Before the Policy is issued, you may request changes in the policy. Some of the changes to consider are:

- Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.
- Allow the Company to add an exception to "rights of parties in possession." If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection. If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

CONDITIONS AND STIPULATIONS

1. If you have actual knowledge of any matter which may affect the title or mortgage covered by this Commitment, that is not shown in Schedule B, you must notify us in writing. If you do not notify us in writing, our liability to you is ended or reduced to the extent that your failure to notify us affects our liability. If you do notify us, or we learn of such matter, we may amend Schedule B, but we will not be relieved of liability already incurred.

2. Our liability is only to you, and others who are included in the definition of Insured in the Policy to be issued. Our liability is only for actual loss incurred in your reliance on this Commitment to comply with its requirements or to acquire the interest in the land. Our liability is limited to the amount shown in Schedule A of this Commitment and will be subject to the following terms of the Policy: Insuring Provisions, Conditions and Stipulations, and Exclusions.

First American Title Guaranty Company	Commitment For Title Insurance (T-7) ISSUED BY **First American Title Guaranty Company**
Schedule A	

Effective Date: **November 06, 2023** at 8:00 a.m. GF No. **1010-391012-RTT**

Commitment No. **1010-391012-RTT**, issued **November 16, 2023**, at 8:00 a.m.

1. The policy or policies to be issued are:

   (a) OWNER'S POLICY OF TITLE INSURANCE (Form T-1)
   (Not applicable for improved one-to-four family residential real estate)
   Policy Amount: $207,500.00
   PROPOSED INSURED: Specialty Land Services LLC

   (b) TEXAS RESIDENTIAL OWNER'S POLICY OF TITLE INSURANCE
   ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)
   Policy Amount: $
   PROPOSED INSURED:

   (c) LOAN POLICY OF TITLE INSURANCE (Form T-2)
   Policy Amount: $
   PROPOSED INSURED:
   Proposed Borrower:

   (d) TEXAS SHORT FORM RESIDENTIAL LOAN POLICY OF TITLE INSURANCE (Form T-2R)
   Policy Amount $
   PROPOSED INSURED:
   Proposed Borrower:

   (e) LOAN TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)
   Binder Amount: $
   PROPOSED INSURED:
   Proposed Borrower:

   (f) OTHER
   Policy Amount: $
   PROPOSED INSURED:

2. The interest in the land covered by this Commitment is:

   Fee Simple

3. Record title to the land on the Effective Date appears to be vested in:

   LARRY CONTRERAS and SANDRA SUSTAITA n/k/a SANDRA CONTRERAS, husband and wife

   By virtue of General Warranty Deed filed 11/13/2023, recorded in cc# 2023-120852, Real Property Records, Denton County, Texas.

4. Legal description of land: Being Lot 5, in Block A, of SOUTHSIDE ACRES SUBDIVISION, an Addition to the City of Little Elm, Denton County, Texas, according to the Plat thereof recorded in Volume 2, Page 103, of the Plat Records of Denton County, Texas; SAVE AND EXCEPT that portion as set out in Agreed Judgment under Cause No. PR2008-00593, Certified Copy being recorded in cc# 2010-55403, Real Property Records, Denton County, Texas.

G.F. No. or File No. **1010-391012-RTT**

EXCEPTIONS FROM COVERAGE

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):

   Restrictive covenants described in instrument recorded in Volume 440, Page 647 and Volume 557, Page 640, Real Property Records, Denton County, Texas. Any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), is deleted.

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.

3. Homestead or community property or survivorship rights, if any, of any spouse of any insured. (Applies to the Owner's Policy only.)

4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,

   a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or

   b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or

   c. to filled-in lands, or artificial islands, or

   d. to statutory water rights, including riparian rights, or

   e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.

   (Applies to the Owner's Policy only.)

5. Standby fees, taxes and assessments by any taxing authority for the year 2024, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Loan Policy of Title Insurance (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year 2024 and subsequent years.")

6. The terms and conditions of the documents creating your interest in the land.

7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Loan Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before a binder is issued.)

8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Loan Policy (T-2) only.)

9. The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Loan Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Loan Policy of Title Insurance (T-2R) only). Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Loan Policy of Title Insurance (T-2R).

10. The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception):

    a. The following easements and/or building lines, as shown on plat recorded in Volume 2, Page 103, Map Records, Denton County, Texas:

        Variable width U.S.A. Flowage easement over and across subject property.

    b. Easement granted by J.C. Olsen and Roxie Olsen, his wife to Denton County Electric Cooperative, Inc., filed 02/19/1954, recorded in Volume 403, Page 455, Real Property Records, Denton County, Texas.

    c. Mineral estate and interest in coal, lignite oil, gas and other minerals together with all rights, privileges and immunities thereto described in instrument filed 05/11/1949, recorded in Volume 353, Page 264, Real Property Records, Denton County, Texas. Company makes no representation as to the present ownership of any such interests.

    d. Terms, provisions, and conditions of Final Judgment (Garza-Little Elm Dam & Reservoir) filed 01/25/1957, recorded in Volume 414, Page 422, Real Property Records, Denton County, Texas.

    e. Rights of parties in possession (Owner's Title Policy only).

    f. Rights, if any, of third parties with respect to any portion of the subject property lying within the boundaries of a public or private road. (May be amended or deleted upon approval of survey.)

    g. All visible and apparent easements or uses and all underground easements or uses, the existence of which may arise by unrecorded grant or by use. (May be amended or deleted upon approval of survey.)

    h. All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interest that are not listed.

G.F. No. or File No. **1010-391012-RTT**

Your Policy will not cover loss, costs, attorney's fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.

2. Satisfactory evidence must be provided that:

   - no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,

   - all standby fees, taxes, assessments and charges against the property have been paid,

   - all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers, and suppliers have been fully paid, and that no mechanic's, laborer's or materialmen's liens have attached to the property,

   - there is legal right of access to and from the land,

   - (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.

3. You must pay the seller or borrower the agreed amount for your property or interest.

4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.

5. Deed of Trust from Larry Contreras and Sandra Sustaita n/k/a Sandra Contreras, husband and wife to Karl W. Hunter or Charles E. Kramer, Trustee(s), dated 11/08/2023, filed 11/08/2023, recorded in cc# 2023-120308, Real Property Records, Denton County, Texas, securing a promissory note in the principal sum of $40,000.00, payable to Warren Dean Stringer, and securing other indebtedness as described therein, if any.

   Additionally secured by a Vendor's Lien retained in Deed filed 11/13/2023, recorded in cc# 2023-120852, Real Property Records, Denton County, Texas.

6. Company requires that a search of the title, including appropriate name searches, be completed prior to closing, from the effective date of this commitment through the recording of the Warranty Deed filed 11/13/2023, recorded in cc# 2023-120852, Real Property Records, Denton County, Texas. Company reserves the right to take exception for any and all matters disclosed by such search.

7. Ascertain marital and homestead status of record owner(s) from date of acquisition. If homestead, or community property require joinder of spouse.

8. With respect to item 2 of Schedule C above, the Company will not except in any policies to be issued pursuant to this commitment to 'Lack of a right of access to and from the land'.

9. Require Affidavit as to Debts and Liens and Parties in Possession executed by owner at or prior to closing.

10. In accordance with Section 11.008 of the Texas Property Code, all deeds and deeds of trust transferring an interest in real property to or from an individual and disclosing that individual's social security number or driver's license number must include the following notice on the top of the first page of the instrument in 12 point bold or uppercase font: NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SCHEDULE D

File No.: 1010-391012-RTT

The following disclosures are made pursuant to Procedural Rule P-21 promulgated by the Texas Department of Insurance:

UNDERWRITER: First American Title Guaranty Company, a Texas Corporation.

Shareholder owning or controlling, directly or indirectly, ten percent or more of the share of the Underwriter: First American Title Guaranty Company is a wholly owned subsidiary of First American Title Insurance Company, a Nebraska Corporation.

Directors: Sally French Tyler, William J. Aulbert, Mark E. Seaton, Lisa W. Cornehl

Officers: President: Sally French Tyler; Vice President, Secretary: Lisa W. Cornehl; and Vice President, Treasurer: Matthew Wajner

TITLE INSURANCE AGENCY: Republic Title of Texas, Inc. (Dallas, TX)
Shareholder, owner, partner or other person having, owning or controlling ten percent (10%) or more of the Title Insurance Title Agent:
First American Financial Corporation 100%

Shareholder, owner, partner or other person having, owning or controlling ten percent (10%) or more of an entity that has, owns or controls one percent (1%) or more Title Insurance Agent:

NONE

If the Title Insurance Agent is a corporation the following is a list of the members of the Board of Directors:
Sally French Tyler, William A. Kramer, David A. Shuttee, Ward Willford, Bo Feagin, Peter Graf, David Kramer

If the Title Insurance Agent is a corporation, the following is a list of its officers:
Collin Chase Evans, Director; William A. Kramer, Executive Chairman; David A. Shuttee, Executive Chairman; Ward Willford, Vice Chairman; Bo Feagin, President; Peter Graf, Executive Vice President and General Counsel; David Kramer, Executive Vice President; Lisa Murray, Executive Vice President and Chief Financial Officer.

You are entitled to receive advance disclosure of settlement charges in connection with the proposed transaction to which this commitment relates. Upon your request, such disclosure will be made to you. Additionally, the name of any person, firm or corporation receiving any sum from the settlement of this transaction will be disclosed on the closing or settlement statement.

You are further advised that the estimated title premium * is:

Owner Policy	$	1,399.00
Loan Policy	$	
Endorsement Charges	$	50.00
Other	$	
Total	$	1,449.00

Of this total amount $ or 15.00% will be paid to the policy issuing Title Insurance Company; $ or 85.00% will be retained by the issuing Title Insurance Agent, and the remainder of the estimated premium will be paid to other parties as follows:

Amount	To Whom	For Services
$		
$		
$		

*The estimated premium is based upon information furnished to us as of the date of this Commitment for Title Insurance. Final determination of the amount of the premium will be made at closing in accordance with the Rules and Regulations adopted by the Commissioner of Insurance.

FIRST AMERICAN TITLE GUARANTY COMPANY

Commitment for Title Insurance Form (T-7)

DELETION OF ARBITRATION PROVISION

(Not applicable to the Texas Residential Owner's Policy)

ARBITRATION is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator's award.

Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is $2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.
The arbitration provision in the Policy is as follows:

"Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured, unless the Insured is an individual person (as distinguished from an Entity). All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction."

_____ _____

SIGNATURE DATE

Republic Title of Texas, Inc.

PRIVACY STATEMENT

Effective: October 1, 2019

Notice Last Updated: January 19, 2023

This Privacy Notice describes how First American Financial Corporation, Republic Title of Texas, Inc. and their subsidiaries and affiliates (together referred to as "Republic," "we," "us," or "our") collect, use, store, and share your information. This Privacy Notice applies to information we receive from you offline only, as well as from third parties, when you interact with us and/or use and access our services and products ("Products"). For more information about our privacy practices, including our online practices, please visit www.republictitle.com/privacy-policy

This Policy applies to information we collect from or about you: (1) when you access or use our mobile applications ("Applications"), websites ("Websites"), or products and/or services ("Products"); (2) when you communicate with us in any manner, including by email, telephone, and/or in person; and (3) from third party sources.

Acknowledgement

Please read this Policy carefully. The practices described herein are subject to the laws in the places in which we operate.

BY ACCESSING AND/OR USING OUR APPLICATIONS, WEBSITES, AND/OR PRODUCTS, OR BY COMMUNICATING WITH US IN ANY MANNER, YOU REPRESENT THAT YOU HAVE READ AND UNDERSTOOD THIS POLICY.

What Type Of Information Do We Collect About You? We collect a variety of categories of information about you. To learn more about the categories of information we collect, please visit www.republictitle.com/privacy-policy.

How Do We Collect Your Information? We collect your information: (1) directly from you; (2) automatically when you interact with us; and (3) from third parties, including business parties and affiliates, to learn more, please visit www.republictitle.com/privacy-policy.

How Do We Use Your Information? We may use your information in a variety of ways, including but not limited to providing the services you have requested, fulfilling your transactions, comply with relevant laws and our policies, and handling a claim. To learn more about how we may use your information, please visit www.republictitle.com/privacy-policy

How Do We Share Your Information? We do not sell your personal information. We only share your information, including to subsidiaries, affiliates, and to unaffiliated third parties: (1) with your consent; (2) in a business transfer; (3) to service providers; and (4) for legal process and protection. To learn more about how we share your information, please visit www.republictitle.com/privacy-policy.

How Do We Store and Protect Your Information? The security of your information is important to us. Although no system can guarantee the complete security of your information, we take all commercially reasonable steps to insure your information is protected in alignment with all applicable laws and regulations, as appropriate to the sensitivity of your information, to learn more, please visit www.republictitle.com/privacy-policy.

How Long Do We Keep Your Information? We keep your information for as long as necessary in accordance with the purpose for which it was collected, our business needs, and our legal and regulatory obligations. If we dispose of your information, we will do so in a way that is secure and appropriate to the nature of the information subject to disposal, to learn more, please visit www.republictitle.com/privacy-policy.

Your Choices We provide you the ability to exercise certain controls and choices regarding our collection, use, storage, and sharing of your information. You can learn more about your choices by visiting www.republictitle.com/privacy-policy

International Jurisdictions: Our Products are offered in the United States of America (US), and are subject to US federal, state, and local law. If you are accessing the Products from another country, please be advised that you may be transferring your information to us in the US, and you consent to that transfer and use of your information in accordance with this Privacy Notice. You also agree to abide by the applicable laws of applicable US federal, state, and local laws concerning your use of the Products, and your agreements with us.

We may change this Privacy Notice from time to time. Any and all changes to this Privacy Notice will be reflected on this page, and where appropriate provided in person or by another electronic method. **YOUR CONTINUED USE, ACCESS, OR INTERACTION WITH OUR PRODUCTS OR YOUR CONTINUED COMMUNICATIONS WITH US AFTER THIS NOTICE HAS BEEN PROVIDED TO YOU WILL REPRESENT THAT YOU HAVE READ AND UNDERSTOOD THIS PRIVACY NOTICE.**

For California Residents

If you are a California resident, you may have certain rights under California law, including but not limited to the California Consumer Privacy Act of 2018 ("CCPA"). All phrases used in this section shall have the same meaning as those phrases are used under California law, including the CCPA, to learn more, please visit www.republictitle.com/privacy-policy.

Right to Know. You have a right to request that we disclose the following information to you: (1) the categories of personal information we have collected about or from you; (2) the categories of sources from which the personal information was collected; (3) the business or commercial purpose for such collection and/or disclosure; (4) the categories of third parties with whom we have shared your personal information; and (5) the specific pieces of your personal information we have collected. To submit a verified request for this information, you may email us at dataprivacy@republictitle.com or call Peter Graf at 1-214-855-8888. You may also designate an authorized agent to submit a request on your behalf by emailing dataprivacy@republictitle.com or by calling Peter Graf at 1-214-855-8888.

Right of Deletion. You also have a right to request that we delete the personal information we have collected from and about you. This right is subject to certain exceptions available under the CCPA and other applicable law. To submit a verified request for deletion, you may email us at dataprivacy@republictitle.com or call Peter Graf at 1-214-855-8888. You may also designate an authorized agent to submit a request on your behalf by emailing dataprivacy@republictitle.com or by calling Peter Graf at 1-214-855-8888.

Verification Process. For either a request to know or delete, we will verify your identity before responding to your request. To verify your identity, we will generally match the identifying information provided in your request with the information we have on file about you. Depending on the sensitivity of the information requested, we may also utilize more stringent verification methods to verify your identity, including but not limited to requesting additional information from you and/or requiring you to sign a declaration under penalty of perjury.

Notice of Sale. We do not sell California resident information, nor have we sold California resident information in the past 12 months. We have no actual knowledge of selling the information of minors under the age of 16.

Right of Non-Discrimination. You have a right to exercise your rights under California law, including under the CCPA, without suffering discrimination. Accordingly, Republic will not discriminate against you in any way if you choose to exercise your rights under the CCPA, to learn more, please visit www.republictitle.com/privacy-policy.

Notice of Collection. To learn more about the categories of personal information we have collected about California residents over the last 12 months, please see "What Information Do We Collect About You" in www.republictitle.com/privacy-policy. To learn about the sources from which we have collected that information, the business and commercial purpose for its collection, and the categories of third parties with whom we have shared that information, please see "How Do We Collect Your Information", "How Do We Use Your Information", and "How Do We Share Your Information" in www.republictitle.com/privacy-policy.

Notice of Sale. We have not sold the personal information of California residents in the past 12 months.

Notice of Disclosure. To learn more about the categories of personal information we may have disclosed about California residents in the past 12 months, please see "How Do We Use Your Information" and "How Do We Share Your Information" in www.republictitle.com/privacy-policy.

First American Title Guaranty Company

Important Notice

ISSUED BY

First American Title Guaranty Company

Have a complaint or need help?

If you have a problem with a claim or your premium, call your insurance company or HMO first. If you can't work out the issue, the Texas Department of Insurance may be able to help.

Even if you file a complaint with the Texas Department of Insurance, you should also file a complaint or appeal through your insurance company or HMO. If you don't, you may lose your right to appeal.

First American Title Guaranty Company

To get information or file a complaint with your insurance company or HMO:

Call: First American Claims at 1-888-632-1642
Toll-free: 1-888-632-1642
Email: claims.nic@firstam.com
Mail: 1 First American Way, Santa Ana, CA 92707

The Texas Department of Insurance

To get help with an insurance question or file a complaint with the state:

Call with a question: 1-800-252-3439
File a complaint: www.tdi.texas.gov
Email: ConsumerProtection@tdi.texas.gov
Mail: MC CO-CP, P.O. Box 12030, Austin, TX 78711-2030

¿Tiene una queja o necesita ayuda?

Si tiene un problema con una reclamación o con su prima de seguro, llame primero a su compañía de seguros o HMO. Si no puede resolver el problema, es posible que el Departamento de Seguros de Texas (Texas Department of Insurance, por su nombre en inglés) pueda ayudar.

Aun si usted presenta una queja ante el Departamento de Seguros de Texas, también debe presentar una queja a través del proceso de quejas o de apelaciones de su compañía de seguros o HMO. Si no lo hace, podría perder su derecho para apelar.

First American Title Guaranty Company

Para obtener información o para presentar una queja ante su compañía de seguros o HMO:

Llame a: First American Claims at 1-888-632-1642
Teléfono gratuito: 1-888-632-1642
Correo electrónico: claims.nic@firstam.com
Dirección postal: 1 First American Way, Santa Ana, CA 92707

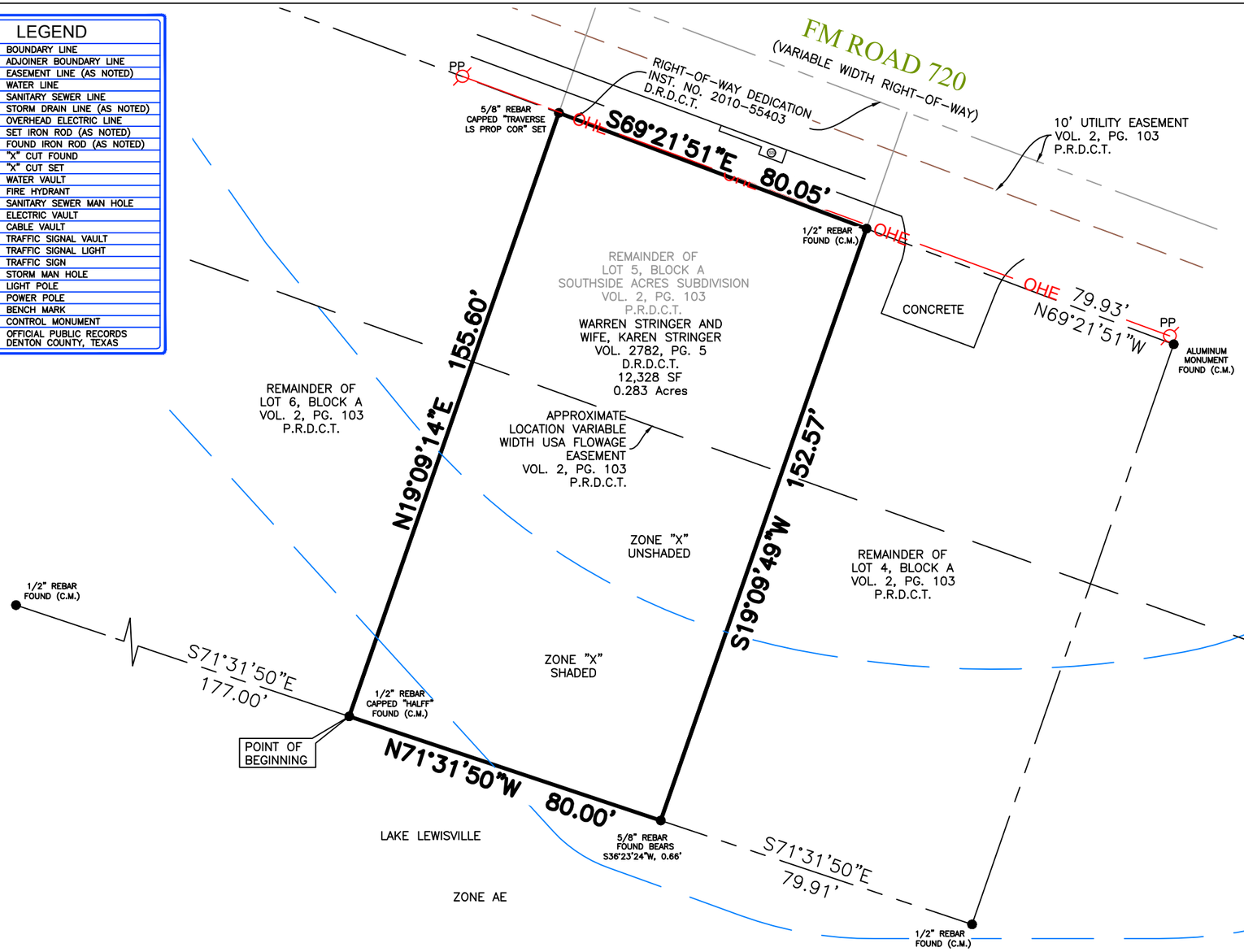
El Departamento de Seguros de Texas

Para obtener ayuda con una pregunta relacionada con los seguros o para presentar una queja ante el estado:

Llame con sus preguntas al: 1-800-252-3439
Presente una queja en: www.tdi.texas.gov
Correo electrónico: ConsumerProtection@tdi.texas.gov
Dirección postal: MC CO-CP, P.O. Box 12030, Austin, TX 78711-2030

LEGEND

———	BOUNDARY LINE
— — —	ADJOINER BOUNDARY LINE
— — —	EASEMENT LINE (AS NOTED)
—W—	WATER LINE
—SAN—	SANITARY SEWER LINE
— — —	STORM DRAIN LINE (AS NOTED)
—OHE—	OVERHEAD ELECTRIC LINE
○	SET IRON ROD (AS NOTED)
●	FOUND IRON ROD (AS NOTED)
⊗	"X" CUT FOUND
⊗	"X" CUT SET
WM	WATER VAULT
FH	FIRE HYDRANT
SS	SANITARY SEWER MAN HOLE
EV	ELECTRIC VAULT
CV	CABLE VAULT
TSV	TRAFFIC SIGNAL VAULT
TSL	TRAFFIC SIGNAL LIGHT
TS	TRAFFIC SIGN
	STORM MAN HOLE
	LIGHT POLE
	POWER POLE
	BENCH MARK
(CM)	CONTROL MONUMENT
O.P.R.D.C.T.	OFFICIAL PUBLIC RECORDS DENTON COUNTY, TEXAS



LAND DESCRIPTION

BEING a 0.283 acre tract of land located in the David M. Cule Survey, Abstract Number 226, Denton County, Texas, being a portion of Lot 5, Block A of Southside Acres Subdivision, an addition to Denton County, as recorded in Volume 2, Page 103, Plat Records, Denton County, Texas and being a portion of a tract of land described to Warren Stringer and Wife, Karen Stringer by deed recorded in Volume 2782, Page 5, Deed Records, Denton County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch rebar capped "HALFF" found for the southwest corner of said Lot 5, same being the southeast corner of Lot 6, Block A of said Southside Acres Subdivision and lying on the north line of Lewisville Lake;

THENCE North 19 degrees 09 minutes 14 seconds East, departing the north line of said Lewisville Lake, with the east line of said Lot 6, a distance of 155.60 feet to a 5/8 inch rebar capped "TRAVERSE LS PROP COR" set on the south right-of-way line of FM Road 720 (Variable Width right-of-way);

THENCE South 69 degrees 21 minutes 51 seconds East, with the south right-of-way line of said FM Road 720, a distance of 80.05 feet to a 1/2 inch rebar found for corner, said corner being a point on the west line of Lot 4, Block A of said Southside Acres Subdivision;

THENCE South 19 degrees 09 minutes 49 seconds West, departing the south right-of-way line of said FM Road 720, with the west line of said Lot 4, a distance of 152.57 feet to a point for the southwest corner of said Lot 4, same being a point on the north line of Lewisville Lake from which a 5/8 inch rebar bears South 36 degrees 23 minutes 24 seconds West, a distance of 0.66 feet;

THENCE North 71 degrees 31 minutes 50 seconds West, with the north line of said Lewisville Lake, a distance of 80.00 feet to THE POINT OF BEGINNING and containing 12,328 square feet or 0.283 acres of land, more or less.

SURVEYOR'S CERTIFICATION

The undersigned does hereby certify that this survey substantially complies with the current Texas Society of Professional Surveyors Manual of Practice Requirements for a Category 1A, Condition II Land Title Survey, and that this Survey was this day made on the ground of the property legally described hereon and is correct and to the best of my knowledge, there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights of way that I have been advised of except as shown hereon. Bearings and Distances are based on the State Plane Coordinate System, Texas North Central Zone (4202) North American Datum of 1983 (NAD83) (US Foot) with a combined scale factor of 1.00015063.

Date of Plat or Map: November 13, 2023

David F. McCullah
Registered Public Land Surveyor
Texas Registration No. 4023

STATE OF TEXAS
REGISTERED
DAVID F. McCULLAH
4023
PROFESSIONAL
LAND SURVEYOR

N

0 30 60 Feet

SCALE IN FEET

NO.	DATE	DESCRIPTION	BY

GENERAL NOTES

1. Bearings and Distances are based on the State Plane Coordinate System, Texas North Central Zone (4202), North American Datum of 1983 (NAD83) (US Foot) with a combined scale factor of 1.00015063.
2. The Subject Property is shown on the National Flood Insurance Program flood insurance rate map for Denton County as shown in map no. 48121C0415G with an effective date of April 18, 2011.
3. All Flood Zones shown hereon are approximate and not located on the ground.
4. This survey was created with the information provided by the client or their representative. the surveyor did not abstract the subject property and cannot be used to represent warranty of title or guarantee of ownership.

TITLE NOTES

This survey relies on the Commitment for Title Insurance prepared by Old Republic Title National Title Insurance Company, File No. 1010-391012-RTT with an effective date of October 30, 2023 and issued on November 07, 2023. The surveyor has performed no additional research for easements, restrictions or other matters of record which may affect the land.

10. The following matters and all terms of the documents creating or offering evidence of the matters:

a. The following easements and/or building lines, as shown on plat recorded in Volume 2, Page 103, Map Records, Denton County, Texas.
– Easement affect the subject property and is shown hereon.

b. Easement granted by J.C. Olsen and Roxie Olsen, his wife to Denton County Electric Cooperative, Inc. filed 02/19/1954, recorded in Volume 403, Page 455, Real Property Records, Denton County, Texas
– Easement is vague in nature and unplaceable.

CATEGORY 1A, CONDITION II LAND TITLE SURVEY

LOT 5, BLOCK A,
SOUTHSIDE ACRES SUBDIVISION
DAVID M. CULE SURVEY, ABSTRACT NO. 226
DENTON COUNTY, TEXAS

TRAVERSE LAND SURVEYING LLC
14200 Midway Road, Suite 130, Dallas, TX 75224 | T: 469.784.9321
W: TraverseLandSurveying.com | Texas Firm No. 10194631

Surveying | Construction Staking | Platting

DRAWN	CHECK	DATE	SCALE	PROJECT NO.	SHEET NO.
GLC	DM	11-14-2023	1" = 30'	TR-217-23	1

Date:	12/05/2023
Agenda Item #:	4. W.
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 the **Final Acceptance of the Woodrow Circle Improvement Project (Contract #2023-05).**

DESCRIPTION:

In December 2022, The Town council awarded a construction contract to Quality Excavation, LTD for the Woodrow Circle Improvement Project. The project included the replacement of the existing asphalt street with a two-lane concrete street, as well as the existing water and wastewater lines. The project has been completed, and the contractor is preparing the final closeout documents. The final acceptance date will be set once the contractor has provided all required closeout documents.

BUDGET IMPACT:

The project has been identified in the Capital Improvement Plan and funded out of capital improvement funds.

$ 1,238,125.00	Original Project Funding Amount
$ 91,442.92	Cost Overruns/Underruns
$ 1,146,682.08	**Final Construction Cost**

RECOMMENDED ACTION:

Staff recommends approval.

Date:	12/05/2023
Agenda Item #:	4. X.
Department:	Administrative Services
Strategic Goal:	Maintain operational integrity and viability
Staff Contact:	Doug Peach, Deputy Town Manager

AGENDA ITEM:

Consider Action to Approve a **Settlement Agreement for the Condemnation Lawsuit between the Town of Little Elm and Laura Elizabeth Keck, Joseph Adamson Nash, and Mary Caroline Mims for 2.656 Acres of Right-of-Way Necessary for the Construction of Ryan Spiritas Parkway in the amount of $1,619,730.**

DESCRIPTION:

In accordance with direction by Town Council at the regular Town Council meeting on September 19th, 2023 Town Staff and the Town Attorney negotiated and prepared a settlement agreement between the Town and Laura Elizabeth Keck, Joseph Adamson Nash, and Mary Caroline Mims related to the condemnation lawsuit for 2.656 acres. The settlement amount is $1,619,730. This real property is necessary for the construction of Ryan Spiritas Parkway.

BUDGET IMPACT:

The Town will fund the Settlement Agreement with funds from the North Impact Fee Fund and CIP Fund. These funds will be reimbursed to the Town by Centurion American in the amount of $421,130 in accordance with their development agreement with the Town and by Denton County in the amount of $1,198,600 in accordance with the first amendment of the ICA between Denton County and the Town for Ryan Spiritas Parkway.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Deed

Settlement Agreement

DEED WITHOUT WARRANTY

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DENTON §

For the consideration of the sum of **TEN AND NO/100 DOLLARS ($10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of all of which is hereby acknowledged and confessed, **LAURA KECK, JOSEPH ADAMSON NASH,** and **MARY MIMS (hereinafter referred to collectively as "Grantors")** do hereby **GRANT, SELL, AND CONVEY** unto the **TOWN OF LITTLE ELM, TEXAS**, a home-rule municipality ("**Grantee**"), that certain tract or parcel of land situated in Denton County, Texas, said tract or parcel being more particularly described in ***Exhibit A*** attached hereto and incorporated herein by reference (the "**Land**"), provided, however, there is excluded from the estate to be condemned all Reserved Minerals (hereinafter defined) as provided below.

THIS CONVEYANCE IS EXPRESSLY MADE AND ACCEPTED SUBJECT TO any and all easements, restrictions, mineral reservations and other matters affecting the Land, whether evidenced by instruments of record in Denton County, Texas, or elsewhere, disclosed by any survey of the Land or any part thereof or otherwise visible upon inspection of the Land (collectively, the "**Permitted Exceptions**").

TO HAVE AND TO HOLD the Land, together with all and singular the rights and appurtenances thereto in anywise belonging to Grantors, unto Grantee and Grantee's heirs, legal representatives, successors and assigns forever (subject to the Permitted Exceptions), without express or implied warranty, and all warranties that might arise by common law and the warranties in §5.023 of the Texas Property Code (or its successor) are excluded.

GRANTEE ACKNOWLEDGES AND AGREES THAT THE LAND IS SOLD, CONVEYED, TRANSFERRED AND ASSIGNED ON AN "AS IS, WHERE IS" BASIS "WITH ALL FAULTS" AND WITHOUT WARRANTY OF TITLE AND THAT, GRANTORS MAKE NO REPRESENTATIONS OR WARRANTIES, TERMS, CONDITIONS, UNDERSTANDINGS OR COLLATERAL AGREEMENTS OF ANY NATURE OR KIND, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, CONCERNING THE LAND OR THE CONDITION, DESCRIPTION, QUALITY, USEFULNESS, QUANTITY OR ANY OTHER THING AFFECTING OR RELATING TO THE LAND, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE ALSO HEREBY EXPRESSLY DISCLAIMED. GRANTEE FURTHER ACKNOWLEDGES THAT GRANTORS HAVE MADE NO AGREEMENT OR PROMISE TO REPAIR OR IMPROVE ANY OF THE LAND BEING SOLD TO GRANTEE, AND THAT GRANTEE TAKES ALL SUCH LAND IN THE CONDITION

EXISTING ON THE DATE HEREOF "AS IS, WHERE IS" AND "WITH ALL FAULTS" AND WITHOUT WARRANTY OF TITLE.

Grantors hereby reserve all of Grantors' interest (if any) in and to all of the following (collectively, the "**Reserved Minerals**"): all oil, gas and other minerals and all hydrocarbon substances of every nature, in, on, and under and that may be produced from the Land. Grantors hereby expressly release and waive, on behalf of themselves and their respective successors and assigns in title to the Reserved Minerals, all rights of ingress and egress to enter upon the surface of the Land for purposes of exploring for, developing, drilling, producing, transporting, mining, treating, storing or any other purposes incident to the development or production of the Reserved Minerals. However, nothing herein contained shall ever be construed to prevent Grantors, and their respective successors and assigns, from developing or producing any of the Reserved Minerals by pooling, by directional drilling under the Land from well sites located on tracts other than the Land, or otherwise so long as Grantors avoid physically entering upon the surface of the Land.

When the context requires, singular nouns and pronouns include the plural.

(Signatures to Follow)

IN WITNESS WHEREOF, the Grantors have caused this Deed Without Warranty to be **EXECUTED and EFFECTIVE** on this the 17 day of November, 2023.

GRANTORS:

LAURA KECK

By: Laura Keck

Date: November 17, 2023

JOSEPH ADAMSON NASH

By: _____

Date: _____

MARY MIMS

By: _____

Date: _____

GRANTEE:

TOWN OF LITTLE ELM, TEXAS

By: _____
Matt Mueller, Town Manager

IN WITNESS WHEREOF, the Grantors have caused this Deed Without Warranty to be **EXECUTED and EFFECTIVE** on this the _____ day of _____, 2023.

GRANTORS:

LAURA KECK

By: _____

Date: _____

JOSEPH ADAMSON NASH

By: Joseph A Nash

Date: NOV. 16 2023

MARY MIMS

By: _____

Date: _____

GRANTEE:

TOWN OF LITTLE ELM, TEXAS

By: _____
Matt Mueller, Town Manager

IN WITNESS WHEREOF, the Grantors have caused this Deed Without Warranty to be **EXECUTED and EFFECTIVE** on this the 15th day of November, 2023.

GRANTORS:

LAURA ELIZABETH KECK

By: _____

Date: _____

JOSEPH ADAMSON NASH

By: _____

Date: _____

MARY CAROLINE MIMS

By: Mary Caroline Mims

Date: Nov. 15, 2023

GRANTEE:

TOWN OF LITTLE ELM, TEXAS

By: _____
Matt Mueller, Town Manager

STATE OF GA §
§
COUNTY OF Fulton §

This instrument was acknowledged before me on the 17 day of November, 2023, by Laura Keck.

Kelli E. Michie
Notary Public, State of GA

Notary's name (printed): Kelli E. Michie

Notary's commission expires: 05/18/2027

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Joseph Adamson Nash.

_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Mary Mims

_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Laura Keck.

_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

STATE OF GA §
§
COUNTY OF DeKalb §

This instrument was acknowledged before me on the 16th day of November, 2023, by Joseph Adamson Nash.

_____
Notary Public, State of GA

Notary's name (printed): Centoya McConnehead

Notary's commission expires: 3/11/24

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Mary Mims

_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Laura Elizabeth Keck.

_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Joseph Adamson Nash.

_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

STATE OF Georgia §
§
COUNTY OF Cobb §

This instrument was acknowledged before me on the 15th day of November, 2023, by Mary Caroline Mims

_____
Notary Public, State of Georgia

Notary's name (printed): Eric Hodgson

Notary's commission expires: 11-29-2025

ERIC HODGSON
NOTARY PUBLIC
MY COMMISSION EXPIRES
NOVEMBER 29, 2025
COBB COUNTY, GEORGIA

Grantee accepts this Deed Without Warranty and consents to its form and substance.

STATE OF TEXAS §
§
COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Mr. Matt Mueller, Town Manager, on behalf of the Town of Little Elm, Texas.

_____
Notary Public, State of Texas

Notary's name (printed): _____

Notary's commission expires: _____

Exhibit A

Legal Description

LEGAL DESCRIPTION

BEING that certain tract of land situated in the Marsella Jones Survey, Abstract Number 662, in the Town of Little Elm, Denton County, Texas, and being part of that certain tract of land described in deed to Mary Caroline Mims, Katherine Ann Nash, and Laura Eliza Elizabeth Keck recorded in Volume 4262, Page 877, of the Real Property Records of Denton County, Texas (RPRDCT), and being more particularly described by metes and bounds as follows:

BEGINNING at 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set on the southerly right-of-way line of U.S. Highway No. 380 (variable width right-of-way), and being located at the most southerly southeast corner of that certain tract of land described as Parcel 25 in Judgement Deed to the State of Texas recorded in Document Number 2021-227713, RPRDCT, and also being the most southerly southwest corner of that certain tract of land described as Parcel 28 in Judgement Deed to the State of Texas recorded in Document Number 2022-148109, RPRDCT;

THENCE South 01°49'47" West, with a west line of that certain tract of land described in deed to Spiritas Ranch Enterprises recorded in Volume 833, Page 38, RPRDCT, a distance of 363.07 feet to a 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set for corner at the location where a 3/8-inch iron rod was previously found;

THENCE North 88°28'06" West, with a north line of said Spiritas Ranch Enterprises tract recorded in Volume 833, Page 38, RPRDCT, a distance of 1398.25 feet to a 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set for corner, from which a 3/8-inch iron rod found at a northwest corner of said Spiritas Ranch Enterprises tract bears North 88°28'06" West, a distance of 621.33 feet, said set iron rod being the beginning of a non-tangent curve to the left;

THENCE over and across said Mary Caroline Mims, Katherine Ann Nash, and Laura Eliza Elizabeth Keck tract, the following courses to 5/8-inch iron rods with blue plastic cap stamped "BCG 10194538" set for corner:

North 77°03'04" East, a distance of 36.00 feet, and the beginning of a tangent curve to the right;

With said curve which has a central angle of 14°43'31", a radius of 1450.00 feet, a chord which bears North 84°24'49" East, a chord distance of 371.63 feet, and for an arc distance of 372.66 feet;

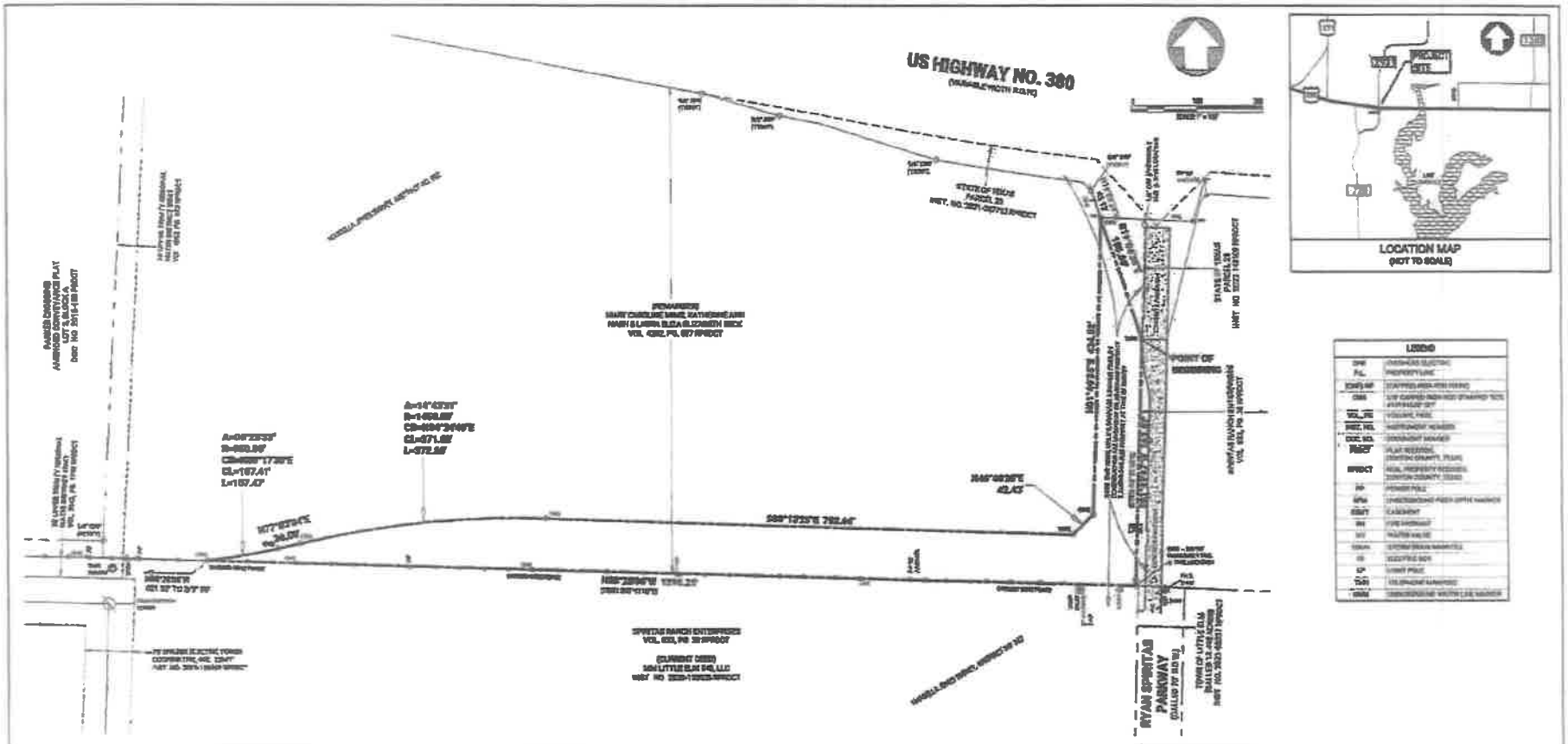
South 88°13'25" East, a distance of 793.66 feet;

North 46°46'35" East, a distance of 42.43 feet;

And North 01°46'35" East, a distance of 434.52 feet, said iron rod being located on said southerly right-of-way line of U.S. Highway No. 380 according to said Parcel 25;

THENCE South 19°06'38" East, with said southerly right-of-way line of U.S. Highway No. 380 according to Parcel 25, a distance of 185.85 feet to the POINT OF BEGINNING, containing an area of 2.656 acres of land.

EXHIBIT
tabbies
A



LEGAL DESCRIPTION

BEING that certain tract of land situated in the Marsella Jones Survey, Abstract Number 662, in the Town of Little Elm, Denton County, Texas, and being part of that certain tract of land described in deed to Mary Caroline Mims, Katherine Ann Nash, and Laura Eliza Elizabeth Nash recorded in Volume 4202, Page 677, of the Real Property Records of Denton County, Texas (RPRDCT), and being more particularly described by metes and bounds as follows:

BEGINNING at 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set on the southerly right-of-way line of U.S. Highway No. 380 (variable width right-of-way), and being located at the most southerly southeast corner of that certain tract of land described as Parcel 25 in Judgement Deed to the State of Texas recorded in Document Number 2021-227713, RPRDCT, and also being the most southerly northeast corner of that certain tract of land described as Parcel 25 in Judgement Deed to the State of Texas recorded in Document Number 2022-149199, RPRDCT;

THENCE South 01°08'04" West, with a west line of that certain tract of land described in deed to Spiritas Ranch Enterprises recorded in Volume 633, Page 39, RPRDCT, a distance of 360.07 feet to a 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set for corner at the location where a 3/8-inch iron rod was previously found;

THENCE North 88°28'56" West, with a north line of said Spiritas Ranch Enterprises tract recorded in Volume 633, Page 39, RPRDCT, a distance of 1398.25 feet to a 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set for corner, from which a 3/8-inch iron rod found at a northwest corner of said Spiritas Ranch Enterprises tract bears North 88°28'56" West, a distance of 621.33 feet, said set iron rod being the beginning of a non-tangent curve to the left;

THENCE over and across said Mary Caroline Mims, Katherine Ann Nash, and Laura Eliza Elizabeth Nash tract, the following courses to 5/8-inch iron rods with blue plastic cap stamped "BCG 10194538" set for corner:

North 77°03'04" East, a distance of 36.00 feet, and the beginning of a tangent curve to the right;

With said curve which has a central angle of 14°43'31", a radius of 1450.00 feet, a chord which bears North 84°24'49" East, a chord distance of 371.53 feet, and for an arc distance of 372.66 feet;

(CONTINUED)

(CONTINUED)

South 89°12'25" East, a distance of 793.56 feet;

North 46°46'35" East, a distance of 42.40 feet;

And North 01°46'35" East, a distance of 434.52 feet, said iron rod being located on said southerly right-of-way line of U.S. Highway No. 380 according to said Parcel 25;

THENCE South 89°46'35" East, with said southerly right-of-way line of U.S. Highway No. 380 according to Parcel 25, a distance of 793.83 feet to the POINT OF BEGINNING, containing an area of 2.656 acres of land.

NOTES:

There is no Title Commitment referenced for this survey (no additional easement research was performed).

The bearings shown and recited hereon are referenced to the Texas Coordinate System of 1983 – North Central Zone No. 4202 - NAD 83. (All distances are surface distances with a surface to grid scale factor of 0.99994093)

Subject property lies within Zone X (un-shaded area), defined as "Areas determined to be outside the 0.2% annual chance floodplain", according to Federal Emergency Management Agency Flood Insurance Rate Map for Denton County, Texas and Incorporated Areas, Number 48121C0465G, Revision Date April 18, 2011.

Plat and deed calls shown recited hereon are referenced to previously filed recorded plats and deeds for subject and adjoining properties.

SURVEYOR'S CERTIFICATE

I, Jimmie D. Nichols, Registered Professional Land Surveyor, do hereby certify that I have made a careful and accurate survey of the above described property and that the plat shown hereon is a substantially true, correct and accurate representation of the property determined by survey. This survey substantially conforms to the current Texas Society of Professional Surveyors Standards and Specifications for a Category 1A, Condition II Survey

FOR: BARRAZA CONSULTING GROUP, LLC:

March 21, 2023

Jimmie D. Nichols, RPLS No. 5184

BOUNDARY SURVEY
2.656 ACRES
SITUATED IN THE
MARSELLA JONES SURVEY
~ ABSTRACT NO. 662
TOWN OF LITTLE ELM
DENTON COUNTY, TEXAS

BARRAZA CONSULTING GROUP, LLC
TBPLS FIRM REG. NO. 10194538
TBPE FIRM REG. NO. 20683
801 EAST CAMPBELL ROAD, STE. 650
RICHARDSON, TEXAS 75081
TELEPHONE - (214)-484-7055
PROJECT NO. 2019017-00
DATE March 2023

SURVEYED ON THE GROUND DURING MARCH 2023

SCALE 1"=100'

CAUSE NO. PR-2023-01015-A

TOWN OF LITTLE ELM, TEXAS,	)	**IN PROBATE COURT**
	)	**NO. 1**
Plaintiff,	)	
	)	
v.	)	
	)	**OF**
LAURA ELIZABETH KECK,	)	
KATHERINE ROGERS NASH, and	)	
MARY CAROLINE MIMS,	)	
	)	
Defendants.	)	**DENTON COUNTY, TEXAS**

SETTLEMENT AGREEMENT

This Settlement Agreement ("**Agreement**") is entered into among Laura Elizabeth Keck, Joseph Adamson Nash, and Mary Caroline Mims (collectively, "**Landowners**") and the Town of Little Elm, Texas ("**Town**") (all of which are parties, or a successor in interest to a party, in the above-styled litigation), and all of which are collectively referred to as the "**Parties.**"

I.

RECITALS

1. On July 25, 2023, the Town filed Plaintiff Town of Little Elm's Original Petition for Condemnation ("**Petition**") to acquire fee simple right-of-way to approximately 2.656 acres (115,695 square feet) (hereinafter referred to as the "**Right-of-Way Strip**") from approximately 24.5758 acres of vacant land located at the southwest corner of US Highway 380 and Ryan Spiritas Parkway, in the Town of Little Elm, Denton County, Texas ("**Parent Tract**"). A true and correct copy of the Petition is attached hereto as ***Exhibit 1*** and incorporated herein for all purposes. The legal description of the Right-of-Way Strip is attached as Exhibit A to the Petition.

2. The condemnation proceeding was filed against Laura Elizabeth Keck, Katherine Rogers Nash, and Mary Caroline Mims as the owners of the Parent Tract. The interests of Katherine Rogers Nash in the Parent Tract became vested in her husband, Joseph Adamson Nash, upon her untimely passing on October 14, 2023 pursuant to a Transfer on Death Deed executed by Katherine Rogers Nash on June 30, 2023, and recorded in the Denton County Real Property Records on July 18, 2023, as Instrument Number 75752, a true and correct copy of which is attached hereto as ***Exhibit 2*** and incorporated herein for all purposes.

3. The Parties have reached a settlement which will allow for the conveyance of the Right-of-Way Strip by the Landowners to the Town without the necessity of a special commissioners hearing in this proceeding and which will allow the Town to dismiss the condemnation proceeding.

4. To avoid the costs and uncertainty of the condemnation proceeding, Parties desire to settle, fully and finally, all claims between them that were asserted, or could have been asserted, in the condemnation proceeding, and the Parties desire to enter into the terms of this Agreement to bring a mutually beneficial resolution to matter in dispute.

5. In consideration of the mutual promises, releases, and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows.

II.

TERMS OF SETTLEMENT

A. Settlement Funds

The Town shall pay to Landowners a sum of One Million, Six-Hundred and Nineteen Thousand, Seven Hundred and Thirty and 00/100 Dollars ($1,619,730) (the "**Settlement Funds**"). The Settlement Funds shall be paid by wire transfer to Dawson & Sodd, PLLC Trust Account by not later than midnight on December 10, 2023, Central Standard Time. The Town shall have no obligation to pay the Settlement Funds under this Agreement unless and until the Town has received a fully executed version of the Deed Without Warranty attached hereto as ***Exhibit 3***.

B. Deed Without Warranty

Landowners agree to execute the Deed Without Warranty attached hereto as ***Exhibit 3*** in a manner that will allow for the recording of the Deed Without Warranty in the Denton County Real Property Records. The Town agrees that it will hold the executed Deed Without Warranty in escrow and will not record it until the Settlement Funds have been both wired and received by Landowners as set forth herein. Execution and delivery of the Deed Without Warranty to the Town in a form suitable for filing in the Denton County Real Property Records shall be a condition to the Town's obligation to pay the Settlement Funds described in Part II(A), above.

C. Development Issues

In conjunction with the development of properties adjacent to the Parent Tract, the Town agrees to undertake, construct and complete at its sole cost and expense, without the contribution of any additional land or funds by Landowners, the recommended infrastructure improvements and development considerations described, depicted, and set forth as **item 1** ("Extension of water mains to Keck Tract"), **item 2** ("Extension of sanitary sewer to the Keck Tract"), and **item 3** ("Access from adjacent roadways") in the November 30, 2022, letter with exhibits from David J. Bond, P.E, to Tyler Milton, a true and correct copy of which is attached hereto as ***Exhibit 4*** and incorporated herein for all purposes. The improvements to be constructed by the Town described in the preceding sentence are collectively referred to as the "**Infrastructure Improvements**". The Town shall cause the Infrastructure Improvements to be completed diligently in a good and workmanlike manner, with the timing of such construction to commence upon the earlier of (i) the commencement of development activities on any of the properties adjacent to the Parent Tract or (ii) the commencement of development activities on the Parent Tract. Promptly following completion of the Infrastructure Improvements, the Town shall return the portions of the Parent

Tract and surrounding property affected by such construction to substantially the same condition, including grade and compaction, as it was prior to the commencement of construction, subject to the Town's rights with respect to the Right of Way Strip.

D. **Dismissal of Litigation.** Within two (2) business days after the payment of the Settlement Funds (as more particularly described in Part II(A), above), the Town agrees to file the appropriate court filings to dismiss the condemnation proceeding. If required by the court, the Parties agree to join in any filings to dismiss and resolve the pending condemnation proceeding.

E. **Release of Lis Pendens.** Upon the dismissal of the condemnation proceeding, the Town will file with the Real Property Records of Denton County documentation to release the Lis Pendens recorded against the Parent Tract.

F. **Covenant Not to Sue.** In the event the condemnation proceeding is dismissed, the Parties agree and covenant not to sue or prosecute the other parties to this Agreement on any claims or for any damages arising out of or related to claims that were brought, or could have been brought, in the condemnation proceeding except for any claims that arise out of the failure to perform the acts, terms, promises, covenants and obligations contained in this Agreement.

G. **Expenses, Costs and Attorneys' Fees.** The Parties agree that each shall satisfy and/or resolve all expenses, costs, and attorneys' fees incurred by that party arising out of the condemnation proceeding, including attorneys' fees and court costs, and that no party shall be responsible for any expenses, costs, or attorneys' fees incurred by another. In the event any party files suit or complaint in order to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with the enforcement suit or complaint.

III.

MUTUAL RELEASE OF CLAIMS

Upon the dismissal with prejudice of the condemnation proceeding, each of the Parties, on behalf of themselves, their heirs, successors, assigns, insurers, partners, officials, officers, agents, employees, and attorneys, hereby release, remise, acquit, and forever discharge all other Parties, the Town Council members, affiliates, successors, assigns, officials, officers, agents, employees, and attorneys, in each of their individual, corporate and governmental capacities, from all claims, demands and causes of action and/or proposed claims, demands and causes of action which have been, or could have been alleged, in regard to the condemnation proceeding except for any claims that may arise out of the failure of any party to perform an acts, terms, promises, covenants or obligations contained within this Agreement.

IV.

ADDITIONAL REPRESENTATIONS AND TERMS

A. **Agreement Executory.** The Parties understand and agree that this Agreement shall be executory and conditioned upon the performance of the acts, terms, promises and obligations set forth herein, unless otherwise agreed to in writing by the Parties.

B. **Assignment.** Neither this Agreement, nor any of the attendant rights, duties, or obligations may be assigned by any Party without the prior written consent of the other Parties, which consent shall not unreasonably be withheld.

C. **Sole Owner of Claims.** The Parties state and warrant that they are the sole owners of any claims that have been asserted by them or may have been asserted by them and that such claims have not been assigned, encumbered, transferred, pledged or otherwise in any manner whatsoever sold or transferred, either by written instrument or otherwise, to any attorney, agent or other person or entity.

D. **Terms Contractual.** It is expressly understood and agreed that the terms hereof are contractual and not merely recitals, and that the agreements herein contained and the consideration transferred are to compromise disputed claims, to avoid litigation and buy peace, and that no payments made or releases or other consideration given shall be construed as an admission of liability or wrongdoing and all such liability is expressly denied.

E. **No Additional Consideration.** The Parties acknowledge that no other consideration has been or shall be furnished or paid in connection with this Agreement other than as stated in this Agreement.

F. **No Admission of Liability.** By entering into this Agreement, the Parties do not admit any liability.

G. **Joint Preparation of Settlement Agreement.** Prior to the execution of this Agreement, the Parties have had an opportunity to consult with independent counsel of their choice in negotiating this Agreement, and this Agreement is the result of negotiations between the Parties. The Parties further acknowledge that all necessary signatories to this Agreement have participated in the preparation of this Agreement and each of the documents related to the settlement, and it is understood that no provision hereof or contained in said documents shall be construed against any of the Parties by virtue of the activities of said Parties or by their attorneys in the preparation and execution thereof.

H. **Consideration.** This Agreement is executed by the Parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

I. **Authority to Execute.** The individuals executing this Agreement on behalf of the respective Parties represent to each other and to others that: (i) all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears; (ii) there are no other parties or entities

required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement; and (iii) each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

J. Applicable Law and Venue. The Parties agree that this Agreement shall be governed by, interpreted, and constructed in accordance with the laws of the State of Texas. The Parties further agree that Denton County, Texas, shall be the mandatory and exclusive venue for any dispute arising out of or related to this Agreement.

K. Entire Agreement. This Agreement sets forth the entire and sole agreement and understanding between the Parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements, and understandings of any kind and nature between them, none of which were relied on by the Parties in deciding to execute this Agreement. Each party is relying on his, her, or its own judgment and each has been represented by or had the opportunity to be represented by his, her, or its own legal counsel in this matter. The Parties acknowledge that each understands each and every term in this Agreement as well as the legal consequences of the Agreement.

L. Modification of Agreement. It is expressly understood and agreed that this Agreement may not be altered, amended, waived, modified, or otherwise changed in any respect or particular whatsoever, except in writing, which must be signed by the Settlement Parties. The Parties further acknowledge and agree they shall make no claims at any time or place that this Agreement has been orally supplemented, modified, or altered in any respect whatsoever.

M. Counterparts. This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument, and any of the Parties may execute this Agreement by signing any such counterpart.

N. No Waiver. No waiver by the Parties of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition, or covenant contained herein.

O. No Chapter 245 Permit. This Agreement shall not constitute a "permit" as defined in Chapter 245, Texas Local Government Code. **THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date appearing next to each Party's signature and this Agreement shall be effective on the date the last signature has been signed upon this Agreement, subject to the terms and conditions of this Agreement.

LAURA ELIZABETH KECK

By: Laura Elizabeth Keck

Date: November 17, 2023

JOSEPH ADAMSON NASH

By: _____

Date: _____

MARY CAROLINE MIMS

By: _____

Date: _____

TOWN OF LITTLE ELM, TEXAS

By: _____
Matt Mueller, Town Manager

Date: _____

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date appearing next to each Party's signature and this Agreement shall be effective on the date the last signature has been signed upon this Agreement, subject to the terms and conditions of this Agreement.

LAURA ELIZABETH KECK

By: _____

Date: _____

JOSEPH ADAMSON NASH

By: Joseph a Nash

Date: NOV 16 2023

MARY CAROLINE MIMS

By: _____

Date: _____

TOWN OF LITTLE ELM, TEXAS

By: _____
Matt Mueller, Town Manager

Date: _____

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date appearing next to each Party's signature and this Agreement shall be effective on the date the last signature has been signed upon this Agreement, subject to the terms and conditions of this Agreement.

LAURA ELIZABETH KECK

By: _____

Date: _____

JOSEPH ADAMSON NASH

By: _____

Date: _____

MARY CAROLINE MIMS

By: Mary Caroline Mims

Date: 11/15/2023

TOWN OF LITTLE ELM, TEXAS

By: _____
Matt Mueller, Town Manager

Date: _____

STATE OF GA §
§
COUNTY OF Fulton §

This instrument was acknowledged before me on the 17 day of November 2023, by Laura Elizabeth Keck.

Kelli E. Michie
Notary Public, State of GA

Notary's name (printed): Kelli E. Michie

Notary's commission expires: 05/18/2027

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Joseph Adamson Nash.

_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Mary Caroline Mims

_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Laura Elizabeth Keck.

_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

STATE OF GA §
§
COUNTY OF DeKalb §

This instrument was acknowledged before me on the 16th day of November, 2023, by Joseph Adamson Nash.

_____
Notary Public, State of GA

Notary's name (printed): Centoya McConnehead

Notary's commission expires: 3/11/24

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Mary Caroline Mims

_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Laura Elizabeth Keck.

_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Joseph Adamson Nash.

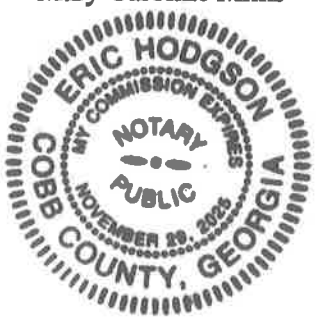
_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

STATE OF Georgia §
§
COUNTY OF Cobb §

This instrument was acknowledged before me on the 15TH day of November, 2023, by Mary Caroline Mims



Eric Hodgson
Notary Public, State of Georgia

Notary's name (printed): Eric Hodgson

Notary's commission expires: 11-29-2025

STATE OF TEXAS §
§
COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Mr. Matt Mueller, Town Manager, on behalf of the Town of Little Elm, Texas.

_____
Notary Public, State of Texas

Notary's name (printed): _____

Notary's commission expires: _____

Exhibit 1

Plaintiff Town of Little Elm's Original Petition for Condemnation

Filed: 7/25/2023 5:10 PM
Juli Luke
Denton County Clerk
By: Shenee Clanton, Deputy

PR-2023-01015-A

CAUSE NO. _____

TOWN OF LITTLE ELM, TEXAS,	)	**IN PROBATE COURT NO. ____**
Plaintiff,	)	
v.	)	**OF**
LAURA ELIZABETH KECK, KATHERINE ROGERS NASH, and MARY CAROLINE MIMS,	)	
Defendants.	)	**DENTON COUNTY, TEXAS**

PLAINTIFF TOWN OF LITTLE ELM'S ORIGINAL PETITION FOR CONDEMNATION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Town of Little Elm, Texas (**"Town"**), a home-rule municipality organized under the Constitution of the State of Texas, brings this action and files this petition (**"Petition"**) for condemnation of the property rights and interests described herein, and shows that the owners of said land, and their addresses, are as follows:

Laura Elizabeth Keck;
Katherine Rogers Nash; and
Mary Caroline Mims.

All may be served by and through their attorney
Mr. B. Tyler Milton
Dawson & Sodd, PPLC
8333 Douglas Avenue, Suite 380
Dallas, Texas 75225

I.

Per TEX. R. CIV. P. 190.1, it is intended that discovery, if any, will be conducted under Level 2.

II.

This condemnation proceeding involves the acquisition of fee simple right-of-way from approximately 24.5758 acres of vacant land located at the southwest corner of US Highway 380 and Ryan Spiritas Parkway, in the Town of Little Elm, Denton County, Texas ("Parent Tract"). The specific interest to be acquired by the Town from the Parent Tract is as follows:

Right-of-Way Strip: Fee simple title to approximately **2.656 acres (115,695 square feet)**, as described by metes and bounds and graphically portrayed in ***Exhibit A*** attached hereto and incorporated by reference as if set forth herein.

III.

Laura Elizabeth Keck, Katherine Rogers Nash, and Mary Caroline Mims (hereinafter collectively referred to as the "Land Owners"), are individuals that own the Parent Tract from which the Right-of-Way Strip is to be acquired.

IV.

Pursuant to the Home-Rule Charter of the Town of Little Elm, Section 251.001 *et seq.* of the Texas Local Government Code, and Section 21.001 *et seq.* of the Texas Property Code, the Town is authorized to exercise its power of eminent domain for the purpose, among others, of acquiring property necessary for providing roadway improvements to serve the Town, either within or without the corporate limits of the Town, or for any other public use the governing body of the Town considers advisable and that is allowed by law.

V.

Acting under and by virtue of the laws of the State of Texas, the Town, in Resolution No. 0418202301, passed and approved on April 18, 2023, determined that public necessity

and public use required the acquisition by the Town of the Right-of-Way Strip described in Part II of this Petition, above, for the Town's 2931 Right-of-Way Project ("Project").

VI.

Specifically, it is necessary for the Town to acquire the Right-of-Way Strip in fee simple from the Land Owners for the Project. The Town has determined that the Right-of-Way Strip is suitable for use for such purpose, and that it is necessary to acquire fee simple title and rights to the land and improvements, if any, in the Right-of-Way Strip. The Town intends to use the interests condemned in the Right-of-Way Strip for such public purpose and as part of the Town's roadway system.

VII.

The Town is entitled to condemn the Right-of-Way Strip for the purpose of the Project, and asks that the same be condemned for such purpose; provided, however, there is excluded from the estate to be condemned all sub-surface mineral rights including, but not necessarily limited to, the oil, gas and sulphur which can be removed from beneath the Parent Tract, without any right whatever remaining to the owners of such oil, gas and sulphur of ingress to or from the surface of said land, for the purpose of exploring, developing, drilling or mining of the same.

VIII.

The Right-of-Way Strip will not prohibit the Land Owners from access their remaining property or the road system.

IX.

The Town and the Land Owners have been unable to agree on the value of the Right-of-Way Strip to be condemned or the damages, if any, occasioned by the acquisition of the

Right-of-Way Strip and improvements, if any. The Town, through agents authorized by the Town Council, offered to purchase the Right-of-Way Strip from the Land Owners. The bona fide offer was extended but not accepted by the Land Owners. As a result, the parties could not and cannot agree, and they have therefore failed to agree upon the damages and compensation that should be paid to the Land Owners by reason of the appropriation of the Right-of-Way Strip.

X.

The Town, through its duly authorized agent, has provided the Land Owners with a copy of the landowner's bill of rights statement in accordance with Texas Property Code Section 21.0112.

XI.

The Town, through its duly authorized agent, made a bona fide offer to acquire the Right-of-Way Strip from the Land Owners voluntarily as provided by Texas Property Code Section 21.0113.

XII.

The Town has authorized the Town Attorney, or his duly appointed agent, to file the appropriate and necessary condemnation proceedings so that Right-of-Way Strip could be appropriated and vested in the Town for the purpose of the Project.

XIII.

The Town has complied with all prerequisites mandated by the Chapter 21 of the Texas Property Code, and Subchapter B of Chapter 2206 of the Texas Government Code (also known as the "Truth in Condemnation Procedures Act") prior to the filing of this lawsuit.

XIV.

The Right-of-Way Strip that the Town has determined to be necessary for the public use stated herein is owned, or claims to be owned, by the Land Owners. The Town, by diligent search, found that the above-named persons own, or claim to own, the Parent Tract from which the Right-of-Way Strip is being acquired; however, should it be disclosed that other parties own or claim some interest in the Parent Tract from which the Right-of-Way Strip is being acquired; the Town reserves the right to amend these proceedings by including such persons and making them parties in this condemnation suit.

WHEREFORE, the Town of Little Elm, Texas, prays that this court:

(1) Appoint three disinterested free holders as Special Commissioners to assess the compensation due the owner and file their decision as provided by law;

(2) Award the Town a final judgment or decree of condemnation vesting in the Town the following:

- Fee simple title to the Right-of-Way Strip, except as above provided as to oil, gas and sulphur; and all limitations and restrictions on the estate to be condemned as are described in the Petition;

(3) Provide for a writ of possession;

(4) Provide for costs of suit; and

(5) Provide for such other and further relief, general and special, at law or in equity, to which the Town may show itself to be entitled.

Respectfully submitted,

BROWN & HOFMEISTER, L.L.P.
740 East Campbell Road
Suite 800
Richardson, Texas 75081
(214) 747-6100
(214) 747-6111 (FAX)
rbrown@bhlaw.net

By: */s/ Robert F. Brown*
Robert F. Brown
Texas Bar Number 01364725

ATTORNEYS FOR PLAINTIFF TOWN OF LITTLE ELM, TEXAS

COPY OF THE PETITION

Pursuant to Texas Property Code Section 21.012(c), the undersigned hereby certifies that a copy of this document was served via certified mail, return receipt requested, upon the owners of the property:

Laura Elizabeth Keck;
Katherine Rogers Nash; and
Mary Caroline Mims

All may be served by and through their attorney
Mr. B. Tyler Milton
Dawson & Sodd, PPLC
8333 Douglas Avenue, Suite 380
Dallas, Texas 75225

/s/ Robert F. Brown
Robert F. Brown

LEGAL DESCRIPTION

BEING that certain tract of land situated in the Marsella Jones Survey, Abstract Number 662, in the Town of Little Elm, Denton County, Texas, and being part of that certain tract of land described in deed to Mary Caroline Mims, Katherine Ann Nash, and Laura Eliza Elizabeth Keck recorded in Volume 4262, Page 877, of the Real Property Records of Denton County, Texas (RPRDCT), and being more particularly described by metes and bounds as follows:

BEGINNING at 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set on the southerly right-of-way line of U.S. Highway No. 380 (variable width right-of-way), and being located at the most southerly southeast corner of that certain tract of land described as Parcel 25 in Judgement Deed to the State of Texas recorded in Document Number 2021-227713, RPRDCT, and also being the most southerly southwest corner of that certain tract of land described as Parcel 28 in Judgement Deed to the State of Texas recorded in Document Number 2022-148109, RPRDCT;

THENCE South 01°49'47" West, with a west line of that certain tract of land described in deed to Spiritas Ranch Enterprises recorded in Volume 833, Page 38, RPRDCT, a distance of 363.07 feet to a 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set for corner at the location where a 3/8-inch iron rod was previously found;

THENCE North 88°28'06" West, with a north line of said Spiritas Ranch Enterprises tract recorded in Volume 833, Page 38, RPRDCT, a distance of 1398.25 feet to a 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set for corner, from which a 3/8-inch iron rod found at a northwest corner of said Spiritas Ranch Enterprises tract bears North 88°28'06" West, a distance of 621.33 feet, said set iron rod being the beginning of a non-tangent curve to the left;

THENCE over and across said Mary Caroline Mims, Katherine Ann Nash, and Laura Eliza Elizabeth Keck tract, the following courses to 5/8-inch iron rods with blue plastic cap stamped "BCG 10194538" set for corner:

North 77°03'04" East, a distance of 36.00 feet, and the beginning of a tangent curve to the right;

With said curve which has a central angle of 14°43'31", a radius of 1450.00 feet, a chord which bears North 84°24'49" East, a chord distance of 371.63 feet, and for an arc distance of 372.66 feet;

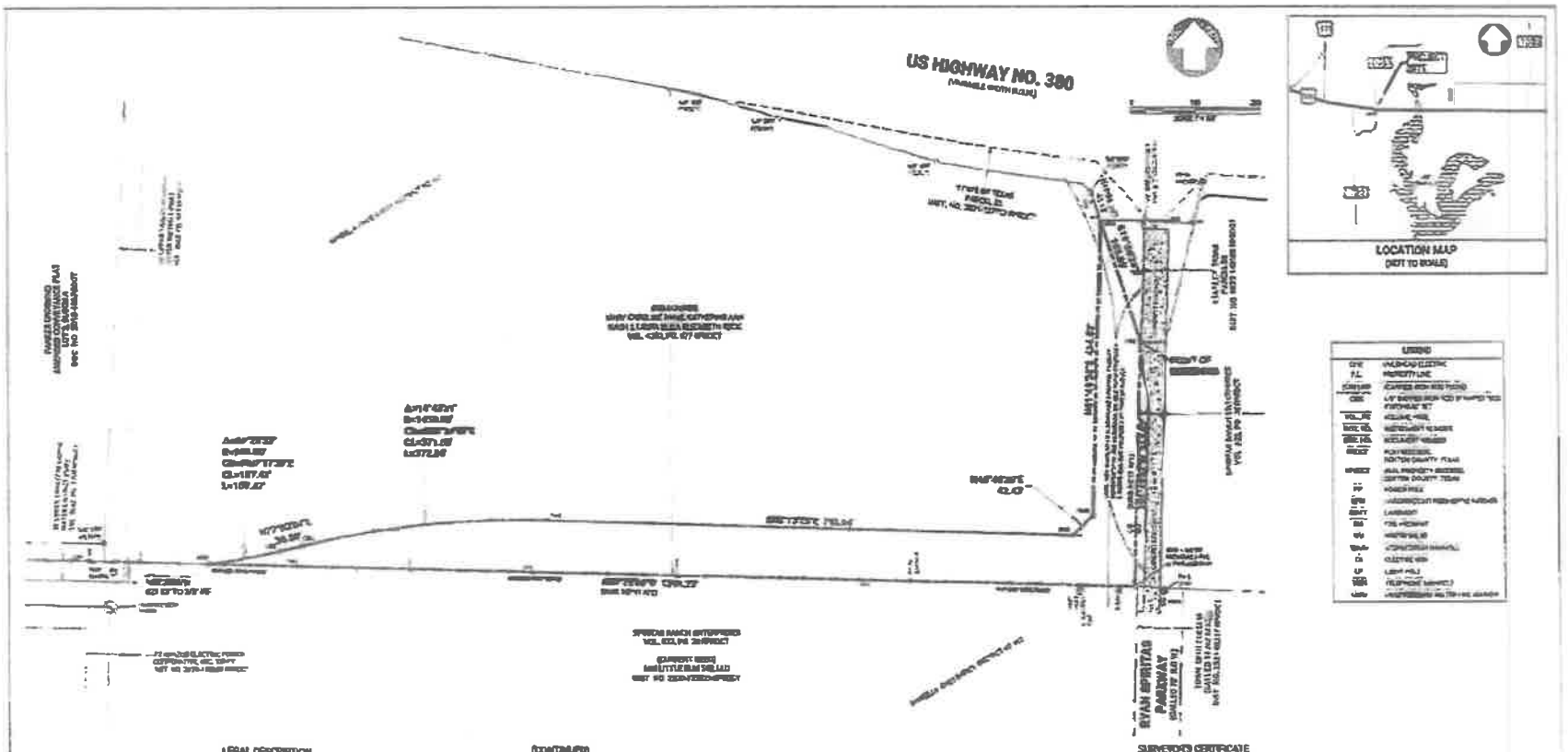
South 88°13'25" East, a distance of 793.66 feet;

North 46°46'35" East, a distance of 42.43 feet;

And North 01°46'35" East, a distance of 434.52 feet, said iron rod being located on said southerly right-of-way line of U.S. Highway No. 380 according to said Parcel 25;

THENCE South 19°06'38" East, with said southerly right-of-way line of U.S. Highway No. 380 according to Parcel 25, a distance of 185.85 feet to the POINT OF BEGINNING, containing an area of 2.656 acres of land.

EXHIBIT
A



LEGAL DESCRIPTION

BEING that certain tract of land situated in the Marsella Jones Survey, Abstract Number 662, in the Town of Little Elm, Denton County, Texas, and being part of that certain tract of land described in deed to Mary Caroline Mims, Katherine Ann Nash, and Laura Ellen Elizabeth Nash recorded in Volume 4943, Page 877, of the Real Property Records of Denton County, Texas (RPRDCT), and being more particularly described by metes and bounds as follows:

BEGINNING at 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set on the southerly right-of-way line of U.S. Highway No. 380 (variable width right-of-way), and being located at the most southerly southeast corner of that certain tract of land described as Parcel 23 in Judgment Deed to the State of Texas recorded in Document Number 2021-227713, RPRDCT, and also being the most southerly southwest corner of that certain tract of land described as Parcel 22 in Judgment Deed to the State of Texas recorded in Document Number 2022-148109, RPRDCT;

THENCE South 01°46'43" West, with a west line of that certain tract of land described in deed to Spiritas Ranch Enterprises recorded in Volume 933, Page 38, RPRDCT, a distance of 365.87 feet to a 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set for corner at the location where a 3/8-inch iron rod was previously found;

THENCE North 88°28'02" West, with a north line of said Spiritas Ranch Enterprises tract recorded in Volume 933, Page 38, RPRDCT, a distance of 1388.25 feet to a 5/8-INCH iron rod with blue plastic cap stamped "BCG 10194538" set for corner, from which a 3/8-inch iron rod found at a northeast corner of said Spiritas Ranch Enterprises tract bears North 88°28'02" West, a distance of 621.28 feet, said set iron rod being the beginning of a non-tangent curve to the left;

THENCE over and across said Mary Caroline Mims, Katherine Ann Nash, and Laura Ellen Elizabeth Nash tract, the following courses to 5/8-inch iron rods with blue plastic cap stamped "BCG 10194538" set for corner:

North 77°03'04" East, a distance of 36.08 feet, and the beginning of a tangent curve to the right;

With said curve which has a central angle of 14°47'31", a radius of 1450.00 feet, a chord which bears North 84°24'49" East, a chord distance of 373.68 feet, and for an arc distance of 374.46 feet;

(CONTINUED)

(CONTINUED)

South 88°13'25" East, a distance of 773.86 feet;

North 46°46'35" East, a distance of 42.43 feet;

And North 01°46'35" East, a distance of 434.82 feet, said iron rod being located on said southerly right-of-way line of U.S. Highway No. 380 according to said Parcel 23;

THENCE South 88°28'02" East, with said southerly right-of-way line of U.S. Highway No. 380 according to Parcel 23, a distance of 185.85 feet to the POINT OF BEGINNING, containing an area of 2.656 acres of land.

NOTES:

There is no Title Commitment referenced for this survey (no additional easement research was performed).

The bearings shown and stated hereon are referenced to the Texas Coordinate System of 1983 ~ North Central Zone No. 4202 ~ NAD 83. (All distances are at face distances with a surface to grid scale factor of 0.999985363)

Subject property lies within Zone X (un-shaded area), defined as "Areas determined to be outside the 0.2% annual chance floodplain", according to Federal Emergency Management Agency Flood Insurance Rate Map for Denton County, Texas and Incorporated Areas, Number 48121C0430G, Revised Date: April 18, 2011.

Plat and deed calls shown recited hereon are referenced to previously filed recorded plats and deeds for subject and adjoining properties.

SURVEYOR'S CERTIFICATE

I, Jimmie D. Nichols, Registered Professional Land Surveyor, do hereby certify that I have made a careful and accurate survey of the above described property and that the plat shown hereon is a substantially true, correct and accurate representation of the property determined by survey. This survey substantially conforms to the current Texas Society of Professional Surveyors Standards and Specifications for a Category 1A, Condition II Survey.

FOR: BARRAZA CONSULTING GROUP, LLC

March 21, 2025

Jimmie D. Nichols, RPLS No. 5184

BOUNDARY SURVEY
2.656 ACRES
SITUATED IN THE
MARSELLA JONES SURVEY
~ ABSTRACT NO. 662
TOWN OF LITTLE ELM
DENTON COUNTY, TEXAS

BARRAZA CONSULTING GROUP, LLC
TBPLS FIRM REG. NO. 10194538
TBPE FIRM REG. NO. 20683
801 EAST CAMPBELL ROAD, STE. 650
RICHARDSON, TEXAS 75081
TELEPHONE - (214) 494-7555
PROJECT NO. 2019017-00
DATE March 2025

BEARINGS ON THE ENCLOSED SURVEY ARE

SCALE 1"=100'

PAGE 1 OF 1

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Stacey Shelby on behalf of Robert Brown
Bar No. 03164725
sshelby@bhlaw.net
Envelope ID: 77878842
Filing Code Description: Petition
Filing Description: Plaintiff Town of Little Elm's Original Petition for Condemnation
Status as of 7/26/2023 8:23 AM CST

Associated Case Party: Town of Little Elm, Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Robert Brown		rbrown@bhlaw.net	7/25/2023 5:10:45 PM	SENT

Associated Case Party: LauraElizabethKeck

Name	BarNumber	Email	TimestampSubmitted	Status
Benjamin Milton	24049465	tyler@dawsonsodd.com	7/25/2023 5:10:45 PM	SENT

Exhibit 2

Transfer on Death Deed

Denton County
Juli Luke
County Clerk

Instrument Number: 75752

Real Property Recordings

DEED

Recorded On: July 18, 2023 11:37 AM

Number of Pages: 8

" Examined and Charged as Follows: "

Total Recording: $54.00

********** THIS PAGE IS PART OF THE INSTRUMENT **********
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:		**Record and Return To:**
Document Number:	75752	LAURA KECK
Receipt Number:	20230718000329	15175 BIRMINGHAM HIGHWAY
Recorded Date/Time:	July 18, 2023 11:37 AM	
User:	Marlene F	ALPHARETTA GA 30004
Station:	Station 6	

STATE OF TEXAS
COUNTY OF DENTON

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Juli Luke
County Clerk
Denton County, TX

Transfer on Death Deed

IMPORTANT NOTICE TO PROPERTY OWNER: Carefully read all instructions for this form. It is always best to talk to a lawyer before using this form. For privacy reasons, do not put your social security number or driver's license number on this form. Do not file these instructions.

REQUIRED:

- **Must Sign and Date Transfer on Death Deed In Front of A Notary.**
- **Must Record Transfer on Death Deed Before Your Death:** You must record (*file*) this deed before your death with the county clerk where the property is located or it will not be effective.

1. Property Owner(s) (Transferors) Making this Deed. *Enter your first, middle (if any), and last name here, along with your mailing address. If more than one person owns the property, all owners must list this information.*

Katherine Rogers Nash	
Property Owner's Printed Name	Second Owner's Printed Name (If Applicable)
Mailing Address:	Mailing Address:
1386 Noel Drive, NE	
Address 1	*Address 1*
Address 2	*Address 2*
Brookhaven GA 30319	
City State Zip	*City State Zip*

2. Legal Description of the Property. *The legal description is not the mailing or physical address of the property. The legal description is listed on the deed to the property, which you should have gotten when you became an owner. This information may also be available at the county clerk's office in the county where the property is located. Do NOT use the legal description listed on your property tax bill because it may be incorrect. IT IS VERY IMPORTANT THAT THIS INFORMATION IS CORRECT. If you are not absolutely sure, talk to a lawyer.*

BEING all that certain lot, tract, or parcel of land situated in the M. Jones Survey Abstract Number 662 in Denton County, Texas, being all that certain tract of land conveyed by deed from Weldon Wayne Rogers and Helena Fuller Rogers to Mary Carolyn Mims et al recorded in Volume 4262, Page 877, Real Property Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a highway right-of-way disk found for corner in the south line of United States Highway Number 380, a public roadway having a variable width right-of-way, said point being the northeast corner of that certain "Tract 1" of land conveyed by deed from Highway 380 Corp. to Trail Dust Steak Houses, Inc. recorded in Volume 972, Page 884, Deed Records, Denton County, Texas;

THENCE S 79° 09' 13" E, 1177.77 feet with said south line of said U. S. Highway to an iron rod set for corner;

THENCE S 79° 46' 07" E, 99.83 feet with said south line of said U. S. Highway to a right-of-way disk found for corner;

THENCE S 79° 46' 07" E, 100.00 feet with said south line of said U. S. Highway to an iron rod set for corner;

THENCE S 80° 59' 54" E, 100.00 feet with said south line of said U. S. Highway to an iron rod set for corner;

THENCE S 43° 45' 46" E, 103.67 feet with said south line of said U. S. Highway to a fence for corner, said point being the northwest corner of that certain tract of land conveyed by deed from Walter E. Peterson and Dorothy Smith Rogers to Spiritas Ranch Enterprises recorded in Volume 1022, Page 393, Deed Records, Denton County, Texas;

THENCE S 02° 20' 12" W, 547.62 feet with the west line of said Spiritas Ranch tract to an iron rod found for corner in the north line of that certain tract of land conveyed by deed from J. Ray Pace, Jr. and Marjorie G. Pace to Spiritas Ranch Enterprises recorded in Volume 833, Page 38, Deed Records, Denton County, Texas;

Transfer on Death Deed

THENCE N 87° 56' 01" W, 1549.97 feet with said north line of said Spiritas Ranch tract to a fence post for corner, said point being the southeast corner of said Trail Dust Steak Houses tract;

THENCE N 02° 39' 29" E, 86.53 feet with the east line of said Trail Dust tract to an iron rod found for corner;

THENCE N 03° 18' 08" E, 753.73 feet with said east line of said Trail Dust tract to the **PLACE OF BEGINNING** and containing 25.560 acres of land, more or less.

Print legal description of the property.

3. Address of the Property (if any). *This is the physical address of the property. Include county.*

Address	*City*	*County*	*State*	*Zip Code*

Transfer on Death Deed

4. Primary and Alternate Beneficiaries. **MUST CHECK AND COMPLETE A, B, OR C (Check ONE and ONLY ONE):**

- *A "beneficiary" is the person who you want to own the property when you die.*
- *Section A: Fill out this section if you are married, and you and your spouse own the property together, and you want your spouse to own the property when you die.*
- *Section B: Fill out this section if you are married and you own the property by yourself – your spouse doesn't own any part of it – and you want your spouse to own the property when you die.*
- *Section C: Fill out this section in all other situations. See #4 in the detailed instructions to this form.*

☐ **A. Both Spouses Own the Property and Want to Leave to Surviving Spouse:** *Fill out this section if you are married, and you and your spouse own the property together, and you want your spouse to own the property when you die. Both spouses must sign the transfer on death deed.*

1) Primary Beneficiary is Surviving Spouse: The owners of this property are married to each other and are both signing this deed. If one of us dies and the other is living, the living spouse will be the sole owner of the property.

2) Alternate Beneficiary or Beneficiaries: *Enter the first, middle (if any), and last name of each person you want to get the property when both you and your spouse have died. This person(s) will be named the "beneficiary(ies)." You may list more than two beneficiaries by attaching a page with their name and mailing address.*

When we are both deceased, we want the following person(s) to own our property. This person(s) may or may not be our child, descendant, or a member of our family. If more than one alternate beneficiary is listed, they will own the property in equal shares.

Alternate Beneficiary *Print Name*	Second Alternate Beneficiary (Optional) *Print Name*
Mailing Address:	Mailing Address:
Address 1	*Address 1*
Address 2	*Address 2*
City *State* *Zip*	*City* *State* *Zip*

Transfer on Death Deed

☐ **B. Only One Spouse Owns the Property:** *Fill out this section if you are married and you own all or part of the property by yourself – your spouse doesn't own any part of it – and you want your spouse to own the property when you die.*

1) Primary Beneficiary: I designate my spouse as the primary beneficiary if I die before my spouse:

Joseph Adamson Nash
Spouse's Printed Name

Mailing Address:

1386 Noel Drive, NE
Address 1

Address 2

Brookhaven GA 30319
City *State* *Zip*

2) Alternate Beneficiary or Beneficiaries: *Enter the first, middle (if any), and last name of each person you want to get the property if your spouse dies before you. You may list more than two alternate beneficiaries by attaching a page with their name and mailing address.*

If my spouse dies before me, I want the following person(s) to own my property when I die. This person(s) may or may not be my child, descendant, or a member of my family. If more than one alternate beneficiary is listed, they will own the property in equal shares:

Alternate Beneficiary
Print Name

Mailing Address:

Address 1

Address 2

City *State* *Zip*

Second Alternate Beneficiary (Optional)
Print Name

Mailing Address:

Address 1

Address 2

City *State* *Zip*

☐ **C. Other:** *Fill out this section if neither section A or B apply to you, including if you are married and you do not want your share of the property to go to your spouse.*

1) Primary Beneficiary: *Enter the first, middle (if any), and last name of each person you want to get the property when you die. This person or people will be named the "beneficiary". You may list more than two primary beneficiaries by attaching a page with their name and mailing address.*

I want the following person(s) to own my property. This person(s) may or may not be my child, descendant, or a member of my family. If more than one primary beneficiary is listed, they will own the property in equal shares:

Primary Beneficiary *Print Name*	Second Primary Beneficiary (Optional) *Print Name*
Mailing Address:	Mailing Address:
Address 1	*Address 1*
Address 2	*Address 2*
City *State* *Zip*	*City* *State* *Zip*

2) Alternate Beneficiary or Beneficiaries: *Enter the first, middle (if any), and last name of each person you want to get the property if all primary beneficiaries die before you. You may list more than two alternate beneficiaries by attaching a page with their name and mailing address.*

If the primary beneficiary or beneficiaries die before me, I want the following person(s) to own my property. If more than one alternate beneficiary is listed, they will own the property in equal shares:

Alternate Beneficiary *Print Name* Mailing Address:	Second Alternate Beneficiary (Optional) *Print Name* Mailing Address:
Address 1	*Address 1*
Address 2	*Address 2*
City *State* *Zip*	*City* *State* *Zip*

Transfer on Death Deed

5. Transfer on Death

At my death, I convey to (*give*) the primary beneficiary or beneficiaries my interest in the property to have and hold forever. If all my primary beneficiaries die before I do, I grant and convey to (*give*) any listed alternate beneficiary or beneficiaries, my interest in the property to have and hold forever. If no primary or alternate beneficiary is alive when I die, this deed is canceled and has no force and effect, as if it had never been executed.

6. Signature of Property Owner(s) Making this Deed: ***Do not sign or date below until you are in front of a notary public.***

Kathy Rogers Nash
Owner's Signature

Second Owner's Signature (If Applicable)

June 30, 2023
Date

Date

FOR NOTARY TO COMPLETE
Acknowledgement

CRYSTAL JENNINGS NOTARY PUBLIC GWINNETT COUNTY EXPIRES GEORGIA 03-12-2027

STATE OF ~~Texas~~ Georgia
COUNTY OF ~~Denton~~ Gwinnett

This instrument was acknowledged before me on the 30 day of June, 2023, by

KATHY NASH.

Notary Public's Signature

After recording, please return to:

KATHERINE NASH
Owner's Name
Owner's Mailing Address:

1386 NOEL DRIVE NE
Address 1

Address 2
BROOKHAVEN, GA 30004
City *State* *Zip*

Exhibit 3

Deed Without Warranty

DEED WITHOUT WARRANTY

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DENTON §

For the consideration of the sum of **TEN AND NO/100 DOLLARS ($10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of all of which is hereby acknowledged and confessed, **LAURA ELIZABETH KECK, JOSEPH ADAMSON NASH,** and **MARY CAROLINE MIMS (hereinafter referred to collectively as "Grantors")** do hereby **GRANT, SELL, AND CONVEY** unto the **TOWN OF LITTLE ELM, TEXAS,** a home-rule municipality **("Grantee")**, that certain tract or parcel of land situated in Denton County, Texas, said tract or parcel being more particularly described in ***Exhibit A*** attached hereto and incorporated herein by reference (the **"Land"**), provided, however, there is excluded from the estate to be condemned all Reserved Minerals (hereinafter defined) as provided below.

THIS CONVEYANCE IS EXPRESSLY MADE AND ACCEPTED SUBJECT TO any and all easements, restrictions, mineral reservations and other matters affecting the Land, whether evidenced by instruments of record in Denton County, Texas, or elsewhere, disclosed by any survey of the Land or any part thereof or otherwise visible upon inspection of the Land (collectively, the **"Permitted Exceptions"**).

TO HAVE AND TO HOLD the Land, together with all and singular the rights and appurtenances thereto in anywise belonging to Grantors, unto Grantee and Grantee's heirs, legal representatives, successors and assigns forever (subject to the Permitted Exceptions), without express or implied warranty, and all warranties that might arise by common law and the warranties in §5.023 of the Texas Property Code (or its successor) are excluded.

GRANTEE ACKNOWLEDGES AND AGREES THAT THE LAND IS SOLD, CONVEYED, TRANSFERRED AND ASSIGNED ON AN "AS IS, WHERE IS" BASIS "WITH ALL FAULTS" AND WITHOUT WARRANTY OF TITLE AND THAT, GRANTORS MAKE NO REPRESENTATIONS OR WARRANTIES, TERMS, CONDITIONS, UNDERSTANDINGS OR COLLATERAL AGREEMENTS OF ANY NATURE OR KIND, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, CONCERNING THE LAND OR THE CONDITION, DESCRIPTION, QUALITY, USEFULNESS, QUANTITY OR ANY OTHER THING AFFECTING OR RELATING TO THE LAND, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE ALSO HEREBY EXPRESSLY DISCLAIMED. GRANTEE FURTHER ACKNOWLEDGES THAT GRANTORS HAVE MADE NO AGREEMENT OR PROMISE TO REPAIR OR IMPROVE ANY OF THE LAND BEING SOLD TO GRANTEE, AND THAT GRANTEE TAKES ALL SUCH LAND IN THE CONDITION

EXISTING ON THE DATE HEREOF "AS IS, WHERE IS" AND "WITH ALL FAULTS" AND WITHOUT WARRANTY OF TITLE.

Grantors hereby reserve all of Grantors' interest (if any) in and to all of the following (collectively, the "Reserved Minerals"): all oil, gas and other minerals and all hydrocarbon substances of every nature, in, on, and under and that may be produced from the Land. Grantors hereby expressly release and waive, on behalf of themselves and their respective successors and assigns in title to the Reserved Minerals, all rights of ingress and egress to enter upon the surface of the Land for purposes of exploring for, developing, drilling, producing, transporting, mining, treating, storing or any other purposes incident to the development or production of the Reserved Minerals. However, nothing herein contained shall ever be construed to prevent Grantors, and their respective successors and assigns, from developing or producing any of the Reserved Minerals by pooling, by directional drilling under the Land from well sites located on tracts other than the Land, or otherwise so long as Grantors avoid physically entering upon the surface of the Land.

When the context requires, singular nouns and pronouns include the plural.

(Signatures to Follow)

IN WITNESS WHEREOF, the Grantors have caused this Deed Without Warranty to be **EXECUTED and EFFECTIVE** on this the _____ day of _____, 2023.

GRANTORS:

LAURA ELIZABETH KECK

By: _____

Date: _____

JOSEPH ADAMSON NASH

By: _____

Date: _____

MARY CAROLINE MIMS

By: _____

Date: _____

GRANTEE:

TOWN OF LITTLE ELM, TEXAS

By: _____
Matt Mueller, Town Manager

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Laura Elizabeth Keck.

_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Joseph Adamson Nash.

_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Mary Caroline Mims

_____
Notary Public, State of _____

Notary's name (printed): _____

Notary's commission expires: _____

Grantee accepts this Deed Without Warranty and consents to its form and substance.

STATE OF TEXAS §
§
COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2023, by Mr. Matt Mueller, Town Manager, on behalf of the Town of Little Elm, Texas.

_____
Notary Public, State of Texas

Notary's name (printed): _____

Notary's commission expires: _____

Exhibit A

Legal Description

LEGAL DESCRIPTION

BEING that certain tract of land situated in the Marsella Jones Survey, Abstract Number 662, in the Town of Little Elm, Denton County, Texas, and being part of that certain tract of land described in deed to Mary Caroline Mims, Katherine Ann Nash, and Laura Eliza Elizabeth Keck recorded in Volume 4262, Page 877, of the Real Property Records of Denton County, Texas (RPRDCT), and being more particularly described by metes and bounds as follows:

BEGINNING at 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set on the southerly right-of-way line of U.S. Highway No. 380 (variable width right-of-way), and being located at the most southerly southeast corner of that certain tract of land described as Parcel 25 in Judgement Deed to the State of Texas recorded in Document Number 2021-227713, RPRDCT, and also being the most southerly southwest corner of that certain tract of land described as Parcel 28 in Judgement Deed to the State of Texas recorded in Document Number 2022-148109, RPRDCT;

THENCE South 01°49'47" West, with a west line of that certain tract of land described in deed to Spiritas Ranch Enterprises recorded in Volume 833, Page 38, RPRDCT, a distance of 363.07 feet to a 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set for corner at the location where a 3/8-inch iron rod was previously found;

THENCE North 88°28'06" West, with a north line of said Spiritas Ranch Enterprises tract recorded in Volume 833, Page 38, RPRDCT, a distance of 1398.25 feet to a 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set for corner, from which a 3/8-inch iron rod found at a northwest corner of said Spiritas Ranch Enterprises tract bears North 88°28'06" West, a distance of 621.33 feet, said set iron rod being the beginning of a non-tangent curve to the left;

THENCE over and across said Mary Caroline Mims, Katherine Ann Nash, and Laura Eliza Elizabeth Keck tract, the following courses to 5/8-inch iron rods with blue plastic cap stamped "BCG 10194538" set for corner:

North 77°03'04" East, a distance of 36.00 feet, and the beginning of a tangent curve to the right;

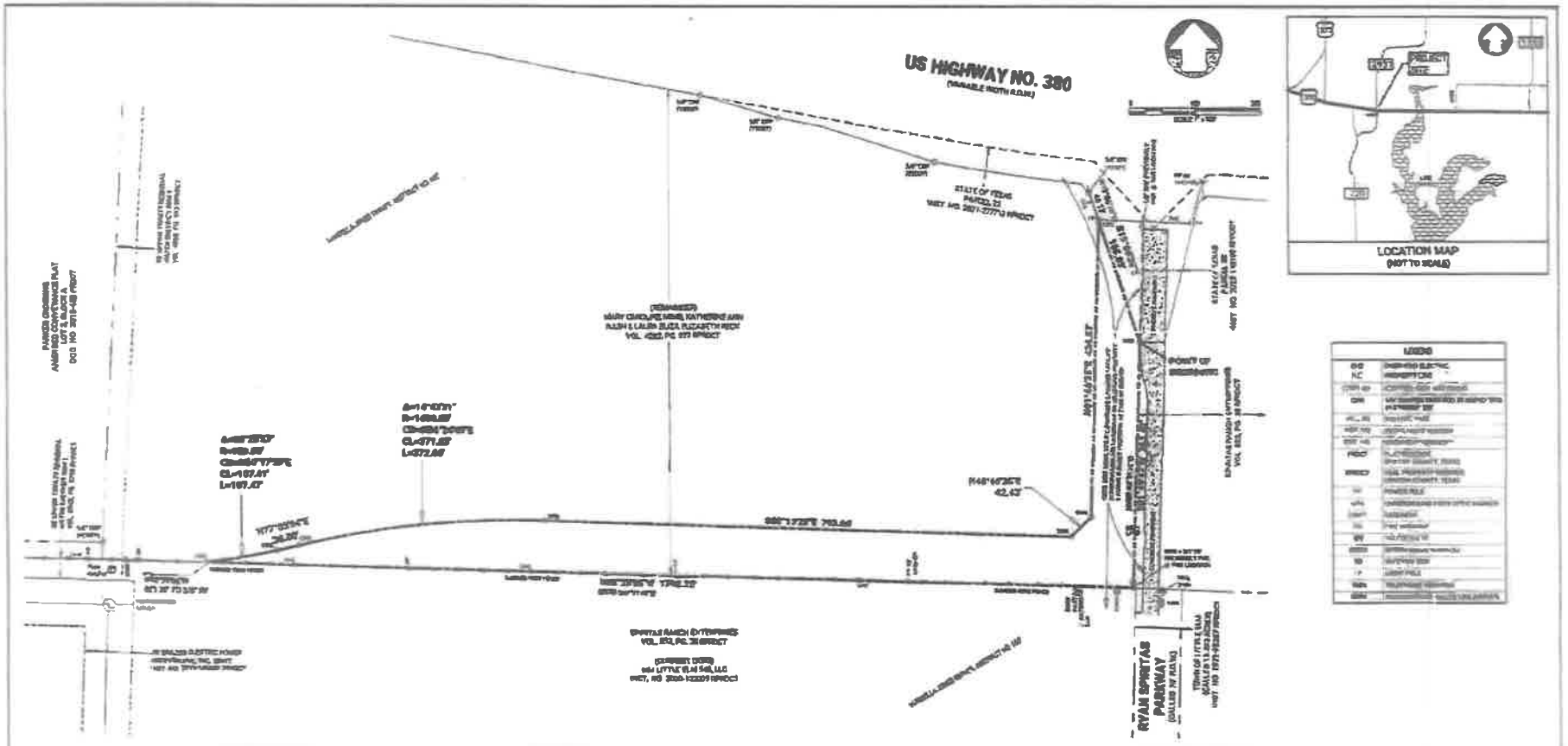
With said curve which has a central angle of 14°43'31", a radius of 1450.00 feet, a chord which bears North 84°24'49" East, a chord distance of 371.63 feet, and for an arc distance of 372. 66feet;

South 88°13'25" East, a distance of 793.66 feet;

North 46°46'35" East, a distance of 42.43 feet;

And North 01°46'35" East, a distance of 434.52 feet, said iron rod being located on said southerly right-of-way line of U.S. Highway No. 380 according to said Parcel 25;

THENCE South 19°06'38" East, with said southerly right-of-way line of U.S. Highway No. 380 according to Parcel 25, a distance of 185.85 feet to the POINT OF BEGINNING, containing an area of 2.656 acres of land.



LEGAL DESCRIPTION

BEING that certain tract of land situated in the Marsella Jones Survey, Abstract Number 662, in the Town of Little Elm, Denton County, Texas, and being part of that certain tract of land described in deed to Mary Caroline Mims, Katherine Ann Nash, and Laura Eliza Elizabeth Neck recorded in Volume 4362, Page 977, of the Real Property Records of Denton County, Texas (RPRDCT), and being more particularly described by metes and bounds as follows:

BEGINNING at 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set on the southerly right-of-way line of U.S. Highway No. 380 (variable width right-of-way), and being located at the most southerly southeast corner of that certain tract of land described as Parcel 25 in Judgement Deed to the State of Texas recorded in Document Number 2021-277713, RPRDCT, and also being the most southerly southwest corner of that certain tract of land described as Parcel 28 in Judgement Deed to the State of Texas recorded in Document Number 2022-149105, RPRDCT;

THENCE South 01°46'57" West, with a west line of that certain tract of land described in deed to Spiritas Ranch Enterprises recorded in Volume 833, Page 38, RPRDCT, a distance of 368.07 feet to a 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set for corner at the location where a 3/8-inch iron rod was previously found;

THENCE North 88°27'56" West, with a north line of said Spiritas Ranch Enterprises tract recorded in Volume 833, Page 38, RPRDCT, a distance of 1398.25 feet to a 5/8-inch iron rod with blue plastic cap stamped "BCG 10194538" set for corner, from which a 3/8-inch iron rod found at a northwest corner of said Spiritas Ranch Enterprises tract bears North 88°27'56" West, a distance of 621.33 feet, said set iron rod being the beginning of a non-tangent curve to the left;

THENCE over and across said Mary Caroline Mims, Katherine Ann Nash, and Laura Eliza Elizabeth Neck tract, the following courses to 5/8-inch iron rods with blue plastic cap stamped "BCG 10194538" set for corner:

North 77°03'04" East, a distance of 34.09 feet, and the beginning of a tangent curve to the right;

With said curve which has a central angle of 14°47'31", a radius of 1463.00 feet, a chord which bears North 84°24'49" East, a chord distance of 371.51 feet, and for an arc distance of 372.68 feet;

(CONTINUED)

(CONTINUED)

South 89°13'25" East, a distance of 793.66 feet;

North 46°46'35" East, a distance of 42.43 feet;

And North 01°46'35" East, a distance of 434.52 feet, said iron rod being located on said southerly right-of-way line of U.S. Highway No. 380 according to said Parcel 25;

THENCE South 19°06'28" East, with said southerly right-of-way line of U.S. Highway No. 380 according to Parcel 25, a distance of 165.85 feet to the POINT OF BEGINNING, containing an area of 2.656 acres of land.

NOTES:

There is no Title Commitment referenced for this survey (no additional easement research was performed).

The bearings shown and recited hereon are referenced to the Texas Coordinate System of 1983 – North Central Zone No. 4202 - NAD 83. (All distances are surface distances; with a surface to grid scale factor of 0.99988406).

Subject property lies within Zone X (un-shaded area), defined as "Areas determined to be outside the 0.2% annual chance floodplain", according to Federal Emergency Management Agency Flood Insurance Rate Map for Denton County, Texas and Incorporated Areas, Number 48121C0465E, Revision Date April 18, 2011.

Plat and deed calls shown recited hereon are referenced to previously filed recorded plats and deeds for subject and adjoining properties.

SURVEYOR'S CERTIFICATE

I, Jerrale D. Nichols, Registered Professional Land Surveyor, do hereby certify that I have made a careful and accurate survey of the above described property and that the plat shown hereon is a substantially true, correct and accurate representation of the property determined by survey. This survey substantially conforms to the current Texas Society of Professional Surveyors Standards and Specifications for a Category 1A, Condition II Survey.

FOR: BARRAZA CONSULTING GROUP, LLC:

March 21, 2023

Jerrale D. Nichols, RPLS No. 5184

BOUNDARY SURVEY
2.656 ACRES
SITUATED IN THE
MARSELLA JONES SURVEY
~ ABSTRACT NO. 662
TOWN OF LITTLE ELM
DENTON COUNTY, TEXAS

BARRAZA CONSULTING GROUP, LLC
TBPLS FIRM REG. NO. 10194538
TBPE FIRM REG. NO. 20683
801 EAST CAMPBELL ROAD, STE. 650
RICHARDSON, TEXAS 75081
TELEPHONE - (214)-484-7055

PROJECT NO. 2019017-00
DATE March 2023

SURVEYOR ON THE GROUND DURING MARCH 2023

SCALE 1"=100'

PAGE 1 OF 1

Exhibit 4

November 30, 2022, letter from David J. Bond, P.E, to Tyler Milton

SPIARS
ENGINEERING & SURVEYING

501 W President George Bush Hwy Suite 200| Richardson, TX 75080
Main 972 422 0077 | www.spiarseng.com
TBPE Reg. F-3727 | TBPLS Reg. F-10043100

November 30, 2022

Mr. Tyler Milton
Dawson and Sodd, PLLC
8333 Douglas Avenue, Suite 380
Dallas, Texas 75225

Re: **Keck Tract ROW Acquisition Review**
Little Elm, Texas
SEI Job No. 22-256

Dear Mr. Milton:

Please accept this letter of review for the proposed Right-of-Way acquisitions associated with Ryan Spiritas Parkway and Spiritas Ranch Parkway located along the east and south sides respectively of the subject tract. The subject property (referred to herein as the "Keck Tract") of this review and investigation is a 24.5758 acre parcel of land according to the Denton County Central Appraisal District and is located along the south side of US Highway 380 at the southwest corner of FM 2931. This letter is based upon review of the Ryan Spiritas Parkway Construction Plans prepared by Barraza Consulting Group, LLC, and dated November 23, 2021, as well as the appraisal documents provided by your office for the two subject acquisition parcels.

The south leg of existing FM 2931 is known as Ryan Spiritas Parkway and is one of the proposed acquisition parcels. The future intersection of US 380 at Ryan Spiritas Parkway is signalized and it appears that sufficient ROW has already been acquired with TxDOT. The proposed Ryan Spiritas ROW acquisition appears to be for half of the ultimate 140' ROW section noted on the City of Little Elm's Thoroughfare Plan. Based on the proposed intersection alignment, only two right-in, right-out driveways will be allowed along this frontage. No left turn movements from northbound Ryan Spiritas Ranch Parkway will be allowed.

Spiritas Ranch Parkway runs along the south side of the Keck Tract and is an apparent proposed 4 lane divided 100 foot ROW. Further east of the Keck Tract, the alignment of Spiritas Ranch Parkway is shifted further south, apparently to avoid a overhead electric transmission tower and/or potential ROW acquisition from the neighboring HEB Grocery owned parcel to the west. It is not immediately evident upon review of the documents why Spiritas Ranch Parkway needs to meander further north onto the Keck Tract, rather than continuing to the east abutting the south line of the Keck Tract.

It is recommended that the Keck Tract request the following considerations from the adjacent developer:

1. Extension of water mains to the Keck Tract. The Barazza plans indicate 12" PVC water is brought to the southeast corner of Spiritas Ranch Parkway and Ryan Spiritas Parkway. This can easily be extended/stubbed to the Keck Tract with the initial utility construction which will avoid the need for future developers to bore underneath the roadway for the future connections. Accordingly, water is likely to be ultimately run along Spiritas Ranch Parkway, although those plans and documentation are not available at this time. An additional waterline stub at the mid point and southwest corner of the Keck tract are recommended.
2. Extension of Sanitary Sewer to the Keck Tract. The Barazza Plans do not indicate Sanitary Sewer service to serve the lots south of Spiritas Ranch Parkway, but it is recommended that the developer extend 8" PVC sanitary sewer to the Keck Tract along the south property line. There may be potential service availability and capacity issues to be worked out with Mustang Special Utility District that could prevent this extension from being utilized by future development on the Keck Tract, but a stub at this time would still be an appropriate request of the developer.
3. Access from adjacent roadways. Access to the subject roadways will ultimately be permitted by the Town of Little Elm. Absent any imminent development, no driveway cuts are requested at this time along either roadway. However, it is recommended that the median cut locations along Spiritas Ranch Parkway be designed and built with a eastbound left turn lane at each to allow for future access into the Keck Tract.

Thank you for the opportunity to be of service to you in this matter. Should you have any additional questions or concerns in this matter, please do not hesitate to reach out.

Regards,

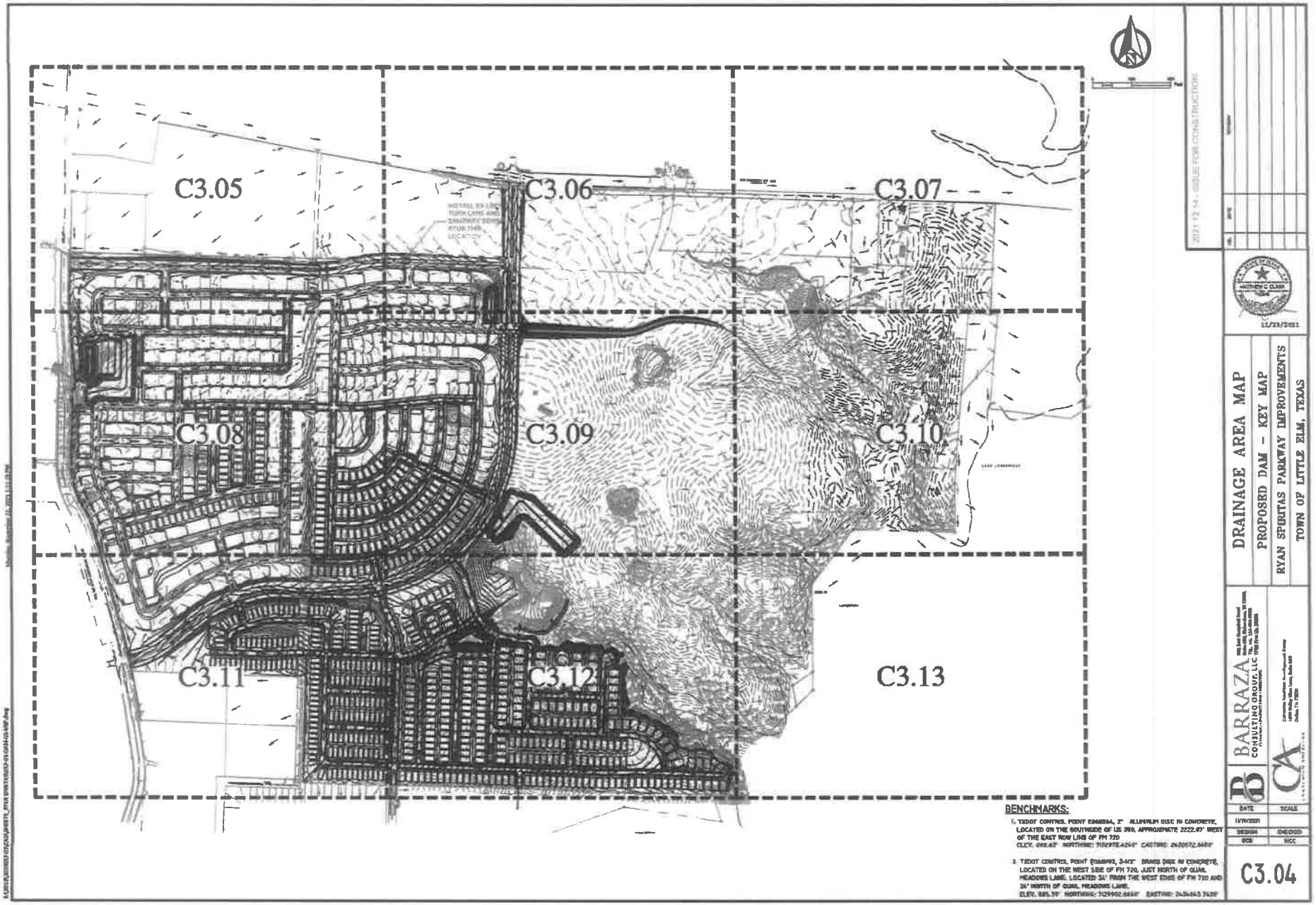
Spiars Engineering, Inc.

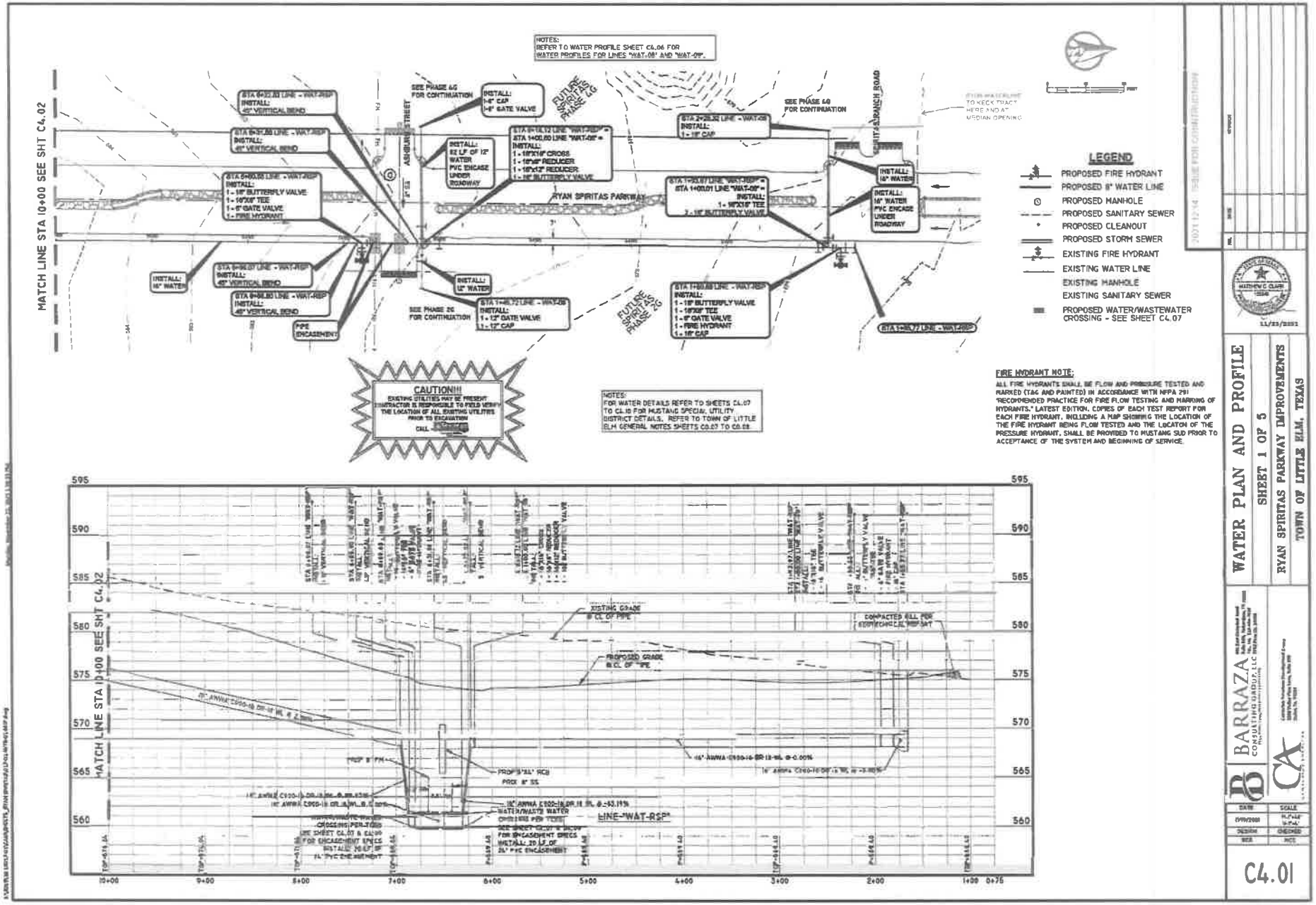
David J. Bond, P.E.

SPIARS ENGINEERING & SURVEYING

KECK TRACT IMPROVEMENT EXHIBIT

IN THE TOWN OF LITTLE ELM, DENTON COUNTY, TEXAS


C3.05
C3.06
C3.07
C3.08
C3.09
C3.10
C3.11
C3.12
C3.13
N
BENCHMARKS:
1. TXDOT CONTROL POINT ESMERA, 2" ALUMINUM DISC IN CONCRETE, LOCATED ON THE SOUTHSIDE OF US 380, APPROXIMATE 2222.67' WEST OF THE EAST ROW LINE OF FM 720
2. TXDOT CONTROL POINT (CHANEY, 3-1/2" BRASS DISK IN CONCRETE, LOCATED ON THE WEST SIDE OF FM 720, JUST NORTH OF GUAL MEADOWS LANE, LOCATED 32' FROM THE WEST EDGE OF FM 720 AND 26' NORTH OF GUAL MEADOWS LANE.
2021 12 14 - ISSUE FOR CONSTRUCTION
11/23/2021
DRAINAGE AREA MAP
PROPOSED DAM - KEY MAP
RYAN SPIRITAS PARKWAY IMPROVEMENTS
TOWN OF LITTLE ELM, TEXAS
BARRAZA CONSULTING GROUP, LLC
DATE 11/19/2021
SCALE
DESIGN
CHECKED
DCH
MCC
C3.04


NOTES:
REFER TO WATER PROFILE SHEET C4.06 FOR WATER PROFILES FOR LINES "WAT-08" AND "WAT-09".
MATCH LINE STA 10+00 SEE SHT C4.02
SEE PHASE 4G FOR CONTINUATION
INSTALL: 1-6" CAP 1-6" GATE VALVE
FUTURE RYAN SPIRITAS PHASE 4G
ASHBURN STREET
INSTALL: 82 LF OF 12" WATER PVC ENCASE UNDER ROADWAY
STA 9+78.12 LINE "WAT-RSP" = STA 14+00.00 LINE "WAT-08" = INSTALL: 1 - 16"X16" CROSS 1 - 16"x8" REDUCER 1 - 16"x12" REDUCER 1 - 16" BUTTERFLY VALVE
RYAN SPIRITAS PARKWAY
SEE PHASE 4G FOR CONTINUATION
STA 2+29.82 LINE - WAT-08 INSTALL: 1 - 12" CAP
STA 1+00.01 LINE "WAT-08" = STA 14+00.01 LINE "WAT-09" = INSTALL: 1 - 16"X16" TEE 2 - 16" BUTTERFLY VALVE
INSTALL: 16" WATER
INSTALL: 16" WATER PVC ENCASE UNDER ROADWAY
STA 9+97.85 LINE - WAT-RSP INSTALL: 45° VERTICAL BEND
STA 9+57.85 LINE - WAT-RSP INSTALL: 45° VERTICAL BEND
STA 9+50.85 LINE - WAT-RSP INSTALL: 1 - 16" BUTTERFLY VALVE 1 - 16"X16" TEE 1 - 6" GATE VALVE 1 - FIRE HYDRANT
INSTALL: 16" WATER
STA 9+78.85 LINE - WAT-RSP INSTALL: 45° VERTICAL BEND
STA 9+78.85 LINE - WAT-RSP INSTALL: 45° VERTICAL BEND
PIPE ENCASEMENT
INSTALL: 16" WATER
SEE PHASE 2G FOR CONTINUATION
STA 1+46.72 LINE - WAT-08 INSTALL: 1 - 12" GATE VALVE 1 - 12" CAP
FUTURE RYAN SPIRITAS PHASE 2G
STA 1+46.72 LINE - WAT-RSP INSTALL: 1 - 16" BUTTERFLY VALVE 1 - 16"X16" TEE 1 - 6" GATE VALVE 1 - FIRE HYDRANT 1 - 16" CAP
STA 1+46.77 LINE - WAT-RSP
CAUTION!!! EXISTING UTILITIES MAY BE PRESENT. CONTRACTOR IS RESPONSIBLE TO FIELD VERIFY THE LOCATION OF ALL EXISTING UTILITIES PRIOR TO EXCAVATION
CALL
NOTES: FOR WATER DETAILS REFER TO SHEETS C4.07 TO C4.10 FOR MUSTANG SPECIAL UTILITY DISTRICT DETAILS. REFER TO TOWN OF LITTLE ELM GENERAL NOTES SHEETS C0.07 TO C0.08.
LEGEND
PROPOSED FIRE HYDRANT
PROPOSED 8" WATER LINE
PROPOSED MANHOLE
PROPOSED SANITARY SEWER
PROPOSED CLEANOUT
PROPOSED STORM SEWER
EXISTING FIRE HYDRANT
EXISTING WATER LINE
EXISTING MANHOLE
EXISTING SANITARY SEWER
PROPOSED WATER/WASTEWATER CROSSING - SEE SHEET C4.07
FIRE HYDRANT NOTE:
ALL FIRE HYDRANTS SHALL BE FLOW AND PRESSURE TESTED AND MARKED (TAG AND PAINTED) IN ACCORDANCE WITH NFPA 291 "RECOMMENDED PRACTICE FOR FIRE FLOW TESTING AND MARKING OF HYDRANTS." LATEST EDITION. COPIES OF EACH TEST REPORT FOR EACH FIRE HYDRANT, INCLUDING A MAP SHOWING THE LOCATION OF THE FIRE HYDRANT BEING FLOW TESTED AND THE LOCATION OF THE PRESSURE HYDRANT, SHALL BE PROVIDED TO MUSTANG SUD PRIOR TO ACCEPTANCE OF THE SYSTEM AND BEGINNING OF SERVICE.
595
590
585
580
575
570
565
560
MATCH LINE STA 10+00 SEE SHT C4.02
EXISTING GRADE @ CL OF PIPE
PROPOSED GRADE @ CL OF PIPE
COMPACTED FILL PER GEOTECHNICAL REPORT
PROP 8" FH
PROP 8"SL" RCB PROP 8" SS
WATER/WASTE WATER CROSSING PER TCEQ
LINE-"WAT-RSP"
SEE SHEET C4.07 & C4.09 FOR ENCASEMENT SPECS INSTALL: 20 LF OF 24" PVC ENCASEMENT
10+00
9+00
8+00
7+00
6+00
5+00
4+00
3+00
2+00
1+00
0+75
11/23/2021
WATER PLAN AND PROFILE
SHEET 1 OF 5
RYAN SPIRITAS PARKWAY IMPROVEMENTS
TOWN OF LITTLE ELM, TEXAS
BARRAZA CONSULTING GROUP, LLC
DATE 09/09/2021
SCALE H:1"=40' V:1"=4'
DESIGN
CHECKED
DRAWN
PIC
C4.01

Date:	12/05/2023
Agenda Item #:	4. Y.
Department:	Administrative Services
Strategic Goal:	Ensure strong relationship within the community and region
Staff Contact:	Joe Florentino, Assistant Town Manager

AGENDA ITEM:

Consider Action to Approve an **Interlocal Agreement for Fire Protection Services between the Town of Little Elm and Denton County Fresh Water Supply Districts 8-A, 8-B, 11-A, 11-B, and 11-C.**

DESCRIPTION:

As part of the Strategic Plan, one of the Town's objectives is to operate as a service provider for neighboring communities and districts where possible. The Board of Directors for Denton County Fresh Water Supply Districts 8-A, 8-B, 11-A, 11-B, and 11-C has determined that it is in the best interest of the Districts and residents of the Paloma Creek developments to enter into a long-term contract with the Town to provide firefighting services to the area.

BUDGET IMPACT:

There is no cost to the Town. The Town will see an increase in revenue associated with this contract in FY 2024-2025.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Contract

THE STATE OF TEXAS §
§
COUNTY OF DENTON §

INTERLOCAL AGREEMENT FOR FIRE PROTECTION SERVICES BETWEEN THE TOWN OF LITTLE ELM, TEXAS, AND DENTON COUNTY FRESH WATER SUPPLY DISTRICTS 8-A, 8-B, 11-A, 11-B, AND 11-C

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 Denton County Fresh Water Supply Districts 8-A, 8-B, 11-A, 11-B, and 11-C (the "Districts"). The Town and the Districts are referred to herein collectively as "the Parties" and separately as "Party."

WHEREAS, The Districts are political subdivisions 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, The Districts are seeking to secure firefighting services for the benefit of the residents and property owners within the boundaries of the Paloma Creek developments located within the Districts, as described in the attached Exhibit "A"; and

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

WHEREAS, Sections 49.212 and 49.351 of the Texas Water Code authorize the Districts 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 May 4, 2024, a majority of the Districts 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, The Districts' Board of Directors has determined that it is in the best interests of the Districts and residents of the Paloma Creek 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 Districts 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 Districts Obligations. The Parties understand that, pursuant to applicable law and the rules of the TCEQ, before this Agreement may become effective, the Districts 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 Districts' voters voting in an election (an "Election") properly called and held by the Districts for such purpose. The foregoing shall constitute conditions precedent to this Agreement becoming effective as to the Districts. 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 Area is 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.

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 Districts, but the Town will not be responsible for inspecting and maintaining any part of the Water System within the Districts. In addition, the Town will not be liable to Districts 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 Districts, the Town will provide, at cost to the Districts, 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 Districts 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 Districts 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 Districts 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 Districts (i) do 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- $21.11
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 calculations. The Town shall then send monthly invoices to the Districts representing the calculated Costs for the rest of the quarter. On or before the first day of the subsequent quarter, the Districts 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 previously made and invoice the Districts 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 Districts shall remit payment to the Town within 30 days following the receipt of the monthly invoice form the Town.

Section 6
Notices

All notices give 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
Little Elm, TX 75068
(972) 377-1898

If to Districts:

Presidents, Board of Directors
c/o Allen Boone Humphries Robinson LLP
4514 Cole Avenue, Suite 1450
Dallas, TX 75205
972) 823-0800

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 the Districts 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 the Districts, as applicable, to make payments described in Section 5, but only after (i) Town provides written notice to the Districts 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) Districts Termination. The Districts' 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 the Districts 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) Districts' 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, Districts will be free to seek the services contemplated by this Agreement from any source available to the Districts.

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) Districts. Nothing stated herein shall be construed as a waiver of all the protections afforded to the Districts as sovereign governmental units. Districts 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 Districts, 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 Districts.

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 the Town or the Districts 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, offers, 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 of 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 enforce 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 _____, 2023.

TOWN OF LITTLE ELM, TEXAS

_____

_____, Mayor

ATTEST:

_____

Town Secretary

STATE OF TEXAS §

COUNTY OF DENTON §

Before me on _____, ____, 2023, the undersigned notary public appeared _____, Mayor of the Town of Little Elm, and executed the foregoing agreement for the purposes therein expressed on behalf of such municipality.

_____

Notary Public in and for the State of Texas

SIGNED AND AGREED this 16th day of October, 2023.

DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 11-A

Nikki Gantzert, President

STATE OF TEXAS §

COUNTY OF DENTON §

Before me on October, 16, 2023, the undersigned notary public appeared Nikki Gantzert, President of Denton County Fresh Water Supply District No. 11-A, and executed the foregoing agreement for the purposes therein expressed on behalf of such district.

Notary Public in and for the State of Texas

SIGNED AND AGREED this 16th day of October, 2023.

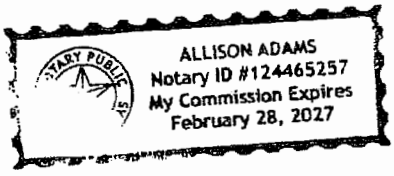
DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 11-B

David M. McClellan
David M. McClellan, President

STATE OF TEXAS §

COUNTY OF DENTON §

Before me on October, 16, 2023, the undersigned notary public appeared David McClellan, President of Denton County Fresh Water Supply District No. 11-B, and executed the foregoing agreement for the purposes therein expressed on behalf of such district.



Allison Adams
Notary Public in and for the State of Texas

SIGNED AND AGREED this 26th day of October, 2023.

DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 11-C

Robbie Patman, President

STATE OF TEXAS §

COUNTY OF DENTON §

Before me on October, 26, 2023, the undersigned notary public appeared Robbie Patman, President of Denton County Fresh Water Supply District No. 11-C, and executed the foregoing agreement for the purposes therein expressed on behalf of such district.

JENNIFER BENCHECK
Notary Public, State of Texas
Comm. Expires 11-08-2026
Notary ID 134055065

Notary Public in and for the State of Texas

SIGNED AND AGREED this 24th day of October, 2023.

DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 8-A

Jason Shipley, President

STATE OF TEXAS §

COUNTY OF DENTON §

Before me on October 24, 2023, the undersigned notary public appeared Jason Shipley, President of Denton County Fresh Water Supply District No. 8-A, and executed the foregoing agreement for the purposes therein expressed on behalf of such district.

ALLISON ADAMS
Notary ID #124465257
My Commission Expires
February 28, 2027

Notary Public in and for the State of Texas

SIGNED AND AGREED this 18th day of October, 2023.

DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 8-B

David Harrison, President

STATE OF TEXAS §

COUNTY OF DENTON §

Before me on October, 18, 2023, the undersigned notary public appeared David Harrison, President of Denton County Fresh Water Supply District No. 8-B, and executed the foregoing agreement for the purposes therein expressed on behalf of such district.

Notary Public in and for the State of Texas

ALLISON ADAMS
Notary ID #124465257
My Commission Expires
February 28, 2027

Date:	12/05/2023
Agenda Item #:	4. Z.
Department:	Administrative Services
Strategic Goal:	Ensure strong relationship within the community and region
Staff Contact:	Joe Florentino, Assistant Town Manager

AGENDA ITEM:

Consider Action to Approve an **Interlocal Agreement for Fire Protection Services between the Town of Little Elm and Elm Ridge Water Control and Improvement District of Denton County.**

DESCRIPTION:

As part of the Strategic Plan, one of the Town's objectives is to operate as a service provider for neighboring communities and districts where possible. The Board of Directors for Elm Ridge Water Control and Improvement District of Denton County has determined that it is in the best interest of the Districts and residents of the Savannah and ArrowBrooke developments to enter into a long-term contract with the Town to provide firefighting services to the area.

BUDGET IMPACT:

There is no cost to the Town. The Town will see an increase in revenue associated with this contract in FY 2024-2025.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Elm Ridge Contract

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

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 form the Town.

Section 6
Notices

All notices give 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, offers, 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 of 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 enforce 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.

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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

_____
Mayor

ATTEST:

_____
Town Secretary

ELM RIDGE WATER CONTROL AND IMPROVEMENT DISTRICT OF DENTON COUNTY

_____
President

ATTEST:

_____
District Secretary

ELM RIDGE WATER CONTROL AND IMPROVEMENT DISTRICT OF DENTON COUNTY TEXAS

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.

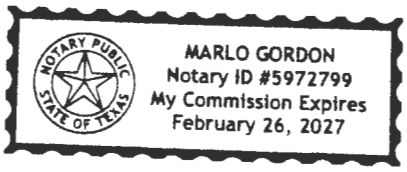
[SEAL]

_____
Notary Public, State of Texas

THE STATE OF TEXAS §
COUNTY OF DENTON §

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

Date:	12/05/2023
Agenda Item #:	5. A.
Department:	Development Services
Strategic Goal:	Promote and expand Little Elm's identity
Staff Contact:	Olga Chernomorets, Planning Manager

AGENDA ITEM:

Hold a Public Hearing, Present, Discuss, and Consider Action on **Ordinance No. 1742 Regarding a Request to Rezone Approximately 35 Acres of Land, Currently Zoned as Planned Development Based on Light Commercial and Multifamily District Standards Through Ordinance No. 1589, as Amended by Ordinance No. 1713, Generally Located on the Northwest Corner of US Highway 380 and FM 2931, within Little Elm's Town Limits, in Order to Amend the Existing Concept Plan to Provide for Modifications to the Internal Site Layout.**

Open Public Hearing:
Receive Public Comments:
Close Public Hearing:
Take Action on Ordinance No. 1742:

DESCRIPTION:

Location.
Generally located on the northwest corner of US Highway 380 and FM 2931, within Little Elm's town limits.

Background.
The subject property consists of 14 lots in various stages of development, totaling approximately 35 acres. This land was annexed into the Town in 2014, through Ordinance No. 1247. The subject property is currently zoned Planned Development (PD), with both Light Commercial (LC) and Multifamily (MF) base uses, through Ordinance No. 1283, as amended by Ordinance No. 1589 in 2021. The property is located within the Town's U.S. 380 Overlay District.

Originally, the existing PD was envisioned as a large-scale mixed-use development, providing for multifamily residential along the northern and western portion, utilizing the remainder of the land for retail/commercial uses anchored by a large big-box tenant. The overall PD area had been subdivided into several parcels, and the remaining undeveloped commercial tracts sold off. The land within the PD currently contains a recently completed, approximately 10-acre,

multifamily community development in the northwestern quadrant, a gas station and Brakes Plus on the southeastern corner, at Highway 38 and FM 2931, and a Specific Use Permit (SUP) for a drive-thru restaurant that's currently under construction along the southern boundary, fronting Highway 380. The Hillstone Point Residential Subdivision is adjacent to the north and west boundaries. The Town Limits with Providence Village is on the eastern boundary. And to the south is Highway 380, with Agricultural zoned land on the south side.

The original concept site plan depicted multiple pad sites along the road frontages of Highway 380 and FM 2931 and a "big box" retail in the center of the property, with access lanes throughout the site.

In March 2022, the property owner of the largest, internal commercial tract, submitted a rezoning request to amend the existing PD in order to further subdivide into several parcels and sell them off for individual development, primarily for office uses, as well as a Montessori school. This request was denied by the Planning and Zoning Commission due to not meeting the original intent of the PD.

Since the denial, the property owner has committed to searching for a big box tenant for this property without any traction. Due to existing and new development in proximity to this property, there has not been any interest from big box tenants to locate on this specific property. Therefore, in coordination with Staff and the EDC, the property owner has been exploring other possible anchor tenants that could still meet the intent of the PD. The property owner has found potential interested tenants for hotel uses and mid-size retailers; this however, slightly alters the concept site plan in the original PD.

Proposal.
The applicant is proposing to amend the concept site plan in the original PD, allowing the subdivision of the largest interior commercial tract into four smaller commercial tracts. The applicant's proposal includes a sidewalk concept plan to ensure the site provides easy pedestrian access and connectivity, and a planting plan for the detention pond on the northeast corner of the site.

Uses.
The primary purpose of this concept plan revision is to change the interior lot to allow for multiple buildings of a smaller footprint, with two hotels as the primary tenants. There are three types of hotel uses in the Town's Use Chart. The three are described below:

Hotel, Full Service would be allowed by right. A full service hotel is considered a top tier hotel in terms of amenities and service provided to the clientele. (See section 106.05.02.2(m), "hotel, full-service" for regulations)

Section 106.05.02 of Town Code states that all of the following should be included as amenities at a Full Service Hotel:

1. A minimum of 80 guest rooms and/or suites;
2. A minimum of 4,000 square feet of meeting room space;
3. A minimum of one restaurant that provides three meals per day with on-site preparation and service provided by wait staff, hostesses, etc. and seating for a minimum of 30 customers;
4. Guest room access from an interior hallway;
5. Minimum of 800 square feet of pool surface area; and
6. Attached covered drive-through area adjacent to the hotel lobby or reception area.

Hotel, Limited Service would require a Specific Use Permit (SUP). A limited service hotel provides travelers an economical choice with fewer amenities than a full-service hotel. (See section 106.05.02.2(n), "hotel, limited-service" for regulations)

Section 106.05.02 of Town Code states that all of the following should be included as amenities at a Limited Service Hotel:
a. A minimum of 700 square feet of meeting room space;
b. Limited food and beverage service, but including breakfast buffet service;
c. Guest room access from an interior hallway;
d. Minimum of 400 square feet of pool surface area; and
e. Attached covered drive-through area adjacent to the hotel lobby or reception area.

Hotel, Extended Stay would require a SUP. A building or group of buildings used as a temporary dwelling place for individuals in exchange for financial consideration where customary hotel services such as linen, housekeeping service, and telephone are provided. Residence hotel room units are designed to be suitable for long term occupancy with financial consideration typically being calculated on a weekly and/or monthly basis. Typical residence hotel attributes include, but are not limited to, kitchen facilities, and external doorways into room units. (See section 106.05.02.2(l), hotel, extended stay" for regulations)

Section 106.05.02 of Town Code states that all of the following should be included as amenities at a Extended Stay Hotel:
a. A minimum of 80 guest rooms and/or suites;
b. Guest room access from an interior hallway;
c. Laundry facilities adequate to serve the residents at full capacity;
d. Playground equipment and open space as determined by the director; and
e. Minimum of 800 square feet of pool surface area;

Zoning Standards.
This is only a concept plan amendment, the zoning standards for site development within this PD must follow the Light Commercial zoning and site development standards. Therefore, should an Extended Stay Hotel, or Limited Service Hotel, apply for a permit at this site, it will need to obtain a SUP.

Design Standards.
There are no new proposed design standards in this PD proposal.

Landscaping Standards.
The applicant is adding a planting plan for landscaping that will help enhance the detention pond in the northeast corner of the site, which was initially intended to be a commercial lot. The existing detention pond was approved without any landscaping and will now be required conform to Town Landscape standards, per the included landscape setback waivers in the original PD.

Parking.
This is only a concept plan, any development will be required conform to Town's Parking standards, except for the existing PD waiver allowing 9 feet x 20 feet parking space.

Subdivision.
The replat of this site will still have to meet all subdivision ordinances, approval of this concept plan does not approve the layout of public facilities, easements, exact lot lines, or any other aspect of

subdivision plat review.

Signage.
The property owner has included clauses in deeds on certain lots for signage along the right of way which will allow for multi-tenant signs the businesses within the entire development. The newly created internal commercial tenants will be allowed to locate their signage on multitenant monument signs, on either Lot 7 or Lot 10, of the existing subdivision plat. The proposed signs will otherwise be required to meet all Town Standards in Chapters 86 and 106.

Fire and Engineering.
Proposed concept plans have been reviewed and generally approved for the purposes of the zoning request only. This is not an approval of the plans for actual construction and does not prevent additional necessary changes to the site plan as determined during the review of the Site Development Permit.

Comprehensive Plan.
This concept plan amendment aligns with the comprehensive plan for the area, which has a primary goal of creating a strong commercial corridor along Highway 380.

Recommendation to Planning and Zoning Commission.
The U.S. 380 Overlay District (380-OD) is identified in the 2017 Comprehensive Plan as the Town's major commercial hub for employment, and provides enhanced regulations to stimulate high-quality employment opportunities in this area. The intent of this district is to promote the economic development of the area, promoting a job base for the residents of Little Elm, and to regulate the character of growth along the 380 Corridor.

Retail development in key identified areas is important along this corridor, especially given the future development across US 380. Based on the previously approved PD concept plan, the commercial tract in its entirety was envisioned as a large unified retail/commercial development with a big box anchor tenant.

The intent of the current property owner is to subdivide the largest interior commercial tract into four lots for individual development. Over the last two years, the property owner has struggled to find an appropriate big-box tenant and with Staff and EDC coordination is requesting an alternative that could still meet the intent of the original PD. Staff believes that given the lack of interest from big-box tenants, providing two hotel tenants, a mid-size retailer, and another retail/commercial lot still aligns with the commercial uses envisioned for this PD, as well as the 380 District. The property owner has the potential hotel and mid-sized retail tenants ready to move forward if this amendment is approved and they are aware of, and ready to meet, the Town’s site development requirements.

The original vision for this property was to develop in its entirety as retail/commercial as a trade-off for the two multifamily developments to the north and west. When the development of the multifamily components commenced and a regional detention area was identified in the northeast corner, this decreased the retail/commercial component by 1.91 acres. In an effort to make up for the loss of potential retail/commercial land, Staff believes the detention pond should be utilized as a feature of the overall development. This means providing enhanced landscaping, trail around the pond, a water feature, and other amenities such as benches and/or pavilions. This has been typical practice with most PD requests, where appropriate, where the developer was required to improve the detention area to provide amenitized open space. It should be noted that this is a regional detention pond, the maintenance costs of which are shared across all properties utilizing it.

Additionally, the detention pond has already been built, with the previous property owner, the multifamily developer, incurring the costs of construction. While the applicant has proposed to plant trees around the detention pond as part of this request, Staff believes it would be appropriate to explore additional improvements to really make this a feature for the overall retail/commercial development.

Commission Findings.
At their regular meeting on October 19, 2023, the Planning and Zoning Commission held a public hearing and discussed the proposed request in the context of the development surrounding the subject property and the intent of the original Planned Development District. The Commission discussed the timeline for projected development, potential tenants, and the detention pond area. The Planning and Zoning Commission unanimously (4-0) approved the request with the conditions suggested by Staff.

BUDGET IMPACT:

This item has no budget impact.

RECOMMENDED ACTION:

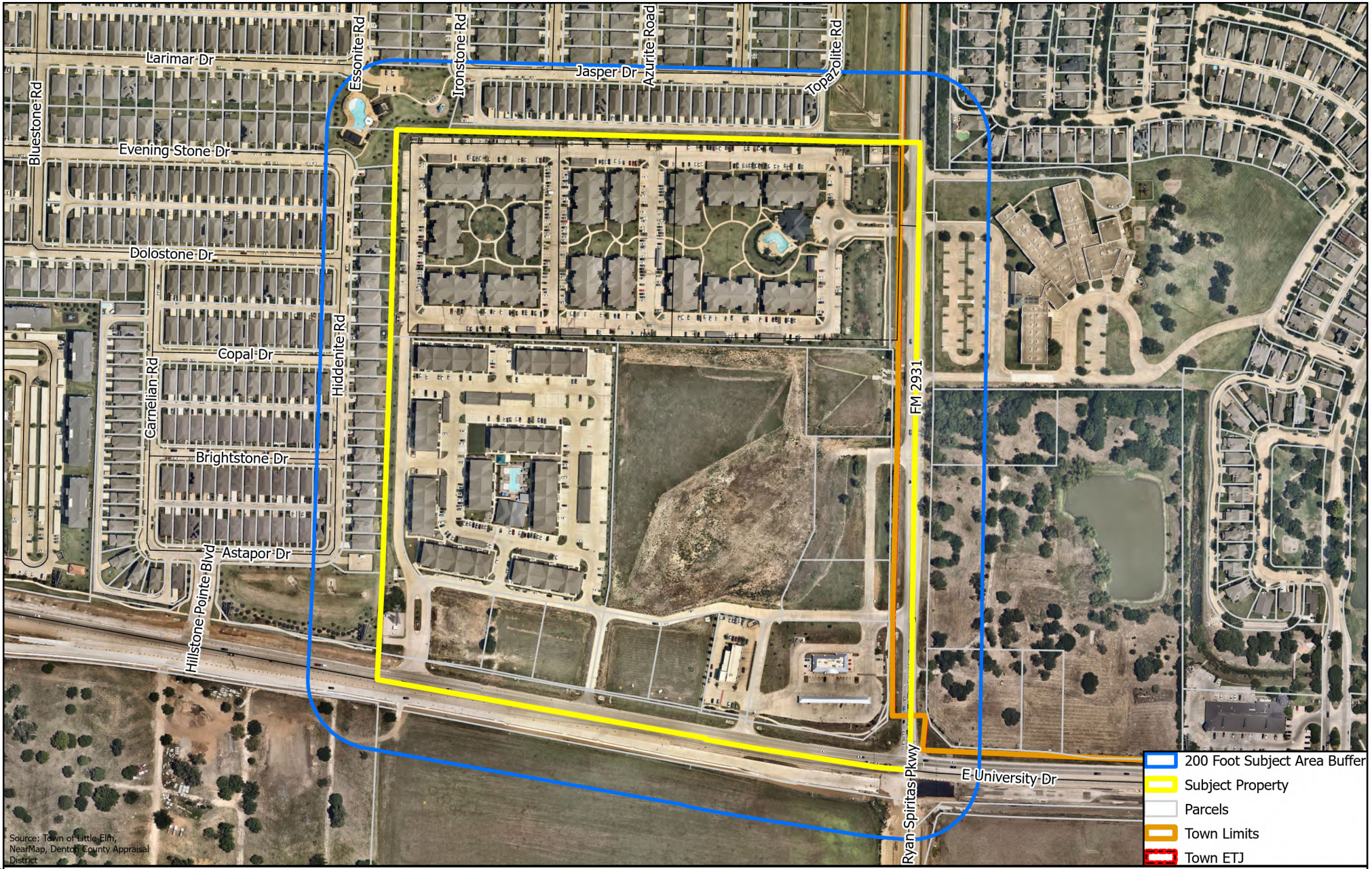
Planning and Zoning Commission recommends approval subject to the following conditions:

1. Interior commercial lots can utilize future multitenant monument signs located on either Lot 7 or Lot 10, of the existing subdivision plat. The proposed signs for all lots will otherwise be required to meet all Town Standards in Chapters 86 and 106.
2. Detention/Retention areas along a right-of-way may be amenitized with improvements. A bench, shaded seating structure or pavilion constitutes an improvement. A paved walking path must be provided along one internal side of the pond, connecting to existing sidewalks. Tree planting shall be provided as shown on the Planting Concept Plan. All landscaping within these areas shall be irrigated and shall comply with the Zoning Ordinance, as it exists or may be amended in accordance with the standards in effect at the time of development or requested change.
3. Detention/Retention planning and improvements shall be provided at the time of Site Development Permitting of first of the two commercial lots along the northern most boundary, intended for hotel development.
4. Modifications to the Concept Site Layout: The Concept Plan attached hereto and incorporated herein by reference, demonstrates locations of the proposed and existing buildings and improvements within the Subject Property. Any amendment to the concept plan approved as a part of the ordinance establishing the Planned Development District is a change in zoning district classification and must follow the same procedures as set forth in Section 106.04.03, except that the Director of Development Services may approve revisions which do not alter the basic relationship of the proposed development and reflect the original intent of this Planned Development District.
5. Revised Development Agreement must be approved by Town Council, executed, and recorded.

Attachments

Location Map

Ordinance No. 1742 - Alta 380 Planned Development Amendment



LITTLE ELM

Alta 380 (PD-23-03411)
Little Elm, TX 75068

Town of Little Elm
Denton County, Tx

Date: 10/9/2023

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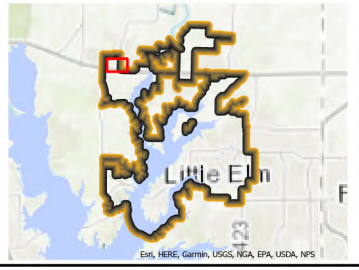
US Feet



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.

Project Location: G:\GIS\For Town\Employee\DevServices\Josie\Location Map\

TOWN OF LITTLE ELM

ORDINANCE NO. 1742

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE, BY AMENDING EXISTING PLANNED DEVELOPMENT ORDINANCE NO. 1589, AS AMENDED BY ORDINANCE NO. 1713, IN ORDER TO REVISE THE CONCEPT PLAN; PROVIDING A SAVINGS CLAUSE; CORRECTING THE OFFICIAL ZONING MAP; 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, a request for an amendment to existing Planned Development Ordinance No. 1589, as amended by Ordinance No. 1713, on approximately 30.853 acres of land, more specifically described in the exhibits, attached hereto; and

WHEREAS, this zoning change is in accordance with the most current adopted Comprehensive Plan of the Town of Little Elm; and

WHEREAS, the 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 zoning change described herein; and

WHEREAS, at its regular meeting held on October 19, 2023 the Planning & Zoning Commission considered and made recommendations on a request to amend existing Planned Development Ordinance No. 1589 (Case No. PD-23-03411); 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 is 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. ZONING AMENDMENT. That Ordinance No. 226 of the Town of Little Elm, Texas, the same being the Comprehensive Zoning Ordinance of the Town, is hereby amended by amending existing Planned Development Ordinance No. 1589, as amended by Ordinance No. 1713, in order to revise the existing concept plan to provide for modifications to the internal site layout, generally located on the northwest corner of US Highway 380 and FM 2931, within Little Elm's town limits, approximately 30.853 acres of land more particularly described as **Exhibit A**, and attached hereto, subject to all of the terms and conditions set forth herein, the terms and conditions of the Comprehensive Zoning Ordinance, and all other applicable ordinances, laws, rules, regulations, and standards.

SECTION 3. CONDITIONS AND REGULATIONS. The permitted uses and standards shall be in accordance with existing Planned Development Ordinance No. 1589, as amended by Ordinance No. 1713, and all applicable provisions of Chapter 106 – Zoning Ordinance in general, with the exception of the following requirements, which are otherwise captured within the development plans, as depicted within **Exhibit B** attached hereto:

a) The Concept Plan attached hereto and incorporated herein by reference, demonstrates locations of the proposed structures and improvements within the Subject Property. Amendments to the Concept Plan, approved as a part of this Ordinance, is a change in zoning district classification and must follow the same procedures as set forth in Section 106.04.03, requiring Council action, except that the Director of Development Services may approve revisions which do not alter the basic relationship of the proposed development and reflect the original intent of this Planned Development District.

b) Interior commercial lots can utilize future multitenant monument signs located on either Lot 7 or Lot 10, of the existing subdivision plat. The proposed signs for all lots will otherwise be required to meet all Town Standards in Chapters 86 and 106.

c) Detention/Retention areas along a right-of-way may be amenitized with improvements. A bench, shaded seating structure or pavilion constitutes an improvement. A paved walking path must be provided along one internal side of the pond, connecting to existing sidewalks. Tree planting shall be provided ash shown on the Planting Concept Plan. All landscaping within these areas shall be irrigated and shall comply with the Zoning Ordinance, as it exists or may be amended in accordance with the standards in effect at the time of development or requested change.

d) Detention/Retention planning and improvements shall be provided at the time of Site Development Permitting of first of the two commercial lots along the northern most boundary, intended for hotel development.

e) Revised, Town Council approved, executed, and recorded Development Agreement is required.

SECTION 4. PLANNED DEVELOPMENT MASTER PLAN. The Concept Plan Exhibit and related plans, images, and documents approved and described, as **Exhibit B,** attached hereto and made a part hereof are approved in addition to those existing within Planned Development Ordinances No. 1589 and No. 1713. The subject property shall be improved in accordance with the plans set forth in **Exhibit B**.

a) If, after two years from the date of approval of the Planned Development Master Plan, no substantial development progress has been made within the PD, then the Planned Development Master Plan shall expire. If the Planned Development Master Plan expires, a new Planned Development Master Plan must be submitted and approved according to the procedures within the Zoning Ordinance, Planned Development Districts. An extension of the two year expiration shall be granted if a development application for the PD has been submitted and is undergoing the development review process or if the Director of Development Services determines development progress is occurring.

b) The Planned Development Master Plan shall control the use and development of the property, and all building permits and development requests shall be in accordance with the plan until it is amended by the City Council.

c) If a change to the Concept Plan, if any, is requested, the request shall be processed in accordance with the development standards in effect at the time the change is requested for the proposed development.

SECTION 5. SAVINGS. This 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 indirect 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 5. ZONING MAP. The official zoning map of the Town shall be amended to reflect the changes in zoning made by this ordinance.

SECTION 6. 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 7. 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 Comprehensive 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 the ordinance without the valid parts and to this end the provisions of this ordinance shall remain in full force and effect.

SECTION 8. REPEALER. That all ordinances of the Town of Little Elm in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of that conflict.

SECTION 9. EFFECTIVE DATE. That this Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, Texas on the 5th day of December, 2023.

Town of Little Elm, Texas

_____

Curtis Cornelious, Mayor

ATTEST:

_____

Caitlan Biggs, Town Secretary

Exhibit A
Property Description

BEING a tract of land situated in the Marsella Jones Survey, Abstract No. 662, Town of Little Elm, Denton County, Texas and being all of a called 19.151 acre tract of land described in the Special Warranty Deed to Little Elm 380 2931 Partners, LLC., recorded in Document No. 2021-133264, Official Records, Denton County, Texas, (O.R.D.C.T.), and being all of a called 10.000 acre tract of land and a called 1.697 acre tract of land, both described in the Special Warranty Deed to ALTA 3Eighty, LLC., recorded in Document No. 2021-128914, O.R.D.C.T., and being more particularly described as follows:

BEGINNING at an “X” cut in concrete found for the northwest corner of Lot 7, Block A of Brakes Plus Addition, an addition to the Town of Little Elm, Denton County, Texas, according to the plat thereof recorded in Document No. 2017-13, Plat Records, Denton County, Texas (P.R.D.C.T.);

THENCE South 10°31'20" West, with the west line of said Lot 7, Block A, a distance of 283.30 feet to a 1/2-inch iron rod with pink plastic cap stamped "TXDOT SURVEY MARKER, RIGHT OF WAY MONUMENT" (hereinafter referred to as "TXDOT Monument") found for corner in the north right-of-way line U.S. Highway No. 380, (a variable width public right-of-way);

THENCE with said north right-of-way line, the following courses and distances:

North 79°40'11" West, a distance of 23.69 feet to a TXDOT Monument found at the beginning of a tangent curve to the left having a central angle of 1°52'32", a radius of 6556.67 feet, a chord bearing and distance of North 80°36'27" West, a distance of 214.62 feet;

In a northwesterly direction, along said curve to the left, an arc distance of 214.63 feet to a 5/8-inch iron rod with red plastic cap stamped “KHA” found at the beginning of a reverse curve to the right having a central angle of 1°52'32", a radius of 4643.33 feet, a chord bearing and distance of North 80°36'27" West, a distance of 151.99 feet;

In a northwesterly direction, along said curve to the right, an arc distance of 152.00 feet to a 5/8-inch iron rod with red plastic cap stamped “KHA” found for corner;

North 79°40'11" West, a distance of 179.66 feet to a 5/8-inch iron rod with yellow plastic cap stamped “Petitt RPLS 4807” found for corner;

North 81°32'43" West, a distance of 231.86 feet to a 5/8-inch iron rod with yellow plastic cap stamped “Petitt RPLS 4807” found for corner;

North 79°13'48" West, at a distance of 3.00 feet, passing an "X" cut found at the southeast corner of said 1.697 acre tract, and continuing with said north right-of-way line for a total distance of 141.22 feet to the southwest corner of said 1.697 acre tract from which a 1/2-inch iron rod with yellow plastic cap stamped "Metroplex" found bears South 2°51'32" East, a distance of 0.39 feet;

THENCE North 1°57'18" East, passing at a distance of 13.78 feet a 5/8-inch iron rod with yellow plastic cap stamped “Petitt RPLS 4807” found at the southeast corner of Lot 4X, Block J of Hillstone Pointe Phase 1A, 2 and 3, an addition to the Town of Little Elm, Texas according to the plat thereof recorded in Document No. 2019-307 P.R.D.C.T, as amended by Document No. 2020-155, P.R.D.C.T.,continuing with common line of said 1.697 acre tract and said Hillstone Pointe Phase 1A, 2 and 3, a total distance of 914.32 feet to an “X” cut in concrete found at the southwest corner of Lot 1, Block A, The Landing at Little Elm, an addition to the Town of Little Elm, Texas according to the plat thereof recorded in Document No. 2021-172, P.R.D.C.T.;

THENCE South 88°30'32" East, with the south line of said Lot 1, Block A, passing at a distance of 1441.67 feet, the southeast corner of said Lot 1, Block A, and the southwest corner of a 25-foot right-of-way dedication as dedicated by said Plat of The Landing at Little Elm, and continuing with the south line of said The Landing at Little Elm in all for a total distance of 1466.67 feet to a 5/8-inch iron rod with red plastic cap stamped “KHA” found in the west right-of-way line of Farm to Market Road 2931 (a variable width public right-of-way);

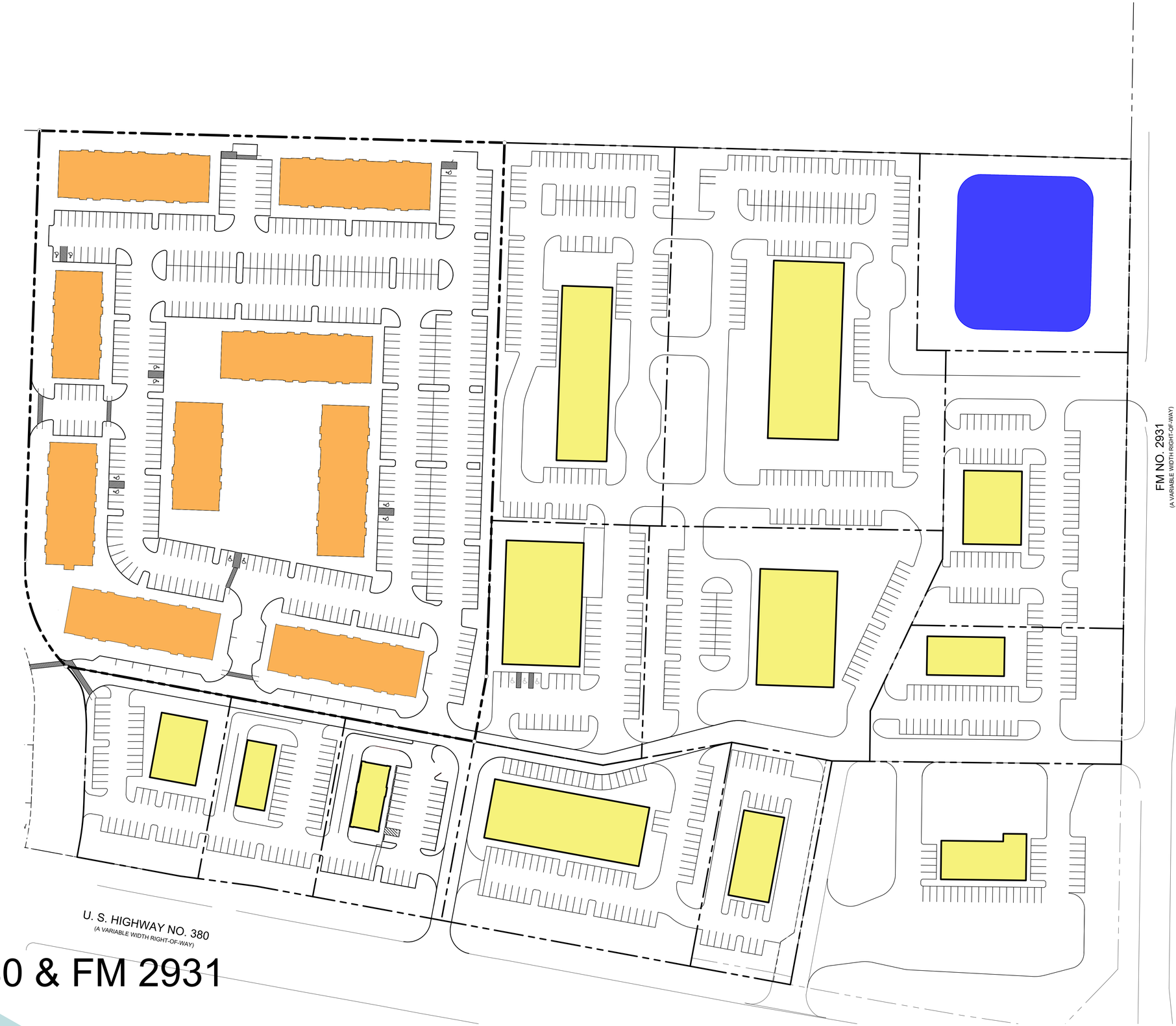
THENCE South 0°55'50" West, with said west right-of-way line, a distance of 782.08 feet to an "X" cut in concrete found for corner;

THENCE North 89°20'36" West, departing said right-of-way, passing at a distance of 10.00 feet the northeast corner of Lot 1, Block A of CST Addition, an addition to the Town of Little Elm, Denton County, Texas, according to the plat thereof recorded in Document No. 2015-425, P.R.D.C.T., and continuing with the north line of said CST Addition, a total distance of 373.81 feet to an "X" cut in concrete found at the northwest corner of said CST Addition and being the northeast corner of said Brakes Plus Addition;

THENCE North 79°33'26" West, with the north line of said Lot 1, Block A, of Brakes Plus Addition, a distance of 131.50 feet to the **POINT OF BEGINNING** and containing a computed area of 1,344,007 square feet or 30.853 acres of land

Exhibit B

Development Plans, Images, and Documents



US 380 & FM 2931

Little Elm, TX
September 2023

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LAST SAVED: 10/3/2023 4:49 PM

Kimley»Horn
13455 Noel Road
Two Galleria Office Tower, Suite 700
Dallas, Texas 75240
(972) 770-1300
State of Texas Registration No. F-928

NOTE: THIS PLAN IS CONCEPTUAL IN NATURE AND HAS BEEN PREPARED WITHOUT THE BENEFIT OF A SURVEY OR CONTACT WITH THE CITY, COUNTY, ETC.

NORTH

GRAPHIC SCALE IN FEET
0 30 60 120

LEGEND

- PROPSED DETENTION POND
- PROPOSED BUILDING
- PROPERTY LINE
- POTENTIAL PEDESTRIAN PATH
- POTENTIAL STAMPED CONCRETE CROSSWALK
- POND
- COMMERCIAL
- MULTI-FAMILY

NOTES

POTENTIAL PEDESTRIAN PATHS SHOWN FOR REFERENCE ONLY. FINAL PEDESTRIAN LAYOUTS WILL BE DETERMINED FOR EACH INDIVIDUAL LOT AND APPROVED BY THE TOWN OF LITTLE ELM

FM NO. 2931
(A VARIABLE WIDTH RIGHT-OF-WAY)

U. S. HIGHWAY NO. 380
(A VARIABLE WIDTH RIGHT-OF-WAY)

US 380 & FM 2931

Little Elm, TX
September 2023

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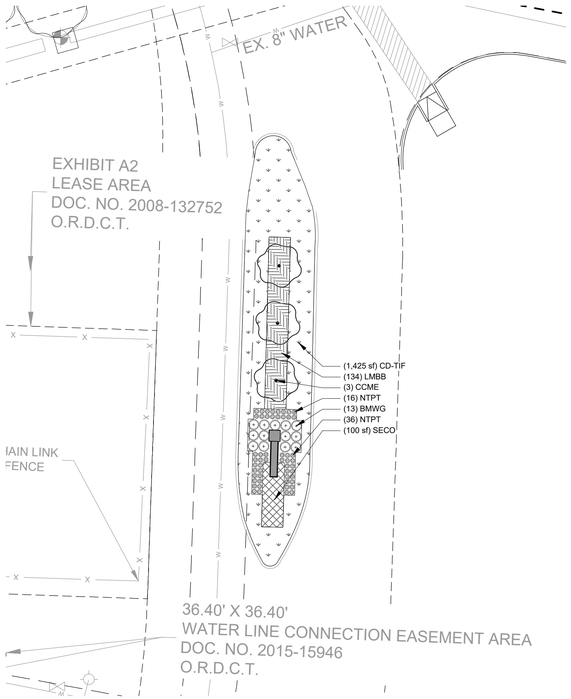
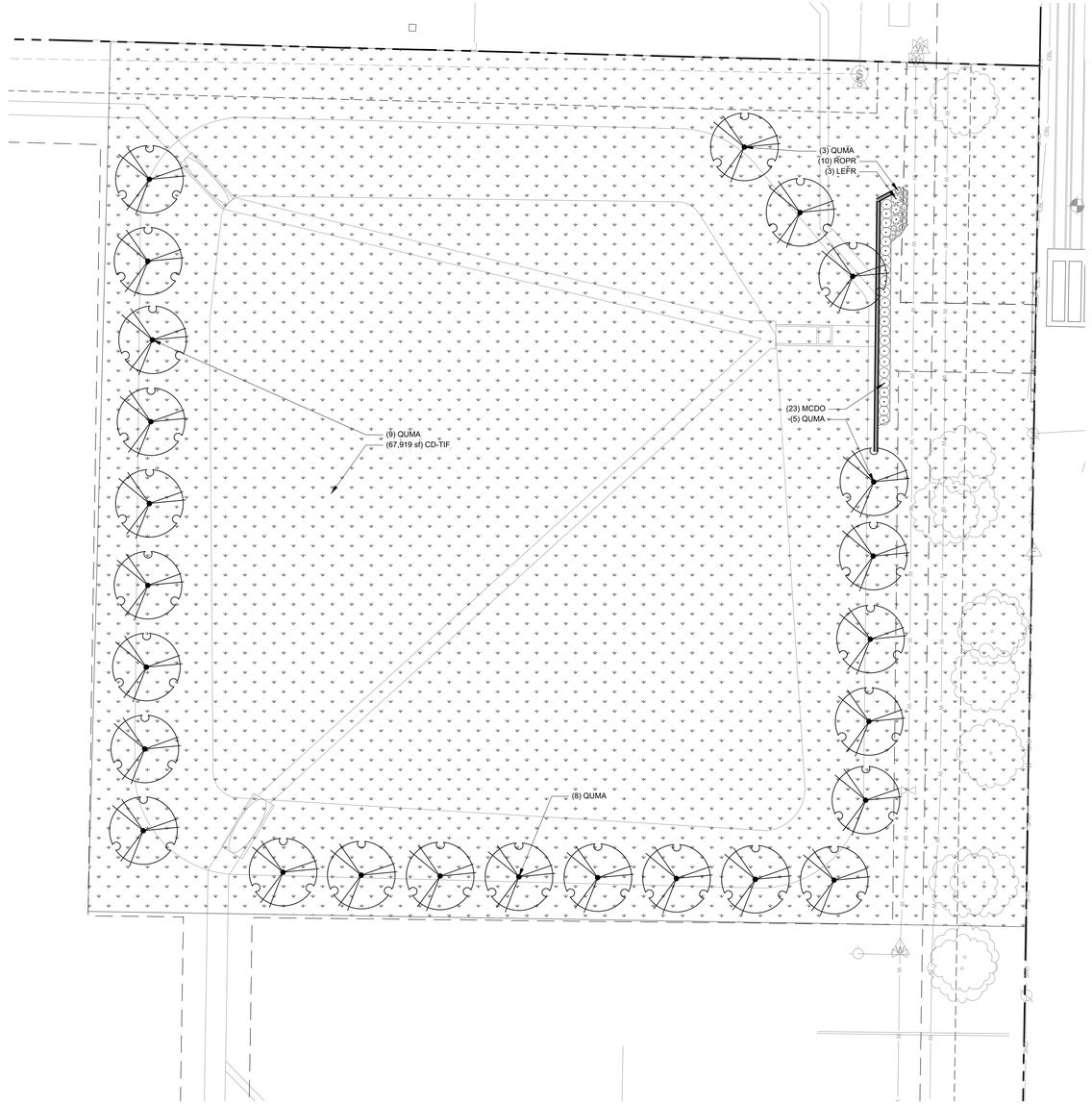
Kimley»Horn
13455 Noel Road
Two Galleria Office Tower, Suite 700
Dallas, Texas 75240
(972) 770-1300
State of Texas Registration No. F-928

NOTE: THIS PLAN IS CONCEPTUAL IN NATURE AND HAS BEEN PREPARED WITHOUT THE BENEFIT OF A SURVEY OR CONTACT WITH THE CITY, COUNTY, ETC.



ENTRY MONUMENT PLANTING (1" = 20'-0")



DETENTION PARCEL (1" = 20'-0")

PLANT SCHEDULE		
TREES	CODE	BOTANICAL / COMMON NAME
	ACBA	Acer barbatum `Caddo` / Caddo Southern Sugar Maple
	QUMA	Quercus macrocarpa / Burr Oak
	QPMO	Quercus polymorpha `Monterey` / Monterey Oak
	QUSH	Quercus shumardii / Shumard Red Oak
	QUVI	Quercus virginiana / Southern Live Oak
	TADI	Taxodium distichum / Bald Cypress
	ULCR	Ulmus crassifolia / Cedar Elm
	ULPA	Ulmus parvifolia `Allee` / Allee Lacebark Elm
ORNAMENTAL TREES	CODE	BOTANICAL / COMMON NAME
	CCME	Cercis canadensis var. mexicana / Mexican Redbud
	CHLI	Chilopsis linearis / Desert Willow
	ILVO	Ilex vomitoria / Yaupon Holly
	LIDB	Lagerstroemia indica `Deled` / Delta Breeze Crape Myrtle
SHRUBS	CODE	BOTANICAL / COMMON NAME
	ABRC	Abelia x `Rose Creek` / Rose Creek Abelia
	ABGR	Abelia x grandiflora `Edward Goucher` / Glossy Abelia `Edward Goucher`
	AGAM	Agave americana / Century Plant
	BMWG	Buxus microphylla `Winter Gem` / Globe Winter Gem Boxwood
	HEPA	Hesperaloe parviflora / Red Yucca
	ICBN	Ilex cornuta `Burfordii Nana` / Dwarf Burford Holly
	IVNA	Ilex vomitoria `Nana` / Dwarf Yaupon Holly
	IVSD	Ilex vomitoria `Stokes Dwarf` / Stokes Dwarf Yaupon Holly
	LEFR	Leucophyllum frutescens `Greado` / Desperado Texas Sage
	LCPD	Loropetalum chinense `Purple Diamond` / Fringe Flower
	MCDO	Myrica cerifera `Don`s` / Don`s Dwarf Wax Myrtle
	NDHD	Nandina domestica `Harbour Dwarf` / Dwarf Heavenly Bamboo
	PEAT	Perovskia atriplicifolia `Little Spire` / Little Spire Russian Sage
	PTCM	Pittosporum tobira `Cream De Mint` TM / Cream De Mint Dwarf Mock Orange
	ROPR	Rosmarinus officinalis `Prostratus` / Dwarf Rosemary
	RFGO	Rudbeckia fulgida `Goldstrum` / Black-eyed Susan
	SARE	Salvia regla / Royal Sage
	SAIS	Salvia x `Indigo Spire` / Indigo Spires Salvia
GRASSES	CODE	BOTANICAL / COMMON NAME
	AGBB	Andropogon gerardii / Big Bluestem
	MUCA	Muhlenbergia capillaris / Pink Muhly
	MLLE	Muhlenbergia lindheimeri `Leni` / Autumn Glow Muhly
	NTPT	Nassella tenuissima `Pony Tails` / Mexican Feathergrass
	PAHN	Pennisetum alopecuroides `Hameln` / Hameln Dwarf Fountain Grass
	PEAL	Pennisetum alopecuroides `Piglet` / Piglet Dwarf Fountain Grass
	SCSC	Schizachyrium scoparium / Little Bluestem Grass
GROUND COVERS	CODE	BOTANICAL / COMMON NAME
	CD-TIF	Cynodon dactylon `Tif 419` / Bermuda Grass
	LMBB	Liriope muscari `Big Blue` / Big Blue Lilyturf
	OPJA	Ophiopogon japonicus / Mondo Grass
	ROCK	RIVER ROCK
	SECO	Seasonal Color / Seasonal Color
	TRAS	Trachelospermum asiaticum / Asian Jasmine

LandDesign.
5301 ALPHA ROAD, SUITE 24
DALLAS, TX 75240
214.785.6009
WWW.LANDDESIGN.COM

WOOD PARTNERS
5440 HARVEST HILL RD
SUITE 206
DALLAS, TX 75230

WOOD PARTNERS

KEY MAP

SEAL

REGISTERED LANDSCAPE ARCHITECT
JOSHUA WILCOX
3355
STATE OF TEXAS
07.16.2021

ISSUE FOR CONSTRUCTION

PROJECT

ALTA 3EIGHTY

WOOD PARTNERS
TOWN OF LITTLE ELM
DENTON COUNTY, TEXAS

LANDDESIGN PROJ.#
8520118

REVISION / ISSUANCE

NO.	DESCRIPTION	DATE
0	CONSTRUCTION ISSUE	07.16.2021

DESIGNED BY: JW, MD
DRAWN BY: MD
CHECKED BY: JW

SCALE

VERT: N/A
HORZ: 1"=20'
0 10' 20' 40'

NORTH

SHEET TITLE

PLANTING PLAN

SHEET NUMBER

L6-05

Date:	12/05/2023
Agenda Item #:	5. B.
Department:	Development Services
Strategic Goal:	Promote and expand Little Elm's identity
Staff Contact:	Olga Chernomorets, Planning Manager

AGENDA ITEM:

Hold a Public Hearing, Present, Discuss, and Consider Action on **Ordinance No. 1741 Regarding a Request to Rezone Approximately Five Acres of Land, Currently Zoned as Planned Development, Based on Light Commercial Standards, Through Ordinance No. 1477, Generally Located 300 Feet East of the Intersection of Old Highway 24 and Oak Grove Parkway, within Little Elm's Town Limits, in Order to Amend the Permitted Uses Within the Planned Development District.**

Open Public Hearing:
Receive Public Comments:
Close Public Hearing:
Take Action on Ordinance No. 1741:

DESCRIPTION:

Location.
Generally located 300 feet east of the intersection of Old Highway 24 and Oak Grove Parkway, within Little Elm's town limits.

Background.
The subject property consists of one commercial lot of approximately 5 acres, currently zoned Planned Development - Light Commercial (PD-LC) through Ordinance No. 1477, which was passed in 2018. The property was initially annexed into the Town in 1971, through Ordinance No. 41. The site currently has four buildings under construction, one light commercial retail building in the front of the property, and three office/warehouse buildings in the rear of the property. The surrounding properties to the east and north are zoned Agricultural, the properties to the south and west are zoned Light Commercial.

The Town's Future Land Use Plan (FLUP) for the area was amended to include the results of the West Side Study. The study was adopted in August 2022, four years after the Planned Development for this site was approved. This site, as well as those properties to the south and west, were designated as Neighborhood Retail/Commercial (NRS) in the updated FLUP,

envisioning neighborhood level retail and commercial services. The properties to the north and east were designated Neighborhood in the updated FLUP. In the FLUP at the time the original PD was adopted in 2017, the FLUP had the property designated mixed-use, at the time, a mix of uses for retail and office/warehouse was within the FLUP's designation of mixed use.

Planned Development - Light Commercial (PD-LC) Ordinance No. 1477 specifically lists the uses allowed by right. It appears that only a few of the uses were picked from the Light Commercial column of the use chart, which is atypical from how PD ordinances have been written. More recent PD ordinances state that the newly established PD is to follow the uses and standards of the Light Commercial District unless otherwise listed in the ordinance.

As the property is finishing up construction, the property owner is searching for interested tenants to occupy the new buildings. The most recent interested tenant is a dog daycare, with indoor boarding only, which is typically allowed by right within the Light Commercial district. However, because this PD Ordinance specifically lists out the uses, and this use was not listed, the tenant would not be able to locate on this property. The property owner is concerned that this will result in challenges for the development moving forward.

Proposal.
The applicant is proposing to amend the existing PD to simply state that all uses allowed by right under the Light Commercial District be included as allowed on this property. Given the PD's allowance for an additional modified use of warehouse/office, at limited capacity, with the back buildings being constructed to accommodate such uses, the applicant is also requesting to add a handful of modified uses with this request.

The proposed modified uses are as follow:

Use	Proposal	Town Code for LC	Town Code for LI
Heavy Machinery Showroom and Storage, Indoor Only*	SUP	NP	P
Auto, Boat, Sales/leasing and storage, new and used, Indoor Only*	SUP	NP	P
Restaurant Drive-Thru	P	SUP	P
Manufacturing, Light Assembly	SUP	NP	C
Reprographic Shop*	SUP	NP	P

P: Permitted
C: Conditional Use Permit
SUP: Specific Use Permit
NP: Not Permitted
* This use is not verbatim in the Town's use chart. See use descriptions below.

<u>Heavy Machinery Showroom and Storage, Indoor Only</u>
Currently, Section 106.01.14 defines "Heavy machinery sales, **service**, and storage" as a retail or wholesale facility that sells, services and stores heavy machinery such as farm equipment, dredging equipment, paving equipment, etc. This use is permitted in Light Industrial (LI) Districts per the Town's Use Chart, but it is Not Permitted in LC Districts.

Applicant is proposing "Heavy Machinery Showroom and Storage, Indoor Only," without the service

component, defined as “A retail or wholesale facility that sells and stores heavy machinery such as farm equipment, dredging equipment, paving equipment, etc., without any outdoor storage.”

“Heavy Machinery Showroom and Storage, Indoor Only” would become permitted through SUP approval.

Auto, Boat, Sales/leasing and storage, new and used, Indoor Only*

In the Town’s Use Chart, there is no “indoor only” distinction for auto and boat uses; these uses are broken up into three different categories. “Auto, Boat Sales/leasing new, outdoor display”, is allowed in the LC districts with a SUP and permitted by right in LI districts. “Auto/Boat sales, used, outdoor display” and “Auto/boat/RV storage” are prohibited in LC districts, and Permitted by right in LI Districts. There is no “indoor only” distinction for these uses in the Town’s use chart.

Applicant is proposing “Auto, Boat, Sales/leasing and storage, new and used, Indoor Only” defined as “Retail sales, rental, leasing, and/or showroom/storage of new or used operable automobiles, light load vehicles, or boats, without any outdoor storage or display.”

“Auto, Boat, Sales/leasing and storage, new and used, Indoor Only” would become permitted through SUP approval.

Restaurant Drive-Thru

“Restaurant Drive-Thru” is being proposed as permitted by right. At the time when the original PD was approved, drive-thru uses did not require a SUP in LC districts. Therefore, when the property owner requested to an end-cap drive-thru, the request was approved administratively as this did not significantly alter the site layout, nor the intent of the original PD. However, that has since changed, and now any new development plans in LC districts require a SUP. The property owner is requesting “Restaurant Drive-Thru” as permitted by right specifically in order to capture the previously administratively approved drive-thru at the western end-cap of the front retail building.

Manufacturing, Light Assembly

Currently, Section 106.01.14 defines “Manufacturing or industrial uses, light” as:

> “A facility that involves assembly and fabrication activities and the use of machines, tools and labor to make items for use or sale. May also include warehousing, research and development, wholesaling operations with infrequent customer or client visits, and may include related office and shipping areas. Light industry is often assembly-based and is typically consumer-oriented (i.e., most light industrial products are sold to retail stores or end users rather than as intermediate parts for use by other industries). Light industry generally has less environmental impact than those associated with heavy industry. Light industry may employ lower skilled workers with only moderate training and often employ large numbers of people. Light industries require a relatively small amount of raw materials, area and power. Examples of light industry include, but are not limited to, plastic items, clothing, shoes, foods, beverages, personal care and home care products, cosmetics, drugs, furniture, consumer electronics, and home appliances.”

This use is prohibited in LC districts, and requires a CUP in LI districts.

Applicant is proposing “Manufacturing, Light Assembly” limited to light assembly, to ensure minimal nuisances emanating to the adjacent suites, buildings, or properties, with the following definition:

> "A facility that involves light assembly, fabrication, and/or packaging of finished products or parts, predominately from previously prepared materials, and the use of small-scale machinery, tools and labor to make items for use or sale. May also include warehousing, research and development, wholesaling operations with infrequent customer or client visits, and may include related office and shipping areas. Light industry is often assembly-based and is typically consumer-oriented (i.e., most light industrial products are sold to retail stores or end users rather than as intermediate parts for use by other industries). Light industry generally has less environmental impact than those associated with heavy industry. Light industries require a relatively small amount of raw materials, area and power. Examples of light industry include, but are not limited to, plastic items, clothing, shoes, foods, beverages, personal care and home care products, cosmetics, drugs, furniture, consumer electronics, and home appliances."

"Manufacturing, Light Assembly" would become permitted through SUP approval.

<u>Reprographic Shop</u>
Currently, Section 106.01.14 defines "Printing plant, reprographic shop" as a "facility for the reproduction of materials or drawings on a job order or bulk basis utilizing lithography, off-set printing, or other printing techniques." While this definition exists, this specific use is not in the Town's Use Chart.

Applicant is proposing "Reprographic Shop" to be defined as "A facility for the reproduction of materials or drawings on a job order basis utilizing lithography, off-set printing, digital printing, or other printing techniques, for purposed of custom design, promotional marketing, banners, brochures, posters, mounting, lamination, bindery, and graphic design. etc."

Staff believes the proposed is a middle ground between "Retail Print Shop" which is allowed by right in LC, and "Industrial Print Shop", which is prohibited in LC districts, and permitted by right in LI district.

"Reprographic Shop" would become permitted through SUP approval.

Site Design.
There are no site design alterations being proposed in this PD amendment.

Subdivision.
There are no Subdivision alterations being proposed in this PD amendment. The properties currently have an approved Plat from the Planning and Zoning Commission, but have not completed their public improvements yet. When the public improvements are complete, Town Staff will be able to sign the plat and release it to the applicant for filing.

Signage.
There are no signage amendments being proposed in this PD amendment.

Fire, Engineering, Building.
There is no site design or building changes in this proposal. Any building plans or site revisions that arise from this PD will still need to go through the site or building permit review process.

Comprehensive Plan.
When the initial PD was approved the intent was to provide an opportunity for a blend of Light Commercial and Light Industrial uses in an office/warehouse environment. The original PD adheres

to the growth and employment opportunity goals of the Comprehensive Plan by allowing an area for unique businesses to locate in Little Elm and create diverse employment opportunities.

Recommendation to Commission.
The intent of the original PD was to provide an opportunity for a blend of Light Commercial and Light Industrial uses in an office/warehouse environment to allow for unique type of businesses that have an on-site storage component, in a warehouse-type setting, but still provide an office type operation with minimal nuisance to the adjacent residents. Staff and the Applicant have worked to refine the proposed uses and their definitions to ensure they are suitable for this particular site and fall within the intent of the original PD.

Staff believes these amendments continue to meet the intent of the original PD, the Comprehensive Plan, the Future Land Use Plan, and the recent amendments to the Future Land Use Plan. The safeguards put in place in this amendment, both, better define the uses allowed in this development and require certain uses to obtain an SUP to mitigate any potential nuisances. This will allow the Planning and Zoning Commission as well as the Town Council evaluate each request on a case by case basis, as well as provide adjacent property owners the opportunity of a public hearing. These changes will also ensure the success of this development moving forward by providing a wider variety of suitable long term tenants. In exploring the surrounding areas, there is limited new development of this type of blended commercial/light industry product. This allows the Town to grow in unique ways and diversify its workforce, both goals of the Comprehensive Plan.

Staff generally supports the proposals and recommends the Planning and Zoning Commission review the request based on the intent of the original PD, Comprehensive Plan, and the impact and suitability of the proposed use changes within the context of the existing area and meets the overall vision for the Town.

Commission Findings.
At their regular meeting on November 2, 2023, the Planning and Zoning Commission heard the request and discussed the intent behind limiting the previously allowed uses, how the existing drive-thru came about, and limiting the requested modified uses to the back buildings. The Planning and Zoning Commission voted to unanimously (5-0) approve the request subject to the following condition:

- The proposed modified uses shall specifically apply to the back of the property, as described by the lot of designations on the current plat document.

BUDGET IMPACT:

This item has no budget impact.

RECOMMENDED ACTION:

The Planning and Zoning Commission recommends approval subject to the following condition:

- The proposed modified uses shall specifically apply to the back of the property, as described by the lot of designations on the current plat document.

Attachments

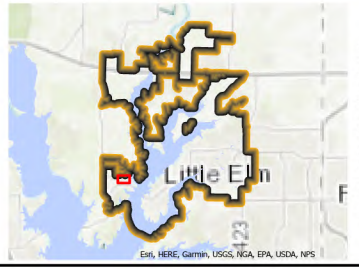
Location Map

Ordinance No. 1741 - Lakeside Shops and Business Park Amendment

Lakeside Shops and Business Park (PD-23-04008)
Little Elm, TX 75068

Town of Little Elm
Denton County, Tx
Date: 10/9/2023

N
0 120 240
US Feet



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.

Project Location: G:\GIS\For Town\Employee\DevServices\Jose\Location Map\

TOWN OF LITTLE ELM

ORDINANCE NO. 1741

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE, BY AMENDING ORDINANCE NO. 1477, ON APPROXIMATELY 5.0 ACRES OF LAND LOCATED AT 1767 AND 1777 OLD HIGHWAY 24, GENERALLY 300 FEET EAST OF THE INTERSECTION OF OAK GROVE PARKWAY AND OLD HIGHWAY 24, IN ORDER TO AMEND PERMITTED USES AND ESTABLISH MODIFIED USES WITHIN THE EXISTING PLANNED DEVELOPMENT DISTRICT; PROVIDING A SAVINGS CLAUSE; CORRECTING THE OFFICIAL ZONING MAP; 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, a request to amend a Planned Development District established under Ordinance No. 1477 by amending Section 3. G. Permitted Uses on approximately 5.0 acres of land, more specifically described in the exhibits, attached hereto; and

WHEREAS, this zoning change is in accordance with the most current adopted Comprehensive Plan of the Town of Little Elm; and

WHEREAS, the 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 zoning change described herein; and

WHEREAS, at its regular meeting held on November 2, 2023 the Planning & Zoning Commission considered and made recommendations on a request to amend Planned Development, (Case No. PD-23-04008); 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 is 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. ZONING AMENDMENT That Ordinance No. 226 of the Town of Little Elm, Texas, the same being the Comprehensive Zoning Ordinance of the Town, is hereby amended by amending existing Planned Development Ordinance No. 1477, on property located at 1767 and 1777 Old Highway 24, within Little Elm's town limits, on approximately 5.0 acres of land more particularly described as **Exhibit A**, and attached hereto, amending Section 3. G. Permitted Uses, to allow for all Light Commercial uses as shown in the Town's Schedule of Uses, with modified uses as stated within **Exhibit B**, subject to all of the terms and conditions set forth herein, the terms and conditions of the Comprehensive Zoning Ordinance, and all other applicable ordinances, laws, rules, regulations, and standards.

SECTION 3. CONDITIONS AND REGULATIONS. The permitted standards shall be in accordance with existing Planned Development Ordinance No. 1477, the permitted uses shall be in accordance with the Light Commercial (LC) District, and all applicable provisions of Chapter 106 – Zoning Ordinance in general, plus as specified herein:

a. Newly established and defined modified uses, allowed through Specific Use Permit, only within Lot 1, as shown in **Exhibit B**:

i. Heavy Machinery Showroom and Storage, Indoor Only
ii. Auto, Boat, Sales/leasing and storage, new and used, Indoor Only
iii. Manufacturing, Light Assembly
iv. Reprographic Shop

SECTION 4. PLANNED DEVELOPMENT MASTER PLAN. The Concept Plan and related plans, images, and documents approved and described as **Exhibit C** attached hereto and made a part hereof, as approved through Ordinance No. 1477. The subject property shall be improved in accordance with the plans set forth through Ordinance No. 1477, with allowance for one drive-thru, at the west end-cap of the retail building, as previously captured through administrative approval.

a) If, after two years from the date of approval of the Planned Development Master Plan, no substantial development progress has been made within the PD, then the Planned Development Master Plan shall expire. If the Planned Development Master Plan expires, a new Planned Development Master Plan must be submitted and approved according to the procedures within the Zoning Ordinance, Planned Development Districts. An extension of the two year expiration shall be granted if a development application for the PD has been submitted and is undergoing the development review process or if the Director of Development Services determines development progress is occurring.

b) The Planned Development Master Plan shall control the use and development of the property, and all building permits and development requests shall be in accordance with the plan until it is amended by the City Council.

c) If a change to the Concept Plan, if any, is requested, the request shall be processed in accordance with the development standards in effect at the time the change is requested for the proposed development.

SECTION 5. SAVINGS. This 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 indirect 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 5. ZONING MAP. The official zoning map of the Town shall be amended to reflect the changes in zoning made by this ordinance.

SECTION 6. 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 7. 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 Comprehensive 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 the ordinance without the valid parts and to this end the provisions of this ordinance shall remain in full force and effect.

SECTION 8. REPEALER. That all ordinances of the Town of Little Elm in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of that conflict.

SECTION 9. EFFECTIVE DATE. That this Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, Texas on the 5th day of December, 2023.

Town of Little Elm, Texas

_____

Curtis Cornelious, Mayor

ATTEST:

_____

Caitlan Biggs, Town Secretary

Exhibit A

Metes and Bounds

EXHIBIT "A"

TRACT 1

BEGINNING FOR THE SOUTHEAST CORNER OF THE TRACT BEING DESCRIBED HEREIN AT A 1/2" SQUARE TUBE FOUND FOR THE SOUTHEAST CORNER OF SAID 5.000 ACRES IN THE NORTH LINE OF F.M. HIGHWAY 720 IN A CURVE TO THE RIGHT, HAVING A RADIUS OF 2819.79 FEET, AT THE SOUTHWEST CORNER OF THE CALLED 9.392 ACRE TRACT DESCRIBED IN THE DEED TO HAROLD V. PRICE, ET UX, RECORDED IN VOLUME 1008, PAGE 695 DEED RECORDS;

THENCE ALONG THE ARC OF SAID CURVE ALONG SAID HIGHWAY AN ARC DISTANCE OF 179.48 FEET (CHORD BEARING OF NORTH 79 DEGREES 49 MINUTES 35 SECONDS WEST A DISTANCE OF 179.45 FEET) TO A CAPPED IRON ROD SET FOR THE SOUTHEAST CORNER OF THE CALLED TWO (2) ACRE TRACT DESCRIBED IN THE FINAL DECREE OF DIVORCE DATE JULY 15TH 1987, CAUSE NUMBER 86-2406-C;

THENCE NORTH 08 DEGREES 18 MINUTES 50 SECONDS WEST WITH THE EAST LINE OF SAID TWO ACRES, SEVERING SAID 5.000 ACRES A DISTANCE OF 713.30 FEET TO A CAPPED IRON SET FOR THE NORTHEAST CORNER OF SAID TWO ACRES IN THE NORTH LINE OF SAID 5.000 ACRES;

THENCE NORTH 66 DEGREES 50 MINUTES 04 SECONDS EAST WITH SAID NORTH LINE GENERALLY ALONG A FENCE A DISTANCE OF 176.07 FEET TO A 1/2" SQUARE TUBE FOUND FOR THE NORTHEAST CORNER OF SAID 5.000 ACRES AT THE NORTHWEST CORNER OF SAID PRICE TRACT;

THENCE SOUTH 08 DEGREES 18 MINUTES 50 SECONDS EAST WITH THE EAST LINE OF SAID 5.000 ACRES AND THE WEST LINE OF SAID PRICE TRACT, GENERALLY ALONG A FENCE A DISTANCE OF 815.34 FEET TO THE PLACE OF BEGINNING AND ENCLOSING 2.990 ACRES OF LAND.

TRACT 2

BEGINNING FOR THE SOUTHWEST CORNER OF THE TRACT BEING DESCRIBED HEREIN AT A \'BD" IRON ROD FOUND FOR THE SOUTHWEST CORNER OF SAID 5.000 ACRES IN THE NORTH LINE OF FM HIGHWAY 720 AT THE SOUTHEAST CORNER OR THE CALLED 3.390 ACRE TRACT DESCRIBED IN THE DEED TO JAMES F. HENSON, JR. ET UX, RECORDED IN VOLUME 928, PAGE 685 DEED RECORDS;

THENCE NORTH 08 DEGREES 8 MINUTES 50 SECONDS WEST WITH THE WEST LINE OF SAID 5.000 ACRES AND THE EAST LINE OF SAID 3.390 ACRES, GENERALLY ALONG A FENCE A DISTANCE OF 604.62 FEET TO A CAPPED IRON ROD SET FOR AN ANGLE POINT IN SAID LINE;

THENCE NORTH 10 DEGREES 33 MINUTES 27 SECONDS WEST CONTINUING WITH SAID LINE A DISTANCE OF 22.30 FEET TO A CAPPED IRON ROD FOUND FOR THE NORTHWEST CORNER OF SAID 5.000 ACRES;

THENCE NORTH 66 DEGREES 50 MINUTES 04 SECONDS EAST WITH THE NORTH LINE OF SAID 5.000 ACRES, GENERALLY ALONG A FENCE A DISTANCE OF 135.12 FEET TO A CAPPED IRON ROD SET FOR THE NORTHEAST CORNER OF SAID TWO ACRE TRACT, FROM WHICH A SQUARE IRON ROD FOUND FOR THE NORTHEAST CORNER OF SAID 5.000 ACRES BEARS NORTH 66 DEGREES 50 MINUTES 04 SECONDS EAST A DISTANCE OF 176.07 FEET;

THENCE SOUTH 08 DEGREES 18 MINUTES 50 SECONDS EAST WITH A LINE PARALLEL WITH THE MOST SOUTHERLY WEST LINE OF SAID 5.000 ACRES A DISTANCE OF 713.30 FEET TO A CAPPED IRON ROD SET FOR THE SOUTHEAST CORNER OF SAID TWO ACRE TRACT IN THE SOUTH LINE OF SAID 5.000 ACRES AND THE NORTH LINE OF SAID HIGHWAY IN A CURVE TO THE RIGHT HAVING A RADIUS OF 2819.79 FEET;

THENCE ALONG SAID LINE ALONG AND NEAR A FENCE AN ARC DISTANCE OF 129.81 FEET (CHORD BEARING OF NORTH 76 DEGREES 34 MINUTES 57 SECONDS WEST A DISTANCE OF 139.80 FEET) TO THE PLACE OF BEGINNING AND ENCLOSING 2.000 ACRES OF LAND.

Note: The Company is prohibited from insuring the area or quantity of the land described herein. Any statement in the above legal description of the area or quantity of land is not a representation that such area or quantity is

Exhibit B
Proposed Uses

1) Use Regulations.
No building, structure, land or premises will be used, and no building or structure shall hereafter be erected, constructed, reconstructed or altered except for one more of the uses as outlined within Light Commercial District, unless otherwise specified herein.

a. Restaurant Drive-Thru is permitted by right, specifically as it currently exists, on Lot 2, western end-cap of Building 100.
b. Lot 1 allows for additional modified uses as defined below:

Use	
Heavy Machinery Showroom and Storage, Indoor Only*	SUP
Auto, Boat, Sales/leasing and storage, new and used, Indoor Only*	SUP
Manufacturing, Light Assembly	SUP
Reprographic Shop*	SUP

SUP: Specific Use Permit

i. Heavy Machinery Showroom and Storage, Indoor Only. A retail or wholesale facility that sells and stores heavy machinery such as farm equipment, dredging equipment, paving equipment, etc., without any outdoor storage.

ii. Auto, Boat, Sales/leasing and storage, new and used, Indoor Only. Retail sales, rental, leasing, and/or showroom/storage of new or used operable automobiles, light load vehicles, or boats, without any outdoor storage or display.

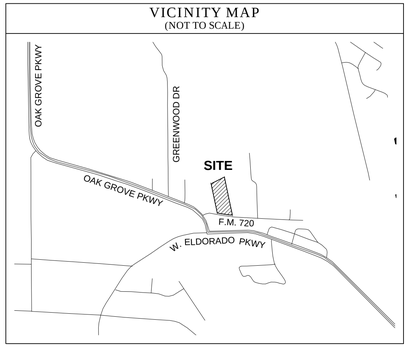
iii. Manufacturing, Light Assembly. A facility that involves light assembly, fabrication, and/or packaging of finished products or parts, predominately from previously prepared materials, and the use of small-scale machinery, tools and labor to make items for use or sale. May also include warehousing, research and development, wholesaling operations with infrequent customer or client visits, and may include related office and shipping areas. Light industry is often assembly-based and is typically consumer-oriented (i.e., most light industrial products are sold to retail stores or end users rather than as intermediate parts for use by other industries). Light industry generally has less environmental impact than those associated with heavy industry. Light industries require a relatively small amount of raw materials, area and power. Examples of light industry include, but are not limited to, plastic items, clothing, shoes, foods, beverages, personal care and home care products, cosmetics, drugs, furniture, consumer electronics, and home appliances.

iv. Reprographic Shop. A facility for the reproduction of materials or drawings on a job order basis utilizing lithography, off-set printing, digital printing, or other printing techniques, for purposed of custom design, promotional marketing, banners, brochures, posters, mounting, lamination, bindery, and graphic design. etc.

Exhibit C

Previously Approved Planned Development Ordinance No. 1477

VICINITY MAP
(NOT TO SCALE)



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 14°08'58" W	22.29'
L2	S 06°14'52" W	42.79'
L3	S 11°39'24" W	12.06'
L4	N 06°14'52" E	53.52'
L5	S 06°14'52" W	16.23'
L6	N 11°39'24" E	16.73'
L7	S 31°46'12" E	98.86'
L8	S 11°00'19" E	117.50'
L9	N 79°18'40" E	67.97'
L10	S 10°41'20" E	15.00'
L11	S 79°18'40" W	15.00'
L12	N 10°41'20" W	4.92'
L13	S 79°18'40" W	48.63'
L14	S 42°34'21" E	49.18'
L15	S 10°34'53" E	5.00'
L16	S 43°43'30" W	30.39'
L17	S 11°45'58" E	22.17'
L18	N 78°08'23" E	248.37'
L19	S 61°19'53" E	16.54'
L20	S 11°56'48" E	62.53'
L21	S 31°45'58" W	13.69'
L22	S 11°10'52" E	63.98'
L23	N 81°02'21" E	33.92'
L24	S 12°30'55" E	75.70'
L25	S 78°51'45" W	5.03'
L26	N 12°30'55" W	70.94'
L27	S 81°02'21" W	34.03'
L28	N 11°10'52" W	70.76'
L29	N 31°45'58" E	13.65'
L30	N 11°56'48" E	58.22'
L31	N 61°19'53" W	12.50'
L32	S 78°08'23" W	253.29'
L33	N 11°45'58" W	29.81'
L34	N 43°43'30" E	34.59'
L35	N 78°34'44" E	42.34'
L36	N 42°34'21" W	66.91'
L37	N 11°00'19" W	112.01'
L38	N 31°46'12" W	118.07'
L39	N 33°04'06" E	24.06'
L40	N 33°04'06" E	18.46'
L41	S 78°16'29" W	32.00'
L42	N 11°43'31" W	10.00'
L43	S 78°15'39" W	16.03'
L44	N 11°44'21" W	23.00'
L45	N 11°44'21" W	44.68'
L46	N 11°44'21" W	44.68'
L47	S 11°44'21" E	15.74'
L48	S 78°15'39" W	13.00'
L49	N 36°47'05" W	13.95'
L50	S 80°18'25" W	17.90'
L51	N 81°33'31" W	13.36'
L52	S 08°26'29" W	10.00'
L53	N 81°33'31" W	10.00'
L54	S 83°45'08" E	17.33'
L55	S 06°14'52" W	31.00'
L56	N 83°45'08" W	18.00'
L57	N 78°15'39" E	4.76'
L58	N 11°44'21" W	10.00'
L59	N 78°15'39" E	12.00'
L60	S 06°14'52" W	18.01'
L61	S 78°15'39" W	13.27'
L62	S 11°44'21" E	10.00'
L63	S 78°15'39" W	10.00'
L64	S 38°04'42" W	9.81'
L65	S 51°55'18" E	10.00'
L66	S 38°04'42" W	9.64'
L67	S 55°17'15" E	24.86'
L68	N 11°39'24" E	32.23'

CURVE TABLE					
CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	320.48'	2819.79'	6°30'43"	N 81°51'10" W	320.31'
C2	25.55'	32.00'	45°45'09"	N 78°51'46" W	24.88'
C3	33.53'	42.00'	45°44'19"	S 78°51'22" E	32.64'
C4	23.95'	25.00'	54°53'56"	S 15°47'34" E	23.05'
C5	13.75'	25.00'	31°30'12"	S 27°29'27" E	13.57'
C6	40.44'	49.00'	47°17'01"	N 11°54'10" E	39.30'
C7	20.63'	25.00'	47°16'11"	N 11°54'34" E	20.05'
C8	20.78'	25.00'	47°37'49"	N 35°32'26" W	20.19'
C9	40.70'	49.00'	47°35'07"	N 35°33'47" W	39.54'
C10	36.32'	49.00'	42°27'53"	N 09°27'43" E	35.49'
C11	21.33'	50.00'	24°26'47"	N 18°28'16" E	21.17'
C12	45.89'	30.00'	87°38'26"	S 37°34'21" E	41.54'
C13	45.53'	30.00'	86°57'02"	N 55°07'55" E	41.28'
C14	36.47'	30.00'	69°39'13"	N 46°33'57" W	34.27'
C15	47.12'	30.00'	90°00'00"	N 33°15'39" E	42.43'
C16	22.41'	30.00'	42°47'56"	S 80°20'23" E	21.89'
C17	40.32'	54.00'	42°47'07"	S 80°19'58" E	39.39'
C18	47.10'	30.00'	89°57'18"	S 56°44'52" E	42.41'
C19	57.79'	30.00'	110°22'39"	S 43°25'06" W	49.26'
C20	47.12'	30.00'	90°00'00"	S 56°44'21" E	42.43'
C21	47.12'	30.00'	90°00'00"	S 33°15'39" W	42.43'
C22	47.13'	30.00'	90°00'50"	N 56°43'56" W	42.43'
C23	47.12'	30.00'	90°00'00"	N 33°16'29" E	42.43'
C24	23.95'	30.00'	45°44'19"	S 78°51'22" E	23.32'
C25	35.14'	44.00'	45°45'09"	S 78°51'46" E	34.21'
C26	47.12'	30.00'	90°00'00"	S 56°44'21" E	42.43'
C27	47.12'	30.00'	90°00'00"	S 33°15'39" W	42.43'
C28	47.12'	30.00'	90°00'00"	N 56°44'21" W	42.43'
C29	47.12'	30.00'	90°00'00"	N 33°15'39" E	42.43'
C30	47.36'	92.50'	29°20'09"	N 26°24'25" W	46.85'
C31	46.78'	107.50'	24°56'01"	N 24°12'21" W	46.41'
C32	4.35'	2.50'	98°38'11"	S 33°56'02" E	3.82'
C33	3.93'	2.50'	90°00'00"	S 51°14'52" W	3.54'
C34	8.76	29.50'	17°00'41"	S 04°24'36" E	8.73'

GENERAL NOTES

1. The subject property does not lie within a 100 year floodplain according to Community Panel No. 48121C0415G, dated April 18, 2011 of the National Flood Insurance rate Maps for Denton County, Texas.
2. Minimum finished floor elevations are at least 2 feet above the 100 year flood plain.
3. The grid coordinates shown on this plat are based on GPS observations utilizing the AllTerra RTK Network - North American Datum of 1983 (Adjustment Realization 2011).
4. Notice - selling a portion of this addition by metes and bounds is a violation of Town ordinance and state law and is subject to fines and withholding of utilities and building permits.
5. All interior property corners are marked with a 1/2-inch iron rod with a green plastic cap stamped "EAGLE SURVEYING" unless noted otherwise.
6. The bearings shown on this plat are based on GPS observations utilizing the AllTerra RTK Network - North American Datum of 1983 (Adjustment Realization 2011). Texas North Central Zone (4202).
7. This property may be subject to charges related to impact fees and the applicant should contact the Town regarding any applicable fees due.
8. All common areas will be owned and maintained by the HOA/POA.
9. All lots comply with the minimum size requirements of the zoning district.
10. This plat does not alter or remove existing deed restrictions, if any, on this property.

LEGEND

POB	POINT OF BEGINNING
IRF	IRON ROD FOUND
CIRF	CAPPED IRON ROD FOUND
DOC. NO.	DOCUMENT NUMBER
P.R.D.C.T.	PLAT RECORDS, DENTON COUNTY, TEXAS
D.R.D.C.T.	DEED RECORDS, DENTON COUNTY, TEXAS
O.R.D.C.T.	OFFICIAL RECORDS, DENTON COUNTY, TEXAS
R.P.R.D.C.T.	REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS
	PROPOSED FIRE HYDRANT

AREA	ACRES	SQ.FT.
LOT 1	3.812	166084.06
LOT 2	1.194	51968.30

CERTIFICATE OFF FINAL APPROVAL

APPROVED

Town Official
Town of Little Elm, Texas

Date

The undersigned, the Town Secretary of the Town of Little Elm, Texas, hereby certifies that the foregoing Final Plat of the LAKESIDE SHOPS AND BUSINESS PARK Subdivision or Addition to the Town of Little Elm was submitted to the Planning and Zoning Commission on the _____ day of _____, 2022, and the Commission, by formal action, then and there accepted the Final Plat and hereby authorizes the developer to proceed with the construction of public works improvements and infrastructure as indicated on the accompanying construction plans, and said Commission further authorizes the Chairman of the Planning and Zoning Commission to note the acceptance thereof by signing his/her name as hereinabove subscribed.

Witness by hand this _____ day of _____, 2022.

Town Secretary
Town of Little Elm, Texas

OWNER'S CERTIFICATE & DEDICATION

STATE OF TEXAS §
COUNTY OF DENTON §

WHEREAS, **HACKBERRY BUSINESS PARK, LLC**, is the owner of a 5.006 acre tract of land out of the DAVID M. CULE SURVEY, ABSTRACT NUMBER 226, situated in the Town of Little Elm, Denton County, Texas and being all of a called Tract 1 - 2.990 acre tract of land and all of a called Tract 2 - 2.000 acre tract conveyed to Hackberry Business Park, LLC by deed of record in Document Number 2018-144789 of the Official Records of Denton County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING, at a 1/2 inch iron rod with yellow plastic cap stamped "JE SMITH" found in the curving North right-of-way line of Farm to Market Road 720 (right-of-way varies), being the Southwest corner of a called 9.404 acre tract of land conveyed to Benjamin and Cheryl Mohrbacher by deed of record in Document Number 2000-6577 of said Official Records, also being the Southeast corner of said 2.990 acre tract and hereof;

THENCE, along the curving North right-of-way line of Farm to Market Road 720, being in part, the common South line of said 2.990 acre tract, and in part, the common South line of said 2.000 acre tract, along a non-tangent curve to the right, having a radius of 2819.79 feet, a chord bearing of N81°51'10"W, a chord length of 320.31 feet, a delta angle of 06°30'43", an arc length of 320.48 feet to a 1/2 inch iron rod found at the Southeast corner of a called 3.40 acre tract of land conveyed to Saiseekers Association of America by deed of record in Document Number 2014-102223 of said Official Records, being the Southwest corner of said 2.000 acre tract and hereof;

THENCE, leaving the North right-of-way line of Farm to Market Road 720, along the East line of said 3.40 acre tract and the common West line of said 2.000 acre tract, the following two (2) courses and distances:

1. N11°44'21"W, a distance of 604.25 feet to a 1/2 inch iron rod with green plastic cap stamped "EAGLE SURVEYING" set;
2. N14°08'58"W, a distance of 22.29 feet to a 1/2 inch iron rod with unreadable orange plastic cap found in the South line of a called 7.010 acre tract of land conveyed to DFW Sneha Limited Liability Company by deed of record in Document Number 2021-26008 of said Official Records, being the Northwest corner of said 2.000 acre tract and hereof;

THENCE, N63°22'41"E, leaving the East line of said 3.40 acre tract, along the South line of said 7.010 acre tract, being in part, the common North line of said 2.000 acre tract, and in part, the common North line of said 2.990 acre tract, passing at a distance of 136.10 feet a 1/2 inch iron rod with illegible yellow plastic cap found at the Northwest corner of said 2.000 acre tract, and continuing for a total distance of 176.07 feet to a 1/2 inch square pipe found at the Northwest corner of said 9.404 acre tract, being the Northeast corner of said 2.990 acre tract and hereof;

THENCE, S11°46'13"E, leaving the South line of said 7.010 acre tract, along the West line of said 9.404 acre tract, being the common East line of said 2.990 acre tract, a distance of 815.65 feet to the **POINT OF BEGINNING** and containing an area of 5.006 Acres, or (218,052 Square Feet) of land, more or less.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS:

THAT, **HACKBERRY BUSINESS PARK, LLC,** does hereby adopt this plat, designating herein described property as **LAKESIDE SHOPS AND BUSINESS PARK,** an addition to the Town of Little Elm, Denton County, Texas, and does hereby dedicate to public use forever all streets, alleys, parks, watercourses, drains, easements and public places thereon shown for the purpose and consideration therein expressed. No buildings, fences, trees, shrubs or other improvements or growths shall be constructed or placed upon, over or across the drainage and utility easements as shown. Said drainage and utility easements being hereby reserved for the mutual use and accommodation of all public utilities desiring to use same. All and any public utility shall have the right to remove and keep removed all or parts of any buildings, fences, trees, shrubs or other improvements or growths which may in any way endanger or interfere with the construction, maintenance, or efficiency of its respective system on the drainage and utility easement and all public utilities shall at all times have the full right of ingress and egress to or from and upon the said drainage and utility easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or parts of its respective systems without the necessity at any time of procuring the permission of anyone.

OWNER: **HACKBERRY BUSINESS PARK, LLC**, a Texas liability company

BY: _____
Authorized Agent

Date

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF THE OFFICE this _____ day of _____, 20__.

Notary Public in and for the State of Texas

CERTIFICATE OF SURVEYOR

STATE OF TEXAS §
COUNTY OF DENTON §

I, **MATTHEW RAABE**, Registered Professional Land Surveyor, do hereby certify that this plat was prepared from an actual survey made on the ground and that the monuments shown hereon were found or placed with 1/2-inch iron rods with green plastic caps stamped "EAGLE SURVEYING" under my direction and supervision in accordance with the current provisions of the Texas Administrative Code and the Ordinances of the Town of Little Elm, Denton County, Texas.

PRELIMINARY
this document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document

Matthew Raabe, R.P.L.S. #6402

Date

STATE OF TEXAS §
COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared **MATTHEW RAABE**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF THE OFFICE this _____ day of _____, 20_.

Notary Public in and for the State of Texas

FINAL PLAT
LAKESIDE SHOPS AND BUSINESS PARK
LOTS 1 & 2, BLOCK A

BEING 5.006 ACRES OF LAND OUT OF THE DAVID M. CULE SURVEY, ABSTRACT NO. 226 TOWN OF LITTLE ELM, DENTON COUNTY, TEXAS

DATE OF PREPARATION: 8/17/2022 SCALE: 1" = 50'

RECORDED IN CABINET _____, SLIDE _____

Project 2108.006-05
Date 09-13-2022
Drafter CHM/EN

EAGLE SURVEYING, LLC
222 S. Elm Street, Suite: 200
Denton, TX 76201
(940) 222-3009
TX Firm #10194177

SURVEYOR
Eagle Surveying, LLC
Contact: Brad Eubanks
Brad@eaglesurveying.com
222 S. Elm Street, Suite: 200
Denton, TX 76201
(940) 222-3009

ENGINEER
Marshall Gage, LLC
Contact: Scott Caruthers, P.E.
sdc@marshallgage.com
207 E. Virginia, Suite: 216
McKinney, TX 75069
(972) 542-9018

OWNER
Hackberry Business Park, LLC
Contact: Daniel Kelleher
Dan@asapstarters.com
1118 Timber Lane
Frisco, TX 75034
(972) 370-7710

ORDINANCE NO. 1477

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, HEREFORE AMENDED, BY REZONING APPROXIMATELY 5.0 ACRES OF LAND FROM LIGHT COMMERCIAL TO PLANNED DEVELOPMENT-LIGHT COMMERCIAL (PD-LC), TO ESTABLISH AND ALLOW FOR THE USE OF OFFICE/WAREHOUSE WITH MODIFIED DEVELOPMENT STANDARDS, GENERALLY LOCATED ON THE NORTH SIDE OF OLD STATE HIGHWAY 24, APPROXIMATELY 305 FEET EAST OF OAK GROVE PARKWAY; CORRECTING THE OFFICIAL ZONING MAP; PROVIDING A SAVINGS CLAUSE, PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; AND PROVIDING FOR 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, the Future Land Use Plan of the 2017 Comprehensive Plan designates the subject property as Mixed Use; and

WHEREAS, a request for a change in zoning has been initiated by Daniel Kelleher to allow for office/warehouse with modified design standards on 5.0 acres of land more specifically described on the Location Map, attached hereto; and

WHEREAS, the Town Council and the Planning and 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 rezoning described herein; and

WHEREAS, after due deliberations and consideration of the recommendation of the Planning and 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 rezoning 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. ZONING AMENDMENT. The Comprehensive Zoning Ordinance of the Town, is hereby amended by providing for a **Planned Development district (PD)** on approximately 5.0 acres of land to establish and allow for the use of office/warehouse with modified development standards, generally located on the north side of Old State Highway 24, approximately 305 feet east of Oak Grove Parkway a tract of land more particularly described on Location Map, attached hereto, subject to all of the terms and conditions set forth herein, and all other applicable ordinances, laws, rules, regulations, and standards.

SECTION 3. CONDITIONS. The following special ordinance provisions shall apply to the subject property:

The permitted uses and standards shall be in accordance with the Light Commercial (LC) zoning district and Architectural Standards for Commercial Structural, unless otherwise specified herein:

A. GENERAL PURPOSE AND DESCRIPTION:

The Lakeside Shops and Business Park Planned Development is intended primarily for the conduct of a mix of uses including retail, office, restaurant, service-oriented uses, and office/warehouse.

B. PERMITTED USES:

Those uses listed in the chart below (Subsection G) as "P" are authorized uses permitted by right. Those uses listed as "S" are allowed with the approval of a Specific Use Permit (SUP) by the Town Council. Additionally, the following use will be allowed, as defined:

1) Office/Warehouse
   a. An establishment that primarily consists of an office and/or commercial use with an incidental need to store supplies or products that are associated with the primary use. Warehousing/storage may be utilized for up to 80% of the overall floor area per tenant space.

C. DEVELOPMENT REGULATIONS:

Maximum Height	45'
Maximum Front Yard Setback	None
Minimum Side Yard Setback	10'
Minimum Rear Yard Setback	35'
Minimum Area/Tenant Space	1,500 square feet

D. PARKING REQUIREMENTS:

1) Office/warehouse buildings will provide the following number of parking spaces:
   a. A ratio of 40% office (One space per 300 square feet of floor area) to 60% warehouse (One space per 1,000 square feet of floor area) will be used to calculate the required number of spaces in aggregate to be shared among the various buildings
2) Parking reduction: As part of this development, the total number of required parking spaces calculated under this section may be reduced by twenty (20) percent.

E. LANDSCAPING & SCREENING REQUIREMENTS:

1) Landscaped yards shall be provided as follows:
   a. Along the side yards, a minimum width of five (5) feet shall be required along the western property line and ten (10) feet shall be required along the eastern property line.
   b. Along the rear yard adjacent to residential use or zoning, a minimum width of thirty-five (35) feet shall be required.

2) Landscaping required:
   a. A minimum of fifteen (15) percent open space will be provided in the development.
   b. The development will exceed the minimum number of required plantings within the front and side yards by a minimum of twenty (20) percent.
   c. A perimeter fence will be installed as shown on the Concept plan, Exhibit A, in accordance with the following:
      i. Along western boundary line of development:
         a) Ornamental iron fence, minimum six (6) feet tall with an irrigated living screen.
      ii. Along eastern boundary line of development:
         a) Ornamental iron fence, minimum six (6) feet tall with an irrigated living screen.
      iii. Along rear boundary line of development:
         a) Masonry wall, eight (8) feet tall.

F. ARCHTECTURAL STANDARDS FOR COMMERCIAL STRUCTURES (Includes office, retail, commercial, etc.)

1) Design standards.
   a. All buildings within this planned development shall have similar materials, colors.
   b. All structures shall be architecturally finished fully to meet the Town's Architectural Standards for Commercial Structures with compatible

materials and colors on sides that can be seen from a public right-of-way. Elevations that are in the interior of the development and have limited sighting from a public right-of-way or side yard may be constructed of 3-step stucco.

G. PERMITTED USES

Planned Development Zoning Districts Uses. Uses not depicted in the chart below or described in Subsection B (above) shall be prohibited. P=permitted by right; S=Specific Use Permit required.

	PD-LC Planned Development
Primary Residential Uses	
Mixed Use Building	P
Institutional & Special Uses	
College, University, or Trade School	P
Fraternal Organization, Lodge, Civic Club, Fraternity, or Sorority	P
Golf Course, Tennis club, Polo Club, or Country Club (private)	P
Hospital	P
Municipal Uses operated by the Town of Little Elm	P
Museum/Art Gallery	P
Park or Playground	P
Recreation Center	P
Religious Facility	P
School, Private, Charter or Parochial	S
Retail Uses	
Antique Shop and Used Furniture, inside only	P
Arcade	S
Bakery, Candy or Ice-Cream Shop	S
Bar/Brewpub	P
Building Material and Hardware Sales, Major	P
Building Material and Hardware Sales, Minor	P
Commercial Amusement, Indoor	P
Florist	P
Greenhouse or Nursery for Retail Plant Sales	P
Portable Building Sales	P
Restaurant, Dine-in	P
Restaurant, Drive-in	S
Restaurant, Drive-thru	S
Restaurant, with Brewpub	P
Restaurant, Pick-up only	P
Retail Use (other than listed)	P

Store, Big Box	P
Store, Convenience	P
Store, Discount, Variety, or Department Store	P
Store, Drugstore or Pharmacy	P
Store, Feed	P
Store, Florist	P
Store, Grocery	P
Store, Hardware & Home Imp.	P
Store, Incidental (within another use)	P
Store, Liquor	S
Store, Pet Shop	P
Store, Shopping Center	P
Store, other than listed above	P
Theatre, Indoor	P
Winery/Brewery Retail Sales	P
Service Uses	
Bank, Savings and Loan, or Credit Union	P
Catering Service	P
Child Care Center	S
Cleaning and pressing (small shop/pickup)	P
Clinic/Medical Lab	P
Clinic, Animal (no outside runs)	P
Commissary	S
Contractor's Shop (Inside Only)	P
Custom Personal Service	P
Gunsmith	P
Gymnastics/Dance Studio/Martial Arts	P
Health/Fitness Center	P
Household Appliance/Electronics Service and Repair	P
Incidental Retail & Service Uses	P
Laundry/Dry Cleaning, Pickup Station	P
Office, Professional and General Administrative	P
Personal Service (other than listed)	P
Print Shop, Minor Retail Shop	P
Studio, Photography, Music, Artistry	P
Studio, Media	P
Automobile & Vehicular Uses	
Auto/Boat/RV Repair, Minor, Indoor Only	S
Auto/Boat/RV Sales, Accessories Only	S
Motorcycle Sales/Service, Indoor Only	S
Industrial & Manufacturing Uses	
Office/Warehouse*	P*
Research and Development Center	P
Winery/Brewery/Distillery Manufacturing	S

*See definitions and associated standards in Subsection B (above)

H. Phasing – No office/warehouse structure shall receive a Certificate of Occupancy until the associated retail structure begins vertical construction.

SECTION 4. **SAVINGS.** This 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 5. **ZONING MAP.** The official zoning map of the Town shall be amended to reflect the change in zoning made by this ordinance.

SECTION 6. **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 7. **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 Comprehensive 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 the ordinance without the valid parts and to this end the provisions of this ordinance shall remain in full force and effect.

SECTION 8. **REPEALER.** That all ordinances of the Town of Little Elm in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of that conflict.

SECTION 9. **EFFECTIVE DATE.** Upon adoption, this Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, Texas on the 4th day of December, 2018.

ATTEST:

Kathy Phillips, Town Secretary

The Town of Little Elm, Texas

David Hillock, Mayor

TOWN OF LITTLE ELM TEXAS

TOWN OF LITTLE ELM
PLANNING & ZONING COMMISSION
November 15, 2018

OVERVIEW

Project	Lakeside Shops and Business Park Rezoning (18-PD-007)
P&Z Hearing	11/15/2018
Council Hearing	12/04/2018
Request	A request for a Planned Development to establish and allow the use of office/warehouse
Size	Approximately 5.0 acres
Current Zoning	Light Commercial (LC)
Proposed Zoning	Planned Development-Light Commercial (PD-LC)
Existing Use	Vacant Property
Future Land Use Plan Designation	Mixed Use
Applicant	Daniel Kelleher – Lakeside Shops and Business Park
Owner	ETE 10, LLC

Location

The subject property is generally located on the north side of Old State Highway 24, approximately 305 feet east of Oak Grove Parkway, within Little Elm's town limits.

Planning Analysis

The proposed amendment request is to establish and allow the use of office/warehouse with modified standards to architectural design. The use of "office/warehouse" is not an established use within the zoning ordinance. This request is a hybrid of uses and categories that fall in both commercial and industrial districts. The Town, in its continued growth, is starting to capture

interest from specific types of commercial and office uses that also have a need for on-site storage in a warehouse-type setting. Upon initial meetings with the applicant, staff expressed concern regarding the development of a product that is more suitable for industrial districts.

In considering this request, staff looks to several sections of the Comprehensive Plan. The first section that touches upon this request is the Growth section of the Plan. A primary goal within the section calls for the correlation "of town services with anticipated population growth and capacity." From a commercial growth perspective, this request is compatible with this language as staff believes the proposed use will help to capture new commercial needs. This perspective reaches to the Employment Opportunities section of the Plan, which states in its primary goal to "encourage the establishment of new businesses...thereby creating increased and diversified employment opportunities." Additionally, Objective 5 within this section calls for the creation of opportunities for office development. The proposed plan also reflects the Town's desire to promote "designs that incorporate Little Elm's relationship with Lewisville Lake, such as the use of Little Elm's lighthouse theme" as noted in Objective 8.

Looking at the Aesthetic Appearance section within Chapter 3 (Livability) of the Plan, the subject request appears to be compatible with the Town's goal to "maximize desirability and aesthetic appeal throughout the Town." The unique and inviting development will provide this area an attractive, active feel which should help catch the attention of motorists along Eldorado Parkway and Oak Grove Parkway for the retail component.

The Future Land Use Plan (FLUP) map calls for the designation of Mixed Use. The Plan's definition for Mixed Use is "vertical and horizontal mix of residential, non-residential, and public uses." This request is generally compatible with this language, a mix of commercial and office uses with supportive warehousing will be developed near existing residential uses.

Included with this report are proposed stipulations that generally conform to the existing base zoning of Light Commercial (LC). Staff is generally in support of the request with the exception of the applicant's proposed warehouse percentage of up to 80% per tenant space. Staff feels a maximum of 60% warehouse area per tenant space will help to ensure a more office oriented development rather than industrial as discussed earlier in this analysis.

To recap the November 15, 2018 Planning & Zoning Commission meeting, staff requested that the Commission consider the phasing of the requested development and noted that in recent PD requests with retail uses associated with other, potentially less desirable uses within the proposed development, Council has approved the requested zoning with language that assures the retail component is constructed prior to other uses being able to obtain certain permits or certificates of occupancy.

Recommended Action

The Planning & Zoning Commission recommended approval of the request per the applicant's proposed standards.

Attachments: Location Map, Plan Exhibits, Proposed Stipulations, Ordinance No. 1477

LITTLE ELM

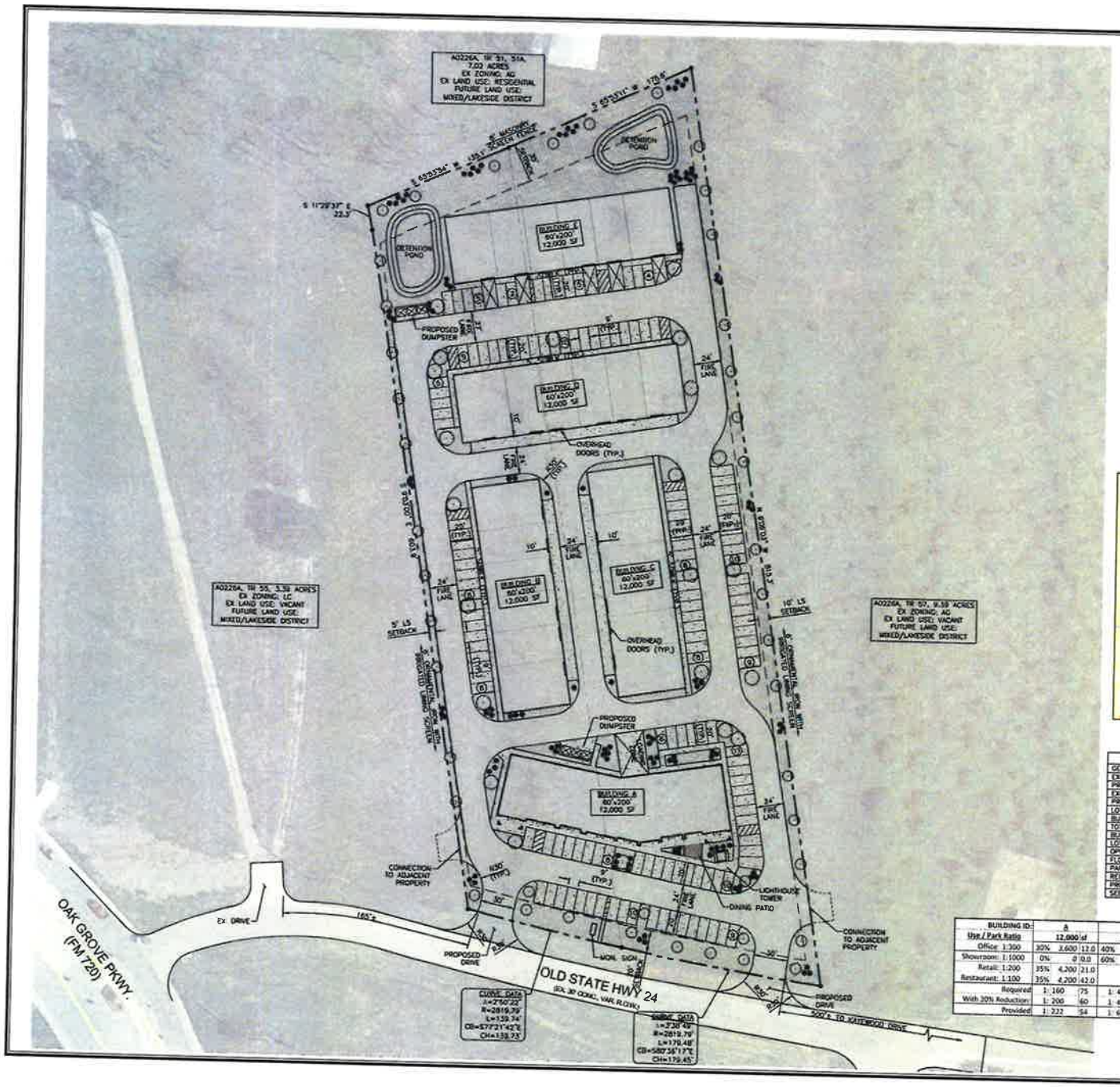
Lakeside Shops
1812 & 1816 Old State Highway 24
Town of Little Elm
Denton County, Tx
Date: 9/17/2018

Legend
Subject Property

N

Location Map

0 500 1,000
Feet



0 20 40 80
SCALE: 1"=40'

LEGEND

- CONCRETE PAVEMENT – FIRELANE AND DRIVEWAY
- CONCRETE PAVEMENT – PARKING AND SIDEWALK
- LANDSCAPE AREA
- TREE
- SHRUBS

NOTES:
1. ALL BUILDINGS SHALL BE ONE STORY IN HEIGHT.
2. EXISTING TREES AT BACK OF PROPERTY (NORTH SIDE) WILL BE PRESERVED IF POSSIBLE. THE PROPOSED DETENTION POND IS SCHEMATIC IN SIZE AND LOCATION.
3. THE SITE GENERALLY DRAINS TO THE EAST AND NORTH. ONSITE DRAINAGE FACILITIES WILL BE DESIGNED TO MITIGATE RUNOFF.
4. DUMPSTER ENCLOSURES SHALL BE 14'x25' AND SCREENED PER TOWN OF LITTLE ELM STANDARDS.

VICINITY MAP
NTS

SITE DATA SUMMARY TABLE – 4.99 ACRES	
GENERAL SITE DATA	A0226A D.M. CULE, TR 56 & 56A
EXISTING ZONING	LIGHT COMMERCIAL
PROPOSED ZONING	PLANNED DEVELOPMENT–LIGHT COMMERCIAL
EXISTING LAND USE	VACANT/AGRICULTURE
PROPOSED LAND USE	RETAIL, COMMERCIAL, OFFICE/WAREHOUSE
LOT AREA (SQUARE FEET AND AC)	217,364 SF, 4.99 AC
BUILDING FOOTPRINT AREA (SQUARE FEET)	60,000 SF
TOTAL BUILDING AREA (SQUARE FEET)	60,000 SF
BUILDING HEIGHT (# STORIES)	1
LOT COVERAGE (PERCENT)	28.39%
OPEN AREA (PERCENT)	23.22% (15% MIN.)
FLOOR AREA RATIO (RATIO, PERCENT)	27.60%
PARKING	
REQUIRED PARKING (# SPACES)	140
PROVIDED PARKING (# SPACES)	143
SEE PARKING TABLE, BELOW FOR DETAILS	

PARKING TABLE

BUILDING ID:	A		B		C		D		E		Total	
Use / Park Ratio	12,000 sf		12,000 sf		12,000 sf		12,000 sf		12,000 sf		60,000 sf	
Office: 1:300	30%	3,600	12.0	40%	4,800	16.0	40%	4,800	16.0	40%	4,800	16.0	22,678 sf	
Showroom: 1:1000	0%	0	0.0	60%	7,200	7.2	60%	7,200	7.2	60%	7,200	7.2	28,831 sf	
Retail: 1:200	35%	4,200	21.0										4,221 sf	
Restaurant: 1:100	35%	4,200	42.0										4,242 sf	
Required	1: 160	75		1: 400	24		1: 250	24		1: 475	24	171	1: 319
With 30% Reduction:	1: 200	60		1: 480	20		1: 300	20		1: 570	20	140	1: 390
Provided:	1: 222	54		1: 600	16		1: 171	35		1: 250	24	143	1: 382

PREPARED: SEPTEMBER 4, 2018
REVISED: NOVEMBER 8, 2018

REV. 1
REV. 2
REV. 3
REV. 4
REV. 5

Allison Engineering Group
Planning Communities - Designing the Systems That Serve Them
4400 W. 13th, SUITE 109
DENTON, TEXAS 76207
PHONE (940)387-8565
FAX (940)380-9741
Kevin Allison, P.E.
Professional Engineer
Registration Number 119886
info@allisoneng.com

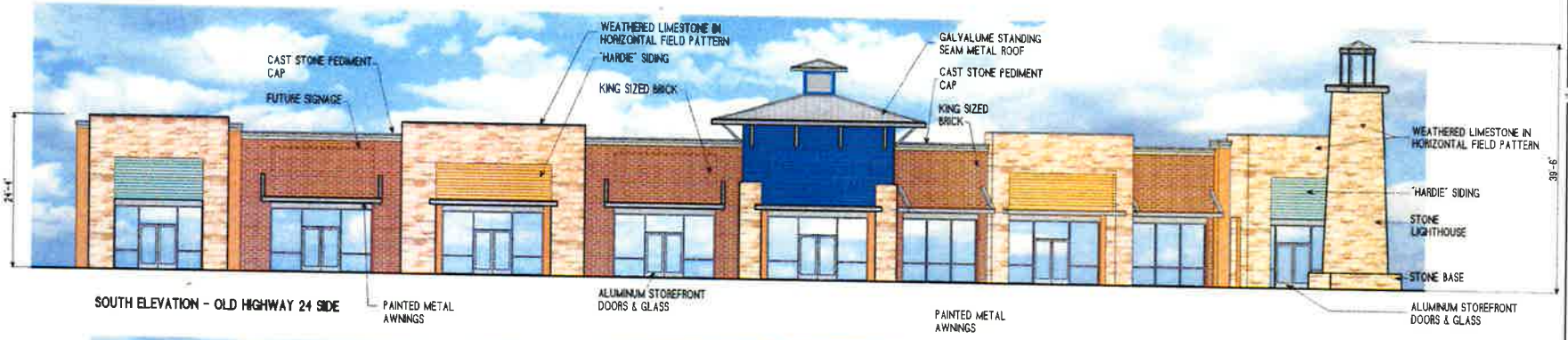
THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF
JASON P. FAGILE
P.E. 101886
IT IS NOT TO BE USED FOR THE PURPOSES OF CONSTRUCTION, BIDDING, PERMITTING, ETC

Drawn by: JSM
Checked by: JPF

PROPOSED MIXED USE DEVELOPMENT
LAKESIDE SHOPS AND BUSINESS PARK
OLD STATE HWY 24 - 5.0 ACRES
TOWN OF LITTLE ELM, DENTON COUNTY, TEXAS

CONCEPT PLAN

SHEET
EXHIBIT A



SOUTH ELEVATION - OLD HIGHWAY 24 SIDE

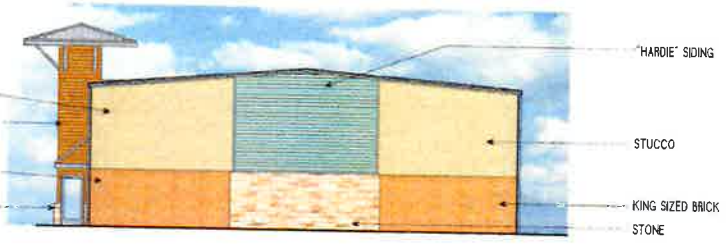
WEST ELEVATION - PUBLIC SIDE

EAST ELEVATION - PRIVATE SIDE

OVERALL PERCENTAGES

STUCCO	35%
"HARDIE" SIDING	24%
BRICK	36%
SONE	5%

NORTH ELEVATION - PRIVATE SIDE



SOUTH ELEVATION - PUBLIC SIDE

DATE:

NEW PLANS FOR:
LAKESIDE SHOPS & BUSINESS PARK
OLD STATE HWY 24
LITTLE ELM, TEXAS

BATES MARTIN ARCHITECTS
MARK M. MARTIN, ARCHITECT
MICHAEL A. BATES, ARCHITECT
DENTON, TEXAS 76205

PROJECT NO.
18-229

SHEET A1
OF 1

Date:	12/05/2023
Agenda Item #:	5. C.
Department:	Development Services
Strategic Goal:	Promote and expand Little Elm's identity
Staff Contact:	Olga Chernomorets, Planning Manager

AGENDA ITEM:

Present, Discuss, and Consider Action on a **Development Agreement between the Town of Little Elm and Lakeside Shops and Business Park LLC.**

DESCRIPTION:

The attached agreement is to solidify the Planned Development and the overall concept plan, architectural design, and development standards as outlined in the associated documents and development plans for Lakeside Shops and Business Park Planned Development.

BUDGET IMPACT:

This item has no budget impact.

RECOMMENDED ACTION:

Staff recommends approval.

Attachments

Development Agreement - Lakeside Shops and Business Park PD

STATE OF TEXAS	**§**	**DEVELOPMENT AGREEMENT**
	§	**FOR Lakeside Shops and Business**
COUNTY OF DENTON	**§**	**Park (PD-23-04008)**

This Development Agreement for Lakeside Shops and Business Park ("**Agreement**") is entered into between Lakeside Shops and Business Park LLC ("**Developer**"), whose address for purposes of this Agreement is 1118 Timber Lane, Frisco, TX 75036, and the Town of Little Elm, Texas ("**Town**"), whose address for purposes of this Agreement is 100 W. Eldorado Parkway, Little Elm, TX 75068. Developer and the Town are sometimes referred herein together as the "**Parties**" and individually as a "**Party**."

Recitals:

1. Developer is the owner of 5.0 acres located at 1767 and 1777 Old State Highway 24 in the Town of Little Elm, Texas (the "**Property")**, which Property is more particularly described in **Exhibit A** attached hereto.

2. In furtherance of the development of the Property, the Parties have negotiated certain matters regarding the Property as set forth in this Agreement.

3. The Parties seek to memorialize these negotiated matters and to include them in this contractually-binding Agreement.

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the benefits to each of the Parties from this Agreement, and other good and valuable consideration, the sufficiency of which is hereby acknowledged and agreed, the Parties do hereby agree as follows:

Section 1. Incorporation of Premises. The above and foregoing Recitals are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Term. This Agreement shall be effective as of the date of execution of this Agreement by the last of the Parties to do so ("**Effective Date**"). This Agreement shall remain in full force and effect from the Effective Date until terminated by the mutual agreement of all of the Parties in writing, or until all obligations in the Agreement have been fulfilled ("**Term**").

Section 3. Agreements. The Parties agree as follows:

A. The negotiated and agreed upon zoning and development standards contained in the Lakeside Shops and Business Park PD Ordinance, No. 1477, attached hereto as **Exhibit B**, which incorporate by reference the general zoning regulations of the Town's zoning ordinance, are hereby adopted and incorporated into this agreement as contractually-binding obligations of the Developer.

B. The negotiated and agreed upon zoning uses in Ordinance No. 1741, which amends the zoning of the original PD Ordinance, No. 1477, attached hereto as **Exhibit C**, which incorporate by reference the updated general zoning regulations

of the Town's zoning ordinance, are hereby adopted and incorporated into this agreement as contractually-binding obligations of the Developer.

Section 4. Miscellaneous.

A. Applicability of Town Ordinances. When the Property is developed, Developer shall construct all structures on the Property, in accordance with all applicable Town ordinances and building/construction codes, whether now existing or arising prior to such construction in the future.

B. Default/Mediation. No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. If either Party is in default under this Agreement, the other Party shall have the right to enforce the Agreement in accordance with applicable law, provided, however, in no event shall any Party be liable for consequential or punitive damages. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

C. Venue. This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its conflict of law rules. In the event of any dispute or action under this Agreement, venue for any and all disputes or actions shall be instituted and maintained in Denton County, Texas.

D. Relationship of Parties. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership, joint venture, joint enterprise, or other relationship between or among the Parties.

E. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

F. Cumulative Rights and Remedies. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies

are given in addition to any other rights the Parties may have by law statute, ordinance, or otherwise. The failure by any Party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such Party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. Any rights and remedies any Party may have with respect to the other arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement, except as otherwise expressly set forth herein.

G. **Exhibits**. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

H. **Surviving Rights**. 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.

I. **Applicable Laws**. This Agreement is made subject to the existing provisions of the Charter of the Town of Little Elm, its present rules, regulations, procedures and ordinances, and all applicable laws, rules, and regulations of the State of Texas and the United States.

J. **Authority to Execute**. 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.

K. **Amendments**. This Agreement may be only amended or altered by written instrument signed by the Parties.

L. **Headings**. The headings and captions used in this Agreement are for the convenience of the Parties only and shall not in any way define, limit or describe the scope or intent of any provisions of this Agreement.

M. **Entire Agreement**. This Agreement is the entire agreement between the Parties with respect to the subject matters covered in this Agreement. There are no other collateral oral or written agreements between the Parties that in any manner relates to the subject matter of this Agreement, except as provided or referenced in this Agreement.

N. **Filing in Deed Records**. This Agreement shall be recorded in the real property records of Denton County, Texas. This Agreement and all of its terms, conditions, and provisions is and shall constitute a restriction and condition upon the development of the Property and all portions thereof and a covenant running with the Property and all portions thereof, and is and shall be binding upon Developer and all of Developer's heirs, successors, and assigns and the future owners of the Property and any portion thereof; provided, however, this Agreement shall not constitute an obligation of or be deemed a restriction or encumbrance with respect to any final platted residential lot upon which a completed home has been constructed.

O. **Notification of Sale or Transfer; Assignment of Agreement**. Developer shall notify the Town in writing of any sale or transfer of all or any portion of the Property, within ten (10) business days of such sale or transfer. Developer has the right (from time to time without the consent of the Town, but upon written notice to the Town) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Developer under this Agreement, to any person or entity (an "**Assignee**") that is or will become an owner of any portion of the Property or that is an entity that is controlled by or under common control with Developer. Each assignment shall be in writing executed by Developer and the Assignee and shall obligate the Assignee to be bound by this Agreement with respect to the portion of the Property transferred to Assignee. If the Property is transferred or owned by multiple parties, this Agreement shall only apply to, and be binding on, such parties to the extent of the Property owned by such successor owner, and if the Developer or any Assignee is in default under this Agreement, such default shall not be an event of default for any non-defaulting Assignee which owns any portion of the Property separate from the defaulting Developer or Assignee. A copy of each assignment shall be provided to the Town within ten (10) business days after execution. Provided that the successor developer assumes the liabilities, responsibilities, and obligations of the assignor under this Agreement with respect to the Property transferred to the successor developer, the assigning party will be released from any rights and obligations under this Agreement as to the Property that is the subject of such assignment, effective upon receipt of the assignment by the Town. No assignment by Developer shall release Developer from any liability that resulted from an act or omission by Developer that occurred prior to the effective date of the assignment. Developer shall maintain true and correct copies of all assignments made by Developer to Assignees, including a copy of each executed assignment and the Assignee's Notice information.

P. **Sovereign Immunity**. The Parties agree that the Town has not waived its sovereign immunity from suit by entering into and performing its obligations under this Agreement.

Q. **Exactions/Infrastructure Costs**. Developer has been represented by legal counsel, or has had an opportunity to do so, in the negotiation of this Agreement, and been advised, or has had the opportunity to have legal counsel review this Agreement and advise Developer, regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town in this Agreement are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Developer specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with § 212.904 of the Texas Local Government Code; however, notwithstanding the foregoing, Developer hereby releases the Town from any and all liability under § 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure requirements imposed by this Agreement.

R. **Waiver of Texas Government Code § 3000.001 et seq**. With respect to the improvements constructed on the Property pursuant to this Agreement, Developer hereby

waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005.

S. **Rough Proportionality**. Developer hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution with respect to infrastructure requirements imposed by this Agreement. Developer and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement, with respect to infrastructure requirements imposed by this Agreement.

T. **Form 1295 Certificate.** The Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the Town, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

U. **Undocumented Workers Provision.** The Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120th day after the date the Town notifies Developer of the violation.

V. **Non-Boycott of Israel Provision.** In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars ($100,000.00). Unless Developer is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Developer verifies that Developer does not boycott Israel and will not boycott Israel during the Term of this Agreement.

W. **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

X. **Report Agreement to Comptroller's Office.** Town covenants and agrees to report this Agreement to the State Comptroller's office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021). [For Chapter 380 Agreements]

Y. **Verification Against Discrimination of Firearm or Ammunition Industries.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the Town, the Developer represents that: (1) the Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Developer will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.

Z. **Verification Against Discrimination Developer Does Not Boycott Energy Companies.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 13, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the Town, the Developer represents that: (1) the Developer does not boycott energy companies; and (2) the Developer will not boycott energy companies during the Term of this Agreement.

EXECUTED by the Parties on the dates set forth below, to be effective as of the date first written above.

DEVELOPER
a _____ company

By: _____

Date:_____

TOWN OF LITTLE ELM, TEXAS

By:_____
Matt Mueller
Town Manager

Date:_____

ATTEST:

By:_____
Caitlan Biggs
Town Secretary

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EXECUTED by the Parties on the dates set forth below, to be effective as of the date first written above.

DEVELOPER
a _____ company

By: Daniel Kelleher
Daniel Kelleher
Owner
Date: November 29, 2023

TOWN OF LITTLE ELM, TEXAS

By:_____
Matt Mueller
Town Manager

Date:_____

ATTEST:

By:_____
Caitlan Biggs
Town Secretary

STATE OF TEXAS §
§
COUNTY OF DENTON §

Before me, the undersigned authority, on this _____ day of _____, 2023, personally appeared MATT MUELLER, Town Manager of the Town of Little Elm, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[Seal]

By:_____
Notary Public, State of Texas

My Commission Expires:_____

STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned authority, on this _____ day of _____, 2023, personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity of a duly authorized representative of _____.

[Seal]

By:_____
Notary Public, State of Texas

My Commission Expires:_____

STATE OF TEXAS §
§
COUNTY OF DENTON §

Before me, the undersigned authority, on this _____ day of _____, 2023, personally appeared MATT MUELLER, Town Manager of the Town of Little Elm, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[Seal]

By:_____
Notary Public, State of Texas

My Commission Expires:_____

STATE OF TEXAS §
§
COUNTY OF Denton §

Before me, the undersigned authority, on this 29 day of November, 2023, personally appeared Dan Kelleher, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity of a duly authorized representative of Lakeside Shops + Business Park.

[Seal]

By:_____
Notary Public, State of Texas

My Commission Expires: 1-3-27

J JASON CLENDANIEL
NOTARY PUBLIC
STATE OF TEXAS
ID # 13412345-6
My Comm. Expires 01-03-2027

EXHIBIT A

Property Description

EXHIBIT "A"

TRACT 1

BEGINNING FOR THE SOUTHEAST CORNER OF THE TRACT BEING DESCRIBED HEREIN AT A 1/2" SQUARE TUBE FOUND FOR THE SOUTHEAST CORNER OF SAID 5.000 ACRES IN THE NORTH LINE OF F.M. HIGHWAY 720 IN A CURVE TO THE RIGHT, HAVING A RADIUS OF 2819.79 FEET, AT THE SOUTHWEST CORNER OF THE CALLED 9.392 ACRE TRACT DESCRIBED IN THE DEED TO HAROLD V. PRICE, ET UX, RECORDED IN VOLUME 1008, PAGE 695 DEED RECORDS;

THENCE ALONG THE ARC OF SAID CURVE ALONG SAID HIGHWAY AN ARC DISTANCE OF 179.48 FEET (CHORD BEARING OF NORTH 79 DEGREES 49 MINUTES 35 SECONDS WEST A DISTANCE OF 179.45 FEET) TO A CAPPED IRON ROD SET FOR THE SOUTHEAST CORNER OF THE CALLED TWO (2) ACRE TRACT DESCRIBED IN THE FINAL DECREE OF DIVORCE DATE JULY 15TH 1987, CAUSE NUMBER 86-2406-C;

THENCE NORTH 08 DEGREES 18 MINUTES 50 SECONDS WEST WITH THE EAST LINE OF SAID TWO ACRES, SEVERING SAID 5.000 ACRES A DISTANCE OF 713.30 FEET TO A CAPPED IRON SET FOR THE NORTHEAST CORNER OF SAID TWO ACRES IN THE NORTH LINE OF SAID 5.000 ACRES;

THENCE NORTH 66 DEGREES 50 MINUTES 04 SECONDS EAST WITH SAID NORTH LINE GENERALLY ALONG A FENCE A DISTANCE OF 176.07 FEET TO A 1/2" SQUARE TUBE FOUND FOR THE NORTHEAST CORNER OF SAID 5.000 ACRES AT THE NORTHWEST CORNER OF SAID PRICE TRACT;

THENCE SOUTH 08 DEGREES 18 MINUTES 50 SECONDS EAST WITH THE EAST LINE OF SAID 5.000 ACRES AND THE WEST LINE OF SAID PRICE TRACT, GENERALLY ALONG A FENCE A DISTANCE OF 815.34 FEET TO THE PLACE OF BEGINNING AND ENCLOSING 2.990 ACRES OF LAND.

TRACT 2

BEGINNING FOR THE SOUTHWEST CORNER OF THE TRACT BEING DESCRIBED HEREIN AT A \'BD" IRON ROD FOUND FOR THE SOUTHWEST CORNER OF SAID 5.000 ACRES IN THE NORTH LINE OF FM HIGHWAY 720 AT THE SOUTHEAST CORNER OR THE CALLED 3.390 ACRE TRACT DESCRIBED IN THE DEED TO JAMES F. HENSON, JR. ET UX, RECORDED IN VOLUME 928, PAGE 685 DEED RECORDS;

THENCE NORTH 08 DEGREES 8 MINUTES 50 SECONDS WEST WITH THE WEST LINE OF SAID 5.000 ACRES AND THE EAST LINE OF SAID 3.390 ACRES, GENERALLY ALONG A FENCE A DISTANCE OF 604.62 FEET TO A CAPPED IRON ROD SET FOR AN ANGLE POINT IN SAID LINE;

THENCE NORTH 10 DEGREES 33 MINUTES 27 SECONDS WEST CONTINUING WITH SAID LINE A DISTANCE OF 22.30 FEET TO A CAPPED IRON ROD FOUND FOR THE NORTHWEST CORNER OF SAID 5.000 ACRES;

THENCE NORTH 66 DEGREES 50 MINUTES 04 SECONDS EAST WITH THE NORTH LINE OF SAID 5.000 ACRES, GENERALLY ALONG A FENCE A DISTANCE OF 135.12 FEET TO A CAPPED IRON ROD SET FOR THE NORTHEAST CORNER OF SAID TWO ACRE TRACT, FROM WHICH A SQUARE IRON ROD FOUND FOR THE NORTHEAST CORNER OF SAID 5.000 ACRES BEARS NORTH 66 DEGREES 50 MINUTES 04 SECONDS EAST A DISTANCE OF 176.07 FEET;

THENCE SOUTH 08 DEGREES 18 MINUTES 50 SECONDS EAST WITH A LINE PARALLEL WITH THE MOST SOUTHERLY WEST LINE OF SAID 5.000 ACRES A DISTANCE OF 713.30 FEET TO A CAPPED IRON ROD SET FOR THE SOUTHEAST CORNER OF SAID TWO ACRE TRACT IN THE SOUTH LINE OF SAID 5.000 ACRES AND THE NORTH LINE OF SAID HIGHWAY IN A CURVE TO THE RIGHT HAVING A RADIUS OF 2819.79 FEET;

THENCE ALONG SAID LINE ALONG AND NEAR A FENCE AN ARC DISTANCE OF 129.81 FEET (CHORD BEARING OF NORTH 76 DEGREES 34 MINUTES 57 SECONDS WEST A DISTANCE OF 139.80 FEET) TO THE PLACE OF BEGINNING AND ENCLOSING 2.000 ACRES OF LAND.

Note: The Company is prohibited from insuring the area or quantity of the land described herein. Any statement in the above legal description of the area or quantity of land is not a representation that such area or quantity is

EXHIBIT B

Lakeside Shops and Business Park PD Ordinance, No. 1477

ORDINANCE NO. 1477

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, HEREFORE AMENDED, BY REZONING APPROXIMATELY 5.0 ACRES OF LAND FROM LIGHT COMMERCIAL TO PLANNED DEVELOPMENT-LIGHT COMMERCIAL (PD-LC), TO ESTABLISH AND ALLOW FOR THE USE OF OFFICE/WAREHOUSE WITH MODIFIED DEVELOPMENT STANDARDS, GENERALLY LOCATED ON THE NORTH SIDE OF OLD STATE HIGHWAY 24, APPROXIMATELY 305 FEET EAST OF OAK GROVE PARKWAY; CORRECTING THE OFFICIAL ZONING MAP; PROVIDING A SAVINGS CLAUSE, PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; AND PROVIDING FOR 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, the Future Land Use Plan of the 2017 Comprehensive Plan designates the subject property as Mixed Use; and

WHEREAS, a request for a change in zoning has been initiated by Daniel Kelleher to allow for office/warehouse with modified design standards on 5.0 acres of land more specifically described on the Location Map, attached hereto; and

WHEREAS, the Town Council and the Planning and 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 rezoning described herein; and

WHEREAS, after due deliberations and consideration of the recommendation of the Planning and 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 rezoning 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. ZONING AMENDMENT. The Comprehensive Zoning Ordinance of the Town, is hereby amended by providing for a **Planned Development district (PD)** on approximately 5.0 acres of land to establish and allow for the use of office/warehouse with modified development standards, generally located on the north side of Old State Highway 24, approximately 305 feet east of Oak Grove Parkway a tract of land more particularly described on Location Map, attached hereto, subject to all of the terms and conditions set forth herein, and all other applicable ordinances, laws, rules, regulations, and standards.

SECTION 3. CONDITIONS. The following special ordinance provisions shall apply to the subject property:

The permitted uses and standards shall be in accordance with the Light Commercial (LC) zoning district and Architectural Standards for Commercial Structural, unless otherwise specified herein:

A. GENERAL PURPOSE AND DESCRIPTION:

The Lakeside Shops and Business Park Planned Development is intended primarily for the conduct of a mix of uses including retail, office, restaurant, service-oriented uses, and office/warehouse.

B. PERMITTED USES:

Those uses listed in the chart below (Subsection G) as "P" are authorized uses permitted by right. Those uses listed as "S" are allowed with the approval of a Specific Use Permit (SUP) by the Town Council. Additionally, the following use will be allowed, as defined:

1) Office/Warehouse
   a. An establishment that primarily consists of an office and/or commercial use with an incidental need to store supplies or products that are associated with the primary use. Warehousing/storage may be utilized for up to 80% of the overall floor area per tenant space.

C. DEVELOPMENT REGULATIONS:

Maximum Height	45'
Maximum Front Yard Setback	None
Minimum Side Yard Setback	10'
Minimum Rear Yard Setback	35'
Minimum Area/Tenant Space	1,500 square feet

D. PARKING REQUIREMENTS:

1) Office/warehouse buildings will provide the following number of parking spaces:
   a. A ratio of 40% office (One space per 300 square feet of floor area) to 60% warehouse (One space per 1,000 square feet of floor area) will be used to calculate the required number of spaces in aggregate to be shared among the various buildings
2) Parking reduction: As part of this development, the total number of required parking spaces calculated under this section may be reduced by twenty (20) percent.

E. LANDSCAPING & SCREENING REQUIREMENTS:

1) Landscaped yards shall be provided as follows:
   a. Along the side yards, a minimum width of five (5) feet shall be required along the western property line and ten (10) feet shall be required along the eastern property line.
   b. Along the rear yard adjacent to residential use or zoning, a minimum width of thirty-five (35) feet shall be required.

2) Landscaping required:
   a. A minimum of fifteen (15) percent open space will be provided in the development.
   b. The development will exceed the minimum number of required plantings within the front and side yards by a minimum of twenty (20) percent.
   c. A perimeter fence will be installed as shown on the Concept plan, Exhibit A, in accordance with the following:
      i. Along western boundary line of development:
         a) Ornamental iron fence, minimum six (6) feet tall with an irrigated living screen.
      ii. Along eastern boundary line of development:
         a) Ornamental iron fence, minimum six (6) feet tall with an irrigated living screen.
      iii. Along rear boundary line of development:
         a) Masonry wall, eight (8) feet tall.

F. ARCHTECTURAL STANDARDS FOR COMMERCIAL STRUCTURES (Includes office, retail, commercial, etc.)

1) Design standards.
   a. All buildings within this planned development shall have similar materials, colors.
   b. All structures shall be architecturally finished fully to meet the Town's Architectural Standards for Commercial Structures with compatible

materials and colors on sides that can be seen from a public right-of-way. Elevations that are in the interior of the development and have limited sighting from a public right-of-way or side yard may be constructed of 3-step stucco.

G. PERMITTED USES

Planned Development Zoning Districts Uses. Uses not depicted in the chart below or described in Subsection B (above) shall be prohibited. P=permitted by right; S=Specific Use Permit required.

	PD-LC Planned Development
Primary Residential Uses	
Mixed Use Building	P
Institutional & Special Uses	
College, University, or Trade School	P
Fraternal Organization, Lodge, Civic Club, Fraternity, or Sorority	P
Golf Course, Tennis club, Polo Club, or Country Club (private)	P
Hospital	P
Municipal Uses operated by the Town of Little Elm	P
Museum/Art Gallery	P
Park or Playground	P
Recreation Center	P
Religious Facility	P
School, Private, Charter or Parochial	S
Retail Uses	
Antique Shop and Used Furniture, inside only	P
Arcade	S
Bakery, Candy or Ice-Cream Shop	S
Bar/Brewpub	P
Building Material and Hardware Sales, Major	P
Building Material and Hardware Sales, Minor	P
Commercial Amusement, Indoor	P
Florist	P
Greenhouse or Nursery for Retail Plant Sales	P
Portable Building Sales	P
Restaurant, Dine-in	P
Restaurant, Drive-in	S
Restaurant, Drive-thru	S
Restaurant, with Brewpub	P
Restaurant, Pick-up only	P
Retail Use (other than listed)	P

Store, Big Box	P
Store, Convenience	P
Store, Discount, Variety, or Department Store	P
Store, Drugstore or Pharmacy	P
Store, Feed	P
Store, Florist	P
Store, Grocery	P
Store, Hardware & Home Imp.	P
Store, Incidental (within another use)	P
Store, Liquor	S
Store, Pet Shop	P
Store, Shopping Center	P
Store, other than listed above	P
Theatre, Indoor	P
Winery/Brewery Retail Sales	P
Service Uses	
Bank, Savings and Loan, or Credit Union	P
Catering Service	P
Child Care Center	S
Cleaning and pressing (small shop/pickup)	P
Clinic/Medical Lab	P
Clinic, Animal (no outside runs)	P
Commissary	S
Contractor's Shop (Inside Only)	P
Custom Personal Service	P
Gunsmith	P
Gymnastics/Dance Studio/Martial Arts	P
Health/Fitness Center	P
Household Appliance/Electronics Service and Repair	P
Incidental Retail & Service Uses	P
Laundry/Dry Cleaning, Pickup Station	P
Office, Professional and General Administrative	P
Personal Service (other than listed)	P
Print Shop, Minor Retail Shop	P
Studio, Photography, Music, Artistry	P
Studio, Media	P
Automobile & Vehicular Uses	
Auto/Boat/RV Repair, Minor, Indoor Only	S
Auto/Boat/RV Sales, Accessories Only	S
Motorcycle Sales/Service, Indoor Only	S
Industrial & Manufacturing Uses	
Office/Warehouse*	P*
Research and Development Center	P
Winery/Brewery/Distillery Manufacturing	S

*See definitions and associated standards in Subsection B (above)

H. Phasing – No office/warehouse structure shall receive a Certificate of Occupancy until the associated retail structure begins vertical construction.

SECTION 4. **SAVINGS.** This 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 5. **ZONING MAP.** The official zoning map of the Town shall be amended to reflect the change in zoning made by this ordinance.

SECTION 6. **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 7. **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 Comprehensive 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 the ordinance without the valid parts and to this end the provisions of this ordinance shall remain in full force and effect.

SECTION 8. **REPEALER.** That all ordinances of the Town of Little Elm in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of that conflict.

SECTION 9. **EFFECTIVE DATE.** Upon adoption, this Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, Texas on the 4th day of December, 2018.

ATTEST:

Kathy Phillips, Town Secretary

The Town of Little Elm, Texas

David Hillock, Mayor

TOWN OF LITTLE ELM TEXAS

TOWN OF LITTLE ELM
PLANNING & ZONING COMMISSION
November 15, 2018

OVERVIEW

Project	Lakeside Shops and Business Park Rezoning (18-PD-007)
P&Z Hearing	11/15/2018
Council Hearing	12/04/2018
Request	A request for a Planned Development to establish and allow the use of office/warehouse
Size	Approximately 5.0 acres
Current Zoning	Light Commercial (LC)
Proposed Zoning	Planned Development-Light Commercial (PD-LC)
Existing Use	Vacant Property
Future Land Use Plan Designation	Mixed Use
Applicant	Daniel Kelleher – Lakeside Shops and Business Park
Owner	ETE 10, LLC

Location

The subject property is generally located on the north side of Old State Highway 24, approximately 305 feet east of Oak Grove Parkway, within Little Elm's town limits.

Planning Analysis

The proposed amendment request is to establish and allow the use of office/warehouse with modified standards to architectural design. The use of "office/warehouse" is not an established use within the zoning ordinance. This request is a hybrid of uses and categories that fall in both commercial and industrial districts. The Town, in its continued growth, is starting to capture

interest from specific types of commercial and office uses that also have a need for on-site storage in a warehouse-type setting. Upon initial meetings with the applicant, staff expressed concern regarding the development of a product that is more suitable for industrial districts.

In considering this request, staff looks to several sections of the Comprehensive Plan. The first section that touches upon this request is the Growth section of the Plan. A primary goal within the section calls for the correlation "of town services with anticipated population growth and capacity." From a commercial growth perspective, this request is compatible with this language as staff believes the proposed use will help to capture new commercial needs. This perspective reaches to the Employment Opportunities section of the Plan, which states in its primary goal to "encourage the establishment of new businesses...thereby creating increased and diversified employment opportunities." Additionally, Objective 5 within this section calls for the creation of opportunities for office development. The proposed plan also reflects the Town's desire to promote "designs that incorporate Little Elm's relationship with Lewisville Lake, such as the use of Little Elm's lighthouse theme" as noted in Objective 8.

Looking at the Aesthetic Appearance section within Chapter 3 (Livability) of the Plan, the subject request appears to be compatible with the Town's goal to "maximize desirability and aesthetic appeal throughout the Town." The unique and inviting development will provide this area an attractive, active feel which should help catch the attention of motorists along Eldorado Parkway and Oak Grove Parkway for the retail component.

The Future Land Use Plan (FLUP) map calls for the designation of Mixed Use. The Plan's definition for Mixed Use is "vertical and horizontal mix of residential, non-residential, and public uses." This request is generally compatible with this language, a mix of commercial and office uses with supportive warehousing will be developed near existing residential uses.

Included with this report are proposed stipulations that generally conform to the existing base zoning of Light Commercial (LC). Staff is generally in support of the request with the exception of the applicant's proposed warehouse percentage of up to 80% per tenant space. Staff feels a maximum of 60% warehouse area per tenant space will help to ensure a more office oriented development rather than industrial as discussed earlier in this analysis.

To recap the November 15, 2018 Planning & Zoning Commission meeting, staff requested that the Commission consider the phasing of the requested development and noted that in recent PD requests with retail uses associated with other, potentially less desirable uses within the proposed development, Council has approved the requested zoning with language that assures the retail component is constructed prior to other uses being able to obtain certain permits or certificates of occupancy.

Recommended Action

The Planning & Zoning Commission recommended approval of the request per the applicant's proposed standards.

Attachments: Location Map, Plan Exhibits, Proposed Stipulations, Ordinance No. 1477

LITTLE ELM

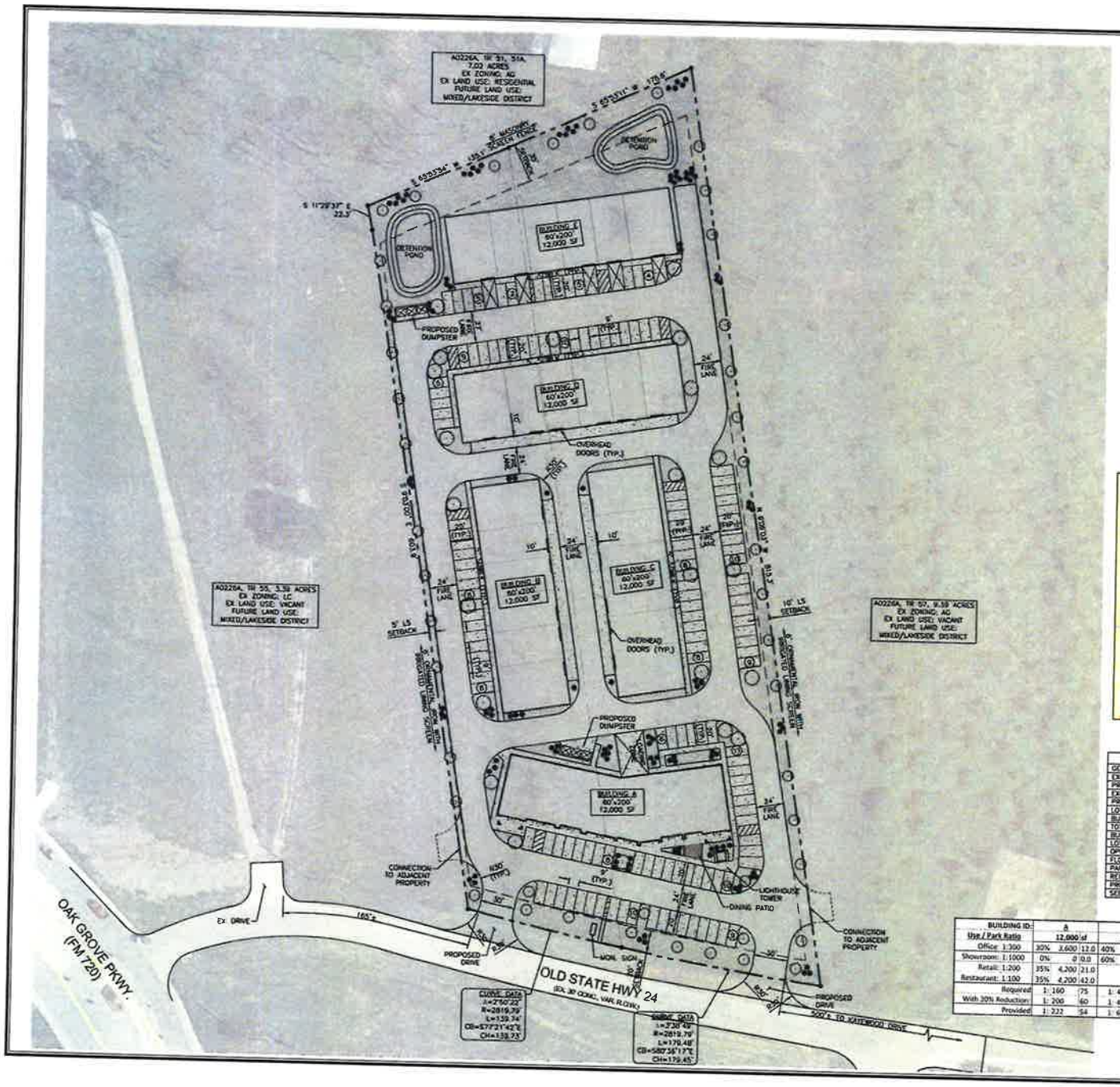
Lakeside Shops
1812 & 1816 Old State Highway 24
Town of Little Elm
Denton County, Tx
Date: 9/17/2018

Legend
Subject Property

N

Location Map

0 500 1,000
Feet



0 20 40 80
SCALE: 1"=40'

LEGEND

- CONCRETE PAVEMENT – FIRELANE AND DRIVEWAY
- CONCRETE PAVEMENT – PARKING AND SIDEWALK
- LANDSCAPE AREA
- TREE
- SHRUBS

NOTES:
1. ALL BUILDINGS SHALL BE ONE STORY IN HEIGHT.
2. EXISTING TREES AT BACK OF PROPERTY (NORTH SIDE) WILL BE PRESERVED IF POSSIBLE. THE PROPOSED DETENTION POND IS SCHEMATIC IN SIZE AND LOCATION.
3. THE SITE GENERALLY DRAINS TO THE EAST AND NORTH. ONSITE DRAINAGE FACILITIES WILL BE DESIGNED TO MITIGATE RUNOFF.
4. DUMPSTER ENCLOSURES SHALL BE 14'x25' AND SCREENED PER TOWN OF LITTLE ELM STANDARDS.

VICINITY MAP
NTS

SITE DATA SUMMARY TABLE – 4.99 ACRES	
GENERAL SITE DATA	A0226A D.M. CULE, TR 56 & 56A
EXISTING ZONING	LIGHT COMMERCIAL
PROPOSED ZONING	PLANNED DEVELOPMENT–LIGHT COMMERCIAL
EXISTING LAND USE	VACANT/AGRICULTURE
PROPOSED LAND USE	RETAIL, COMMERCIAL, OFFICE/WAREHOUSE
LOT AREA (SQUARE FEET AND AC)	217,364 SF, 4.99 AC
BUILDING FOOTPRINT AREA (SQUARE FEET)	60,000 SF
TOTAL BUILDING AREA (SQUARE FEET)	60,000 SF
BUILDING HEIGHT (# STORIES)	1
LOT COVERAGE (PERCENT)	28.39%
OPEN AREA (PERCENT)	23.22% (15% MIN.)
FLOOR AREA RATIO (RATIO, PERCENT)	27.60%
PARKING	
REQUIRED PARKING (# SPACES)	140
PROVIDED PARKING (# SPACES)	143
SEE PARKING TABLE, BELOW FOR DETAILS	

PARKING TABLE

BUILDING ID:	A		B		C		D		E		Total	
Use / Park Ratio	12,000 sf		12,000 sf		12,000 sf		12,000 sf		12,000 sf		60,000 sf	
Office: 1:300	30%	3,600	12.0	40%	4,800	16.0	40%	4,800	16.0	40%	4,800	16.0	22,678 sf	
Showroom: 1:1000	0%	0	0.0	60%	7,200	7.2	60%	7,200	7.2	60%	7,200	7.2	28,831 sf	
Retail: 1:200	35%	4,200	21.0										4,221 sf	
Restaurant: 1:100	35%	4,200	42.0										4,242 sf	
Required	1: 160	75		1: 400	24		1: 250	24		1: 475	24	171	1: 319
With 30% Reduction:	1: 200	60		1: 480	20		1: 300	20		1: 570	20	140	1: 390
Provided:	1: 222	54		1: 600	16		1: 171	35		1: 250	24	143	1: 382

PREPARED: SEPTEMBER 4, 2018
REVISED: NOVEMBER 8, 2018

REV. 1
REV. 2
REV. 3
REV. 4
REV. 5

Allison Engineering Group
Planning Communities - Designing the Systems That Serve Them
4400 W. 13th, SUITE 109
DENTON, TEXAS 76207
PHONE (940)387-8565
FAX (940)380-9741
Kevin Allison, P.E.
Professional Engineer
Registration Number 119886
info@allisoneng.com

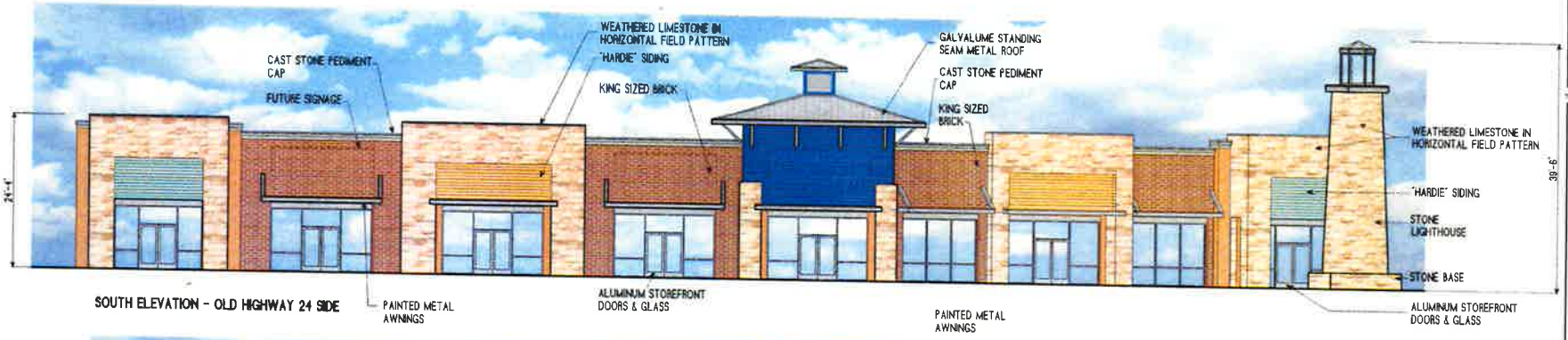
THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF
JASON P. FAGILE
P.E. 101886
IT IS NOT TO BE USED FOR THE PURPOSES OF CONSTRUCTION, BIDDING, PERMITTING, ETC

Drawn by: JSM
Checked by: JPF

PROPOSED MIXED USE DEVELOPMENT
LAKESIDE SHOPS AND BUSINESS PARK
OLD STATE HWY 24 - 5.0 ACRES
TOWN OF LITTLE ELM, DENTON COUNTY, TEXAS

CONCEPT PLAN

SHEET
EXHIBIT A



SOUTH ELEVATION - OLD HIGHWAY 24 SIDE

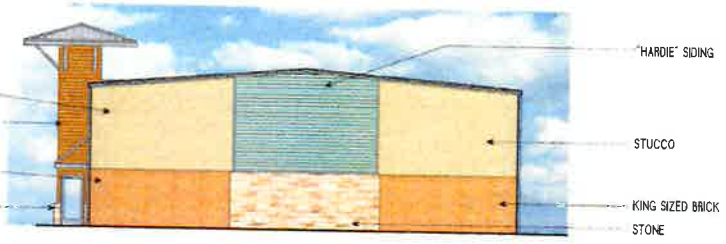
WEST ELEVATION - PUBLIC SIDE

EAST ELEVATION - PRIVATE SIDE

OVERALL PERCENTAGES

STUCCO	35%
"HARDIE" SIDING	24%
BRICK	36%
SONE	5%

NORTH ELEVATION - PRIVATE SIDE



SOUTH ELEVATION - PUBLIC SIDE

DATE:

NEW PLANS FOR:
LAKESIDE SHOPS & BUSINESS PARK
OLD STATE HWY 24
LITTLE ELM, TEXAS

BATES MARTIN ARCHITECTS
MARK M. MARTIN, ARCHITECT
MICHAEL A. BATES, ARCHITECT
DENTON, TEXAS 76205

PROJECT NO.
18-229

SHEET A1
OF 1

EXHIBIT C

Lakeside Shops and Business Park PD Ordinance, No. 1741

TOWN OF LITTLE ELM

ORDINANCE NO. 1741

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE, BY AMENDING ORDINANCE NO. 1477, ON APPROXIMATELY 5.0 ACRES OF LAND LOCATED AT 1767 AND 1777 OLD HIGHWAY 24, GENERALLY 300 FEET EAST OF THE INTERSECTION OF OAK GROVE PARKWAY AND OLD HIGHWAY 24, IN ORDER TO AMEND PERMITTED USES AND ESTABLISH MODIFIED USES WITHIN THE EXISTING PLANNED DEVELOPMENT DISTRICT; PROVIDING A SAVINGS CLAUSE; CORRECTING THE OFFICIAL ZONING MAP; 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, a request to amend a Planned Development District established under Ordinance No. 1477 by amending Section 3. G. Permitted Uses on approximately 5.0 acres of land, more specifically described in the exhibits, attached hereto; and

WHEREAS, this zoning change is in accordance with the most current adopted Comprehensive Plan of the Town of Little Elm; and

WHEREAS, the 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 zoning change described herein; and

WHEREAS, at its regular meeting held on November 2, 2023 the Planning & Zoning Commission considered and made recommendations on a request to amend Planned Development, (Case No. PD-23-04008); 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 is 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. ZONING AMENDMENT That Ordinance No. 226 of the Town of Little Elm, Texas, the same being the Comprehensive Zoning Ordinance of the Town, is hereby amended by amending existing Planned Development Ordinance No. 1477, on property located at 1767 and 1777 Old Highway 24, within Little Elm's town limits, on approximately 5.0 acres of land more particularly described as **Exhibit A**, and attached hereto, amending Section 3. G. Permitted Uses, to allow for all Light Commercial uses as shown in the Town's Schedule of Uses, with modified uses as stated within **Exhibit B**, subject to all of the terms and conditions set forth herein, the terms and conditions of the Comprehensive Zoning Ordinance, and all other applicable ordinances, laws, rules, regulations, and standards.

SECTION 3. CONDITIONS AND REGULATIONS. The permitted standards shall be in accordance with existing Planned Development Ordinance No. 1477, the permitted uses shall be in accordance with the Light Commercial (LC) District, and all applicable provisions of Chapter 106 – Zoning Ordinance in general, plus as specified herein:

a. Newly established and defined modified uses, allowed through Specific Use Permit, only within Lot 1, as shown in **Exhibit B**:

i. Heavy Machinery Showroom and Storage, Indoor Only
ii. Auto, Boat, Sales/leasing and storage, new and used, Indoor Only
iii. Manufacturing, Light Assembly
iv. Reprographic Shop

SECTION 4. PLANNED DEVELOPMENT MASTER PLAN. The Concept Plan and related plans, images, and documents approved and described as **Exhibit C** attached hereto and made a part hereof, as approved through Ordinance No. 1477. The subject property shall be improved in accordance with the plans set forth through Ordinance No. 1477, with allowance for one drive-thru, at the west end-cap of the retail building, as previously captured through administrative approval.

a) If, after two years from the date of approval of the Planned Development Master Plan, no substantial development progress has been made within the PD, then the Planned Development Master Plan shall expire. If the Planned Development Master Plan expires, a new Planned Development Master Plan must be submitted and approved according to the procedures within the Zoning Ordinance, Planned Development Districts. An extension of the two year expiration shall be granted if a development application for the PD has been submitted and is undergoing the development review process or if the Director of Development Services determines development progress is occurring.

b) The Planned Development Master Plan shall control the use and development of the property, and all building permits and development requests shall be in accordance with the plan until it is amended by the City Council.

c) If a change to the Concept Plan, if any, is requested, the request shall be processed in accordance with the development standards in effect at the time the change is requested for the proposed development.

SECTION 5. SAVINGS. This 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 indirect 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 5. ZONING MAP. The official zoning map of the Town shall be amended to reflect the changes in zoning made by this ordinance.

SECTION 6. 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 7. 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 Comprehensive 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 the ordinance without the valid parts and to this end the provisions of this ordinance shall remain in full force and effect.

SECTION 8. REPEALER. That all ordinances of the Town of Little Elm in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of that conflict.

SECTION 9. EFFECTIVE DATE. That this Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, Texas on the 5th day of December, 2023.

Town of Little Elm, Texas

_____

Curtis Cornelious, Mayor

ATTEST:

_____

Caitlan Biggs, Town Secretary

Exhibit A

Metes and Bounds

EXHIBIT "A"

TRACT 1

BEGINNING FOR THE SOUTHEAST CORNER OF THE TRACT BEING DESCRIBED HEREIN AT A 1/2" SQUARE TUBE FOUND FOR THE SOUTHEAST CORNER OF SAID 5.000 ACRES IN THE NORTH LINE OF F.M. HIGHWAY 720 IN A CURVE TO THE RIGHT, HAVING A RADIUS OF 2819.79 FEET, AT THE SOUTHWEST CORNER OF THE CALLED 9.392 ACRE TRACT DESCRIBED IN THE DEED TO HAROLD V. PRICE, ET UX, RECORDED IN VOLUME 1008, PAGE 695 DEED RECORDS;

THENCE ALONG THE ARC OF SAID CURVE ALONG SAID HIGHWAY AN ARC DISTANCE OF 179.48 FEET (CHORD BEARING OF NORTH 79 DEGREES 49 MINUTES 35 SECONDS WEST A DISTANCE OF 179.45 FEET) TO A CAPPED IRON ROD SET FOR THE SOUTHEAST CORNER OF THE CALLED TWO (2) ACRE TRACT DESCRIBED IN THE FINAL DECREE OF DIVORCE DATE JULY 15TH 1987, CAUSE NUMBER 86-2406-C;

THENCE NORTH 08 DEGREES 18 MINUTES 50 SECONDS WEST WITH THE EAST LINE OF SAID TWO ACRES, SEVERING SAID 5.000 ACRES A DISTANCE OF 713.30 FEET TO A CAPPED IRON SET FOR THE NORTHEAST CORNER OF SAID TWO ACRES IN THE NORTH LINE OF SAID 5.000 ACRES;

THENCE NORTH 66 DEGREES 50 MINUTES 04 SECONDS EAST WITH SAID NORTH LINE GENERALLY ALONG A FENCE A DISTANCE OF 176.07 FEET TO A 1/2" SQUARE TUBE FOUND FOR THE NORTHEAST CORNER OF SAID 5.000 ACRES AT THE NORTHWEST CORNER OF SAID PRICE TRACT;

THENCE SOUTH 08 DEGREES 18 MINUTES 50 SECONDS EAST WITH THE EAST LINE OF SAID 5.000 ACRES AND THE WEST LINE OF SAID PRICE TRACT, GENERALLY ALONG A FENCE A DISTANCE OF 815.34 FEET TO THE PLACE OF BEGINNING AND ENCLOSING 2.990 ACRES OF LAND.

TRACT 2

BEGINNING FOR THE SOUTHWEST CORNER OF THE TRACT BEING DESCRIBED HEREIN AT A \'BD" IRON ROD FOUND FOR THE SOUTHWEST CORNER OF SAID 5.000 ACRES IN THE NORTH LINE OF FM HIGHWAY 720 AT THE SOUTHEAST CORNER OR THE CALLED 3.390 ACRE TRACT DESCRIBED IN THE DEED TO JAMES F. HENSON, JR. ET UX, RECORDED IN VOLUME 928, PAGE 685 DEED RECORDS;

THENCE NORTH 08 DEGREES 8 MINUTES 50 SECONDS WEST WITH THE WEST LINE OF SAID 5.000 ACRES AND THE EAST LINE OF SAID 3.390 ACRES, GENERALLY ALONG A FENCE A DISTANCE OF 604.62 FEET TO A CAPPED IRON ROD SET FOR AN ANGLE POINT IN SAID LINE;

THENCE NORTH 10 DEGREES 33 MINUTES 27 SECONDS WEST CONTINUING WITH SAID LINE A DISTANCE OF 22.30 FEET TO A CAPPED IRON ROD FOUND FOR THE NORTHWEST CORNER OF SAID 5.000 ACRES;

THENCE NORTH 66 DEGREES 50 MINUTES 04 SECONDS EAST WITH THE NORTH LINE OF SAID 5.000 ACRES, GENERALLY ALONG A FENCE A DISTANCE OF 135.12 FEET TO A CAPPED IRON ROD SET FOR THE NORTHEAST CORNER OF SAID TWO ACRE TRACT, FROM WHICH A SQUARE IRON ROD FOUND FOR THE NORTHEAST CORNER OF SAID 5.000 ACRES BEARS NORTH 66 DEGREES 50 MINUTES 04 SECONDS EAST A DISTANCE OF 176.07 FEET;

THENCE SOUTH 08 DEGREES 18 MINUTES 50 SECONDS EAST WITH A LINE PARALLEL WITH THE MOST SOUTHERLY WEST LINE OF SAID 5.000 ACRES A DISTANCE OF 713.30 FEET TO A CAPPED IRON ROD SET FOR THE SOUTHEAST CORNER OF SAID TWO ACRE TRACT IN THE SOUTH LINE OF SAID 5.000 ACRES AND THE NORTH LINE OF SAID HIGHWAY IN A CURVE TO THE RIGHT HAVING A RADIUS OF 2819.79 FEET;

THENCE ALONG SAID LINE ALONG AND NEAR A FENCE AN ARC DISTANCE OF 129.81 FEET (CHORD BEARING OF NORTH 76 DEGREES 34 MINUTES 57 SECONDS WEST A DISTANCE OF 139.80 FEET) TO THE PLACE OF BEGINNING AND ENCLOSING 2.000 ACRES OF LAND.

Note: The Company is prohibited from insuring the area or quantity of the land described herein. Any statement in the above legal description of the area or quantity of land is not a representation that such area or quantity is

Exhibit B
Proposed Uses

1) Use Regulations.
No building, structure, land or premises will be used, and no building or structure shall hereafter be erected, constructed, reconstructed or altered except for one more of the uses as outlined within Light Commercial District, unless otherwise specified herein.

a. Restaurant Drive-Thru is permitted by right, specifically as it currently exists, on Lot 2, western end-cap of Building 100.
b. Lot 1 allows for additional modified uses as defined below:

Use	
Heavy Machinery Showroom and Storage, Indoor Only*	SUP
Auto, Boat, Sales/leasing and storage, new and used, Indoor Only*	SUP
Manufacturing, Light Assembly	SUP
Reprographic Shop*	SUP

SUP: Specific Use Permit

i. Heavy Machinery Showroom and Storage, Indoor Only. A retail or wholesale facility that sells and stores heavy machinery such as farm equipment, dredging equipment, paving equipment, etc., without any outdoor storage.

ii. Auto, Boat, Sales/leasing and storage, new and used, Indoor Only. Retail sales, rental, leasing, and/or showroom/storage of new or used operable automobiles, light load vehicles, or boats, without any outdoor storage or display.

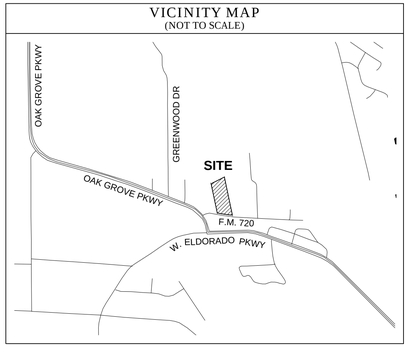
iii. Manufacturing, Light Assembly. A facility that involves light assembly, fabrication, and/or packaging of finished products or parts, predominately from previously prepared materials, and the use of small-scale machinery, tools and labor to make items for use or sale. May also include warehousing, research and development, wholesaling operations with infrequent customer or client visits, and may include related office and shipping areas. Light industry is often assembly-based and is typically consumer-oriented (i.e., most light industrial products are sold to retail stores or end users rather than as intermediate parts for use by other industries). Light industry generally has less environmental impact than those associated with heavy industry. Light industries require a relatively small amount of raw materials, area and power. Examples of light industry include, but are not limited to, plastic items, clothing, shoes, foods, beverages, personal care and home care products, cosmetics, drugs, furniture, consumer electronics, and home appliances.

iv. Reprographic Shop. A facility for the reproduction of materials or drawings on a job order basis utilizing lithography, off-set printing, digital printing, or other printing techniques, for purposed of custom design, promotional marketing, banners, brochures, posters, mounting, lamination, bindery, and graphic design. etc.

Exhibit C

Previously Approved Planned Development Ordinance No. 1477

VICINITY MAP
(NOT TO SCALE)



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 14°08'58" W	22.29'
L2	S 06°14'52" W	42.79'
L3	S 11°39'24" W	12.06'
L4	N 06°14'52" E	53.52'
L5	S 06°14'52" W	16.23'
L6	N 11°39'24" E	16.73'
L7	S 31°46'12" E	98.86'
L8	S 11°00'19" E	117.50'
L9	N 79°18'40" E	67.97'
L10	S 10°41'20" E	15.00'
L11	S 79°18'40" W	15.00'
L12	N 10°41'20" W	4.92'
L13	S 79°18'40" W	48.63'
L14	S 42°34'21" E	49.18'
L15	S 10°34'53" E	5.00'
L16	S 43°43'30" W	30.39'
L17	S 11°45'58" E	22.17'
L18	N 78°08'23" E	248.37'
L19	S 61°19'53" E	16.54'
L20	S 11°56'48" E	62.53'
L21	S 31°45'58" W	13.69'
L22	S 11°10'52" E	63.98'
L23	N 81°02'21" E	33.92'
L24	S 12°30'55" E	75.70'
L25	S 78°51'45" W	5.03'
L26	N 12°30'55" W	70.94'
L27	S 81°02'21" W	34.03'
L28	N 11°10'52" W	70.76'
L29	N 31°45'58" E	13.65'
L30	N 11°56'48" E	58.22'
L31	N 61°19'53" W	12.50'
L32	S 78°08'23" W	253.29'
L33	N 11°45'58" W	29.81'
L34	N 43°43'30" E	34.59'
L35	N 78°34'44" E	42.34'
L36	N 42°34'21" W	66.91'
L37	N 11°00'19" W	112.01'
L38	N 31°46'12" W	118.07'
L39	N 33°04'06" E	24.06'
L40	N 33°04'06" E	18.46'
L41	S 78°16'29" W	32.00'
L42	N 11°43'31" W	10.00'
L43	S 78°15'39" W	16.03'
L44	N 11°44'21" W	23.00'
L45	N 11°44'21" W	44.68'
L46	N 11°44'21" W	44.68'
L47	S 11°44'21" E	15.74'
L48	S 78°15'39" W	13.00'
L49	N 36°47'05" W	13.95'
L50	S 80°18'25" W	17.90'
L51	N 81°33'31" W	13.36'
L52	S 08°26'29" W	10.00'
L53	N 81°33'31" W	10.00'
L54	S 83°45'08" E	17.33'
L55	S 06°14'52" W	31.00'
L56	N 83°45'08" W	18.00'
L57	N 78°15'39" E	4.76'
L58	N 11°44'21" W	10.00'
L59	N 78°15'39" E	12.00'
L60	S 06°14'52" W	18.01'
L61	S 78°15'39" W	13.27'
L62	S 11°44'21" E	10.00'
L63	S 78°15'39" W	10.00'
L64	S 38°04'42" W	9.81'
L65	S 51°55'18" E	10.00'
L66	S 38°04'42" W	9.64'
L67	S 55°17'15" E	24.86'
L68	N 11°39'24" E	32.23'

CURVE TABLE					
CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	320.48'	2819.79'	6°30'43"	N 81°51'10" W	320.31'
C2	25.55'	32.00'	45°45'09"	N 78°51'46" W	24.88'
C3	33.53'	42.00'	45°44'19"	S 78°51'22" E	32.64'
C4	23.95'	25.00'	54°53'56"	S 15°47'34" E	23.05'
C5	13.75'	25.00'	31°30'12"	S 27°29'27" E	13.57'
C6	40.44'	49.00'	47°17'01"	N 11°54'10" E	39.30'
C7	20.63'	25.00'	47°16'11"	N 11°54'34" E	20.05'
C8	20.78'	25.00'	47°37'49"	N 35°32'26" W	20.19'
C9	40.70'	49.00'	47°35'07"	N 35°33'47" W	39.54'
C10	36.32'	49.00'	42°27'53"	N 09°27'43" E	35.49'
C11	21.33'	50.00'	24°26'47"	N 18°28'16" E	21.17'
C12	45.89'	30.00'	87°38'26"	S 37°34'21" E	41.54'
C13	45.53'	30.00'	86°57'02"	N 55°07'55" E	41.28'
C14	36.47'	30.00'	69°39'13"	N 46°33'57" W	34.27'
C15	47.12'	30.00'	90°00'00"	N 33°15'39" E	42.43'
C16	22.41'	30.00'	42°47'56"	S 80°20'23" E	21.89'
C17	40.32'	54.00'	42°47'07"	S 80°19'58" E	39.39'
C18	47.10'	30.00'	89°57'18"	S 56°44'52" E	42.41'
C19	57.79'	30.00'	110°22'39"	S 43°25'06" W	49.26'
C20	47.12'	30.00'	90°00'00"	S 56°44'21" E	42.43'
C21	47.12'	30.00'	90°00'00"	S 33°15'39" W	42.43'
C22	47.13'	30.00'	90°00'50"	N 56°43'56" W	42.43'
C23	47.12'	30.00'	90°00'00"	N 33°16'29" E	42.43'
C24	23.95'	30.00'	45°44'19"	S 78°51'22" E	23.32'
C25	35.14'	44.00'	45°45'09"	S 78°51'46" E	34.21'
C26	47.12'	30.00'	90°00'00"	S 56°44'21" E	42.43'
C27	47.12'	30.00'	90°00'00"	S 33°15'39" W	42.43'
C28	47.12'	30.00'	90°00'00"	N 56°44'21" W	42.43'
C29	47.12'	30.00'	90°00'00"	N 33°15'39" E	42.43'
C30	47.36'	92.50'	29°20'09"	N 26°24'25" W	46.85'
C31	46.78'	107.50'	24°56'01"	N 24°12'21" W	46.41'
C32	4.35'	2.50'	98°38'11"	S 33°56'02" E	3.82'
C33	3.93'	2.50'	90°00'00"	S 51°14'52" W	3.54'
C34	8.76	29.50'	17°00'41"	S 04°24'36" E	8.73'

GENERAL NOTES

1. The subject property does not lie within a 100 year floodplain according to Community Panel No. 48121C0415G, dated April 18, 2011 of the National Flood Insurance rate Maps for Denton County, Texas.
2. Minimum finished floor elevations are at least 2 feet above the 100 year flood plain.
3. The grid coordinates shown on this plat are based on GPS observations utilizing the AllTerra RTK Network - North American Datum of 1983 (Adjustment Realization 2011).
4. Notice - selling a portion of this addition by metes and bounds is a violation of Town ordinance and state law and is subject to fines and withholding of utilities and building permits.
5. All interior property corners are marked with a 1/2-inch iron rod with a green plastic cap stamped "EAGLE SURVEYING" unless noted otherwise.
6. The bearings shown on this plat are based on GPS observations utilizing the AllTerra RTK Network - North American Datum of 1983 (Adjustment Realization 2011). Texas North Central Zone (4202).
7. This property may be subject to charges related to impact fees and the applicant should contact the Town regarding any applicable fees due.
8. All common areas will be owned and maintained by the HOA/POA.
9. All lots comply with the minimum size requirements of the zoning district.
10. This plat does not alter or remove existing deed restrictions, if any, on this property.

LEGEND

POB	POINT OF BEGINNING
IRF	IRON ROD FOUND
CIRF	CAPPED IRON ROD FOUND
DOC. NO.	DOCUMENT NUMBER
P.R.D.C.T.	PLAT RECORDS, DENTON COUNTY, TEXAS
D.R.D.C.T.	DEED RECORDS, DENTON COUNTY, TEXAS
O.R.D.C.T.	OFFICIAL RECORDS, DENTON COUNTY, TEXAS
R.P.R.D.C.T.	REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS
	PROPOSED FIRE HYDRANT

AREA	ACRES	SQ.FT.
LOT 1	3.812	166084.06
LOT 2	1.194	51968.30

CERTIFICATE OFF FINAL APPROVAL

APPROVED

Town Official
Town of Little Elm, Texas

Date

The undersigned, the Town Secretary of the Town of Little Elm, Texas, hereby certifies that the foregoing Final Plat of the LAKESIDE SHOPS AND BUSINESS PARK Subdivision or Addition to the Town of Little Elm was submitted to the Planning and Zoning Commission on the _____ day of _____, 2022, and the Commission, by formal action, then and there accepted the Final Plat and hereby authorizes the developer to proceed with the construction of public works improvements and infrastructure as indicated on the accompanying construction plans, and said Commission further authorizes the Chairman of the Planning and Zoning Commission to note the acceptance thereof by signing his/her name as hereinabove subscribed.

Witness by hand this _____ day of _____, 2022.

Town Secretary
Town of Little Elm, Texas

OWNER'S CERTIFICATE & DEDICATION

STATE OF TEXAS §
COUNTY OF DENTON §

WHEREAS, **HACKBERRY BUSINESS PARK, LLC**, is the owner of a 5.006 acre tract of land out of the DAVID M. CULE SURVEY, ABSTRACT NUMBER 226, situated in the Town of Little Elm, Denton County, Texas and being all of a called Tract 1 - 2.990 acre tract of land and all of a called Tract 2 - 2.000 acre tract conveyed to Hackberry Business Park, LLC by deed of record in Document Number 2018-144789 of the Official Records of Denton County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING, at a 1/2 inch iron rod with yellow plastic cap stamped "JE SMITH" found in the curving North right-of-way line of Farm to Market Road 720 (right-of-way varies), being the Southwest corner of a called 9.404 acre tract of land conveyed to Benjamin and Cheryl Mohrbacher by deed of record in Document Number 2000-6577 of said Official Records, also being the Southeast corner of said 2.990 acre tract and hereof;

THENCE, along the curving North right-of-way line of Farm to Market Road 720, being in part, the common South line of said 2.990 acre tract, and in part, the common South line of said 2.000 acre tract, along a non-tangent curve to the right, having a radius of 2819.79 feet, a chord bearing of N81°51'10"W, a chord length of 320.31 feet, a delta angle of 06°30'43", an arc length of 320.48 feet to a 1/2 inch iron rod found at the Southeast corner of a called 3.40 acre tract of land conveyed to Saiseekers Association of America by deed of record in Document Number 2014-102223 of said Official Records, being the Southwest corner of said 2.000 acre tract and hereof;

THENCE, leaving the North right-of-way line of Farm to Market Road 720, along the East line of said 3.40 acre tract and the common West line of said 2.000 acre tract, the following two (2) courses and distances:

1. N11°44'21"W, a distance of 604.25 feet to a 1/2 inch iron rod with green plastic cap stamped "EAGLE SURVEYING" set;
2. N14°08'58"W, a distance of 22.29 feet to a 1/2 inch iron rod with unreadable orange plastic cap found in the South line of a called 7.010 acre tract of land conveyed to DFW Sneha Limited Liability Company by deed of record in Document Number 2021-26008 of said Official Records, being the Northwest corner of said 2.000 acre tract and hereof;

THENCE, N63°22'41"E, leaving the East line of said 3.40 acre tract, along the South line of said 7.010 acre tract, being in part, the common North line of said 2.000 acre tract, and in part, the common North line of said 2.990 acre tract, passing at a distance of 136.10 feet a 1/2 inch iron rod with illegible yellow plastic cap found at the Northwest corner of said 2.000 acre tract, and continuing for a total distance of 176.07 feet to a 1/2 inch square pipe found at the Northwest corner of said 9.404 acre tract, being the Northeast corner of said 2.990 acre tract and hereof;

THENCE, S11°46'13"E, leaving the South line of said 7.010 acre tract, along the West line of said 9.404 acre tract, being the common East line of said 2.990 acre tract, a distance of 815.65 feet to the **POINT OF BEGINNING** and containing an area of 5.006 Acres, or (218,052 Square Feet) of land, more or less.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS:

THAT, **HACKBERRY BUSINESS PARK, LLC,** does hereby adopt this plat, designating herein described property as **LAKESIDE SHOPS AND BUSINESS PARK,** an addition to the Town of Little Elm, Denton County, Texas, and does hereby dedicate to public use forever all streets, alleys, parks, watercourses, drains, easements and public places thereon shown for the purpose and consideration therein expressed. No buildings, fences, trees, shrubs or other improvements or growths shall be constructed or placed upon, over or across the drainage and utility easements as shown. Said drainage and utility easements being hereby reserved for the mutual use and accommodation of all public utilities desiring to use same. All and any public utility shall have the right to remove and keep removed all or parts of any buildings, fences, trees, shrubs or other improvements or growths which may in any way endanger or interfere with the construction, maintenance, or efficiency of its respective system on the drainage and utility easement and all public utilities shall at all times have the full right of ingress and egress to or from and upon the said drainage and utility easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or parts of its respective systems without the necessity at any time of procuring the permission of anyone.

OWNER: **HACKBERRY BUSINESS PARK, LLC**, a Texas liability company

BY: _____
Authorized Agent

Date

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF THE OFFICE this _____ day of _____, 20__.

Notary Public in and for the State of Texas

CERTIFICATE OF SURVEYOR

STATE OF TEXAS §
COUNTY OF DENTON §

I, **MATTHEW RAABE**, Registered Professional Land Surveyor, do hereby certify that this plat was prepared from an actual survey made on the ground and that the monuments shown hereon were found or placed with 1/2-inch iron rods with green plastic caps stamped "EAGLE SURVEYING" under my direction and supervision in accordance with the current provisions of the Texas Administrative Code and the Ordinances of the Town of Little Elm, Denton County, Texas.

PRELIMINARY
this document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document

Matthew Raabe, R.P.L.S. #6402

Date

STATE OF TEXAS §
COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared **MATTHEW RAABE**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF THE OFFICE this _____ day of _____, 20_.

Notary Public in and for the State of Texas

FINAL PLAT
LAKESIDE SHOPS AND BUSINESS PARK
LOTS 1 & 2, BLOCK A

BEING 5.006 ACRES OF LAND OUT OF THE DAVID M. CULE SURVEY, ABSTRACT NO. 226 TOWN OF LITTLE ELM, DENTON COUNTY, TEXAS

DATE OF PREPARATION: 8/17/2022 SCALE: 1" = 50'

RECORDED IN CABINET _____, SLIDE _____

Project 2108.006-05
Date 09-13-2022
Drafter CHM/EN

EAGLE SURVEYING, LLC
222 S. Elm Street, Suite: 200
Denton, TX 76201
(940) 222-3009
TX Firm #10194177

SURVEYOR
Eagle Surveying, LLC
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Brad@eaglesurveying.com
222 S. Elm Street, Suite: 200
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ENGINEER
Marshall Gage, LLC
Contact: Scott Caruthers, P.E.
sdc@marshallgage.com
207 E. Virginia, Suite: 216
McKinney, TX 75069
(972) 542-9018

OWNER
Hackberry Business Park, LLC
Contact: Daniel Kelleher
Dan@asapstarters.com
1118 Timber Lane
Frisco, TX 75034
(972) 370-7710

ORDINANCE NO. 1477

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, HEREFORE AMENDED, BY REZONING APPROXIMATELY 5.0 ACRES OF LAND FROM LIGHT COMMERCIAL TO PLANNED DEVELOPMENT-LIGHT COMMERCIAL (PD-LC), TO ESTABLISH AND ALLOW FOR THE USE OF OFFICE/WAREHOUSE WITH MODIFIED DEVELOPMENT STANDARDS, GENERALLY LOCATED ON THE NORTH SIDE OF OLD STATE HIGHWAY 24, APPROXIMATELY 305 FEET EAST OF OAK GROVE PARKWAY; CORRECTING THE OFFICIAL ZONING MAP; PROVIDING A SAVINGS CLAUSE, PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; AND PROVIDING FOR 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, the Future Land Use Plan of the 2017 Comprehensive Plan designates the subject property as Mixed Use; and

WHEREAS, a request for a change in zoning has been initiated by Daniel Kelleher to allow for office/warehouse with modified design standards on 5.0 acres of land more specifically described on the Location Map, attached hereto; and

WHEREAS, the Town Council and the Planning and 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 rezoning described herein; and

WHEREAS, after due deliberations and consideration of the recommendation of the Planning and 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 rezoning 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. ZONING AMENDMENT. The Comprehensive Zoning Ordinance of the Town, is hereby amended by providing for a **Planned Development district (PD)** on approximately 5.0 acres of land to establish and allow for the use of office/warehouse with modified development standards, generally located on the north side of Old State Highway 24, approximately 305 feet east of Oak Grove Parkway a tract of land more particularly described on Location Map, attached hereto, subject to all of the terms and conditions set forth herein, and all other applicable ordinances, laws, rules, regulations, and standards.

SECTION 3. CONDITIONS. The following special ordinance provisions shall apply to the subject property:

The permitted uses and standards shall be in accordance with the Light Commercial (LC) zoning district and Architectural Standards for Commercial Structural, unless otherwise specified herein:

A. GENERAL PURPOSE AND DESCRIPTION:

The Lakeside Shops and Business Park Planned Development is intended primarily for the conduct of a mix of uses including retail, office, restaurant, service-oriented uses, and office/warehouse.

B. PERMITTED USES:

Those uses listed in the chart below (Subsection G) as "P" are authorized uses permitted by right. Those uses listed as "S" are allowed with the approval of a Specific Use Permit (SUP) by the Town Council. Additionally, the following use will be allowed, as defined:

1) Office/Warehouse
   a. An establishment that primarily consists of an office and/or commercial use with an incidental need to store supplies or products that are associated with the primary use. Warehousing/storage may be utilized for up to 80% of the overall floor area per tenant space.

C. DEVELOPMENT REGULATIONS:

Maximum Height	45'
Maximum Front Yard Setback	None
Minimum Side Yard Setback	10'
Minimum Rear Yard Setback	35'
Minimum Area/Tenant Space	1,500 square feet

D. PARKING REQUIREMENTS:

1) Office/warehouse buildings will provide the following number of parking spaces:
   a. A ratio of 40% office (One space per 300 square feet of floor area) to 60% warehouse (One space per 1,000 square feet of floor area) will be used to calculate the required number of spaces in aggregate to be shared among the various buildings
2) Parking reduction: As part of this development, the total number of required parking spaces calculated under this section may be reduced by twenty (20) percent.

E. LANDSCAPING & SCREENING REQUIREMENTS:

1) Landscaped yards shall be provided as follows:
   a. Along the side yards, a minimum width of five (5) feet shall be required along the western property line and ten (10) feet shall be required along the eastern property line.
   b. Along the rear yard adjacent to residential use or zoning, a minimum width of thirty-five (35) feet shall be required.

2) Landscaping required:
   a. A minimum of fifteen (15) percent open space will be provided in the development.
   b. The development will exceed the minimum number of required plantings within the front and side yards by a minimum of twenty (20) percent.
   c. A perimeter fence will be installed as shown on the Concept plan, Exhibit A, in accordance with the following:
      i. Along western boundary line of development:
         a) Ornamental iron fence, minimum six (6) feet tall with an irrigated living screen.
      ii. Along eastern boundary line of development:
         a) Ornamental iron fence, minimum six (6) feet tall with an irrigated living screen.
      iii. Along rear boundary line of development:
         a) Masonry wall, eight (8) feet tall.

F. ARCHTECTURAL STANDARDS FOR COMMERCIAL STRUCTURES (Includes office, retail, commercial, etc.)

1) Design standards.
   a. All buildings within this planned development shall have similar materials, colors.
   b. All structures shall be architecturally finished fully to meet the Town's Architectural Standards for Commercial Structures with compatible

materials and colors on sides that can be seen from a public right-of-way. Elevations that are in the interior of the development and have limited sighting from a public right-of-way or side yard may be constructed of 3-step stucco.

G. PERMITTED USES

Planned Development Zoning Districts Uses. Uses not depicted in the chart below or described in Subsection B (above) shall be prohibited. P=permitted by right; S=Specific Use Permit required.

	PD-LC Planned Development
Primary Residential Uses	
Mixed Use Building	P
Institutional & Special Uses	
College, University, or Trade School	P
Fraternal Organization, Lodge, Civic Club, Fraternity, or Sorority	P
Golf Course, Tennis club, Polo Club, or Country Club (private)	P
Hospital	P
Municipal Uses operated by the Town of Little Elm	P
Museum/Art Gallery	P
Park or Playground	P
Recreation Center	P
Religious Facility	P
School, Private, Charter or Parochial	S
Retail Uses	
Antique Shop and Used Furniture, inside only	P
Arcade	S
Bakery, Candy or Ice-Cream Shop	S
Bar/Brewpub	P
Building Material and Hardware Sales, Major	P
Building Material and Hardware Sales, Minor	P
Commercial Amusement, Indoor	P
Florist	P
Greenhouse or Nursery for Retail Plant Sales	P
Portable Building Sales	P
Restaurant, Dine-in	P
Restaurant, Drive-in	S
Restaurant, Drive-thru	S
Restaurant, with Brewpub	P
Restaurant, Pick-up only	P
Retail Use (other than listed)	P

Store, Big Box	P
Store, Convenience	P
Store, Discount, Variety, or Department Store	P
Store, Drugstore or Pharmacy	P
Store, Feed	P
Store, Florist	P
Store, Grocery	P
Store, Hardware & Home Imp.	P
Store, Incidental (within another use)	P
Store, Liquor	S
Store, Pet Shop	P
Store, Shopping Center	P
Store, other than listed above	P
Theatre, Indoor	P
Winery/Brewery Retail Sales	P
Service Uses	
Bank, Savings and Loan, or Credit Union	P
Catering Service	P
Child Care Center	S
Cleaning and pressing (small shop/pickup)	P
Clinic/Medical Lab	P
Clinic, Animal (no outside runs)	P
Commissary	S
Contractor's Shop (Inside Only)	P
Custom Personal Service	P
Gunsmith	P
Gymnastics/Dance Studio/Martial Arts	P
Health/Fitness Center	P
Household Appliance/Electronics Service and Repair	P
Incidental Retail & Service Uses	P
Laundry/Dry Cleaning, Pickup Station	P
Office, Professional and General Administrative	P
Personal Service (other than listed)	P
Print Shop, Minor Retail Shop	P
Studio, Photography, Music, Artistry	P
Studio, Media	P
Automobile & Vehicular Uses	
Auto/Boat/RV Repair, Minor, Indoor Only	S
Auto/Boat/RV Sales, Accessories Only	S
Motorcycle Sales/Service, Indoor Only	S
Industrial & Manufacturing Uses	
Office/Warehouse*	P*
Research and Development Center	P
Winery/Brewery/Distillery Manufacturing	S

*See definitions and associated standards in Subsection B (above)

H. Phasing – No office/warehouse structure shall receive a Certificate of Occupancy until the associated retail structure begins vertical construction.

SECTION 4. **SAVINGS.** This 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 5. **ZONING MAP.** The official zoning map of the Town shall be amended to reflect the change in zoning made by this ordinance.

SECTION 6. **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 7. **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 Comprehensive 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 the ordinance without the valid parts and to this end the provisions of this ordinance shall remain in full force and effect.

SECTION 8. **REPEALER.** That all ordinances of the Town of Little Elm in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of that conflict.

SECTION 9. **EFFECTIVE DATE.** Upon adoption, this Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED by the Town Council of the Town of Little Elm, Texas on the 4th day of December, 2018.

ATTEST:

Kathy Phillips, Town Secretary

The Town of Little Elm, Texas

David Hillock, Mayor

TOWN OF LITTLE ELM TEXAS

TOWN OF LITTLE ELM
PLANNING & ZONING COMMISSION
November 15, 2018

OVERVIEW

Project	Lakeside Shops and Business Park Rezoning (18-PD-007)
P&Z Hearing	11/15/2018
Council Hearing	12/04/2018
Request	A request for a Planned Development to establish and allow the use of office/warehouse
Size	Approximately 5.0 acres
Current Zoning	Light Commercial (LC)
Proposed Zoning	Planned Development-Light Commercial (PD-LC)
Existing Use	Vacant Property
Future Land Use Plan Designation	Mixed Use
Applicant	Daniel Kelleher – Lakeside Shops and Business Park
Owner	ETE 10, LLC

Location

The subject property is generally located on the north side of Old State Highway 24, approximately 305 feet east of Oak Grove Parkway, within Little Elm's town limits.

Planning Analysis

The proposed amendment request is to establish and allow the use of office/warehouse with modified standards to architectural design. The use of "office/warehouse" is not an established use within the zoning ordinance. This request is a hybrid of uses and categories that fall in both commercial and industrial districts. The Town, in its continued growth, is starting to capture

interest from specific types of commercial and office uses that also have a need for on-site storage in a warehouse-type setting. Upon initial meetings with the applicant, staff expressed concern regarding the development of a product that is more suitable for industrial districts.

In considering this request, staff looks to several sections of the Comprehensive Plan. The first section that touches upon this request is the Growth section of the Plan. A primary goal within the section calls for the correlation "of town services with anticipated population growth and capacity." From a commercial growth perspective, this request is compatible with this language as staff believes the proposed use will help to capture new commercial needs. This perspective reaches to the Employment Opportunities section of the Plan, which states in its primary goal to "encourage the establishment of new businesses...thereby creating increased and diversified employment opportunities." Additionally, Objective 5 within this section calls for the creation of opportunities for office development. The proposed plan also reflects the Town's desire to promote "designs that incorporate Little Elm's relationship with Lewisville Lake, such as the use of Little Elm's lighthouse theme" as noted in Objective 8.

Looking at the Aesthetic Appearance section within Chapter 3 (Livability) of the Plan, the subject request appears to be compatible with the Town's goal to "maximize desirability and aesthetic appeal throughout the Town." The unique and inviting development will provide this area an attractive, active feel which should help catch the attention of motorists along Eldorado Parkway and Oak Grove Parkway for the retail component.

The Future Land Use Plan (FLUP) map calls for the designation of Mixed Use. The Plan's definition for Mixed Use is "vertical and horizontal mix of residential, non-residential, and public uses." This request is generally compatible with this language, a mix of commercial and office uses with supportive warehousing will be developed near existing residential uses.

Included with this report are proposed stipulations that generally conform to the existing base zoning of Light Commercial (LC). Staff is generally in support of the request with the exception of the applicant's proposed warehouse percentage of up to 80% per tenant space. Staff feels a maximum of 60% warehouse area per tenant space will help to ensure a more office oriented development rather than industrial as discussed earlier in this analysis.

To recap the November 15, 2018 Planning & Zoning Commission meeting, staff requested that the Commission consider the phasing of the requested development and noted that in recent PD requests with retail uses associated with other, potentially less desirable uses within the proposed development, Council has approved the requested zoning with language that assures the retail component is constructed prior to other uses being able to obtain certain permits or certificates of occupancy.

Recommended Action

The Planning & Zoning Commission recommended approval of the request per the applicant's proposed standards.

Attachments: Location Map, Plan Exhibits, Proposed Stipulations, Ordinance No. 1477

LITTLE ELM

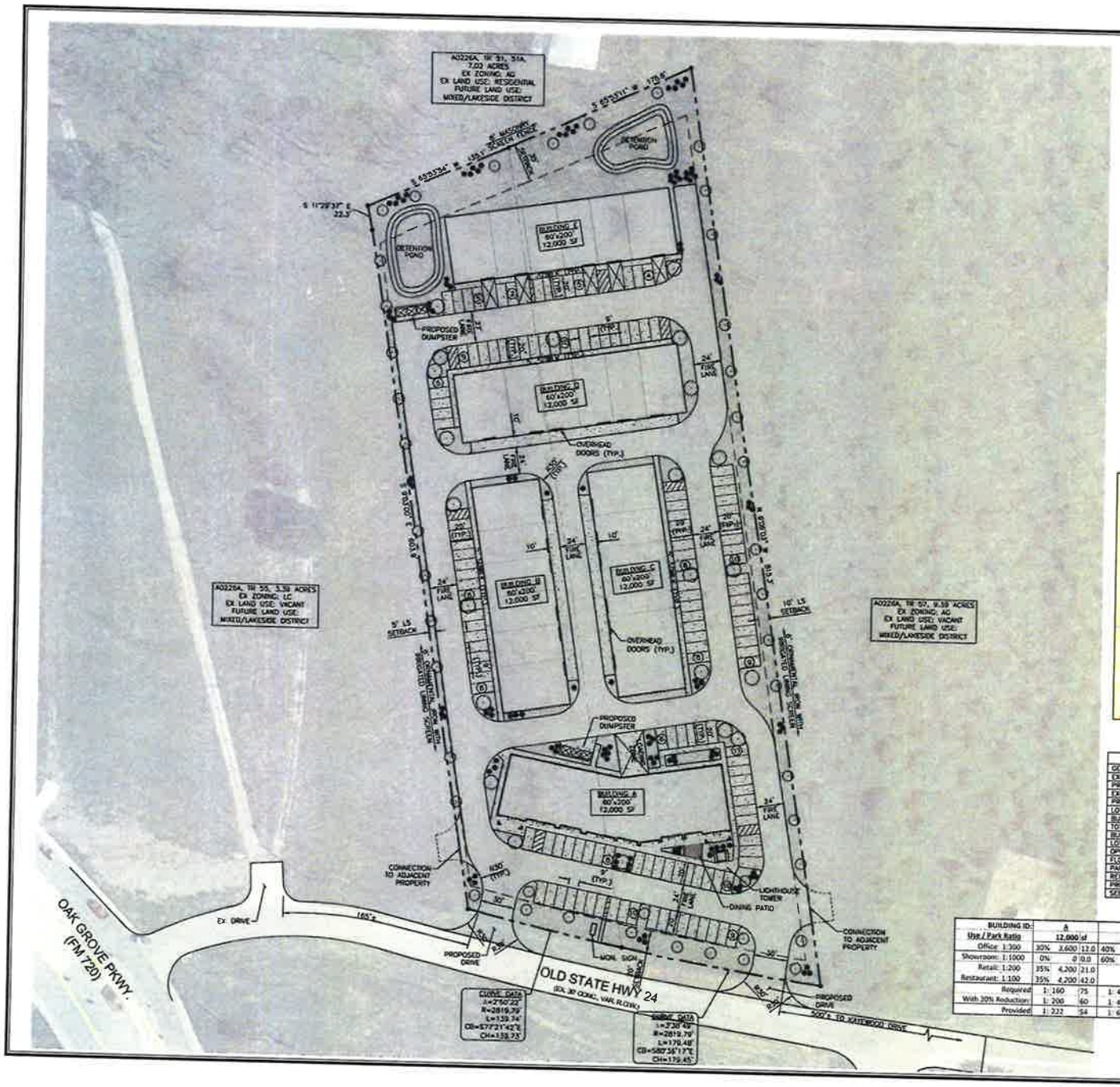
Lakeside Shops
1812 & 1816 Old State Highway 24
Town of Little Elm
Denton County, Tx
Date: 9/17/2018

Legend
Subject Property

N

Location Map

0 500 1,000
Feet



0 20 40 80
SCALE: 1"=40'

LEGEND

- CONCRETE PAVEMENT – FIRELANE AND DRIVEWAY
- CONCRETE PAVEMENT – PARKING AND SIDEWALK
- LANDSCAPE AREA
- TREE
- SHRUBS

NOTES:
1. ALL BUILDINGS SHALL BE ONE STORY IN HEIGHT.
2. EXISTING TREES AT BACK OF PROPERTY (NORTH SIDE) WILL BE PRESERVED IF POSSIBLE. THE PROPOSED DETENTION POND IS SCHEMATIC IN SIZE AND LOCATION.
3. THE SITE GENERALLY DRAINS TO THE EAST AND NORTH. ONSITE DRAINAGE FACILITIES WILL BE DESIGNED TO MITIGATE RUNOFF.
4. DUMPSTER ENCLOSURES SHALL BE 14'x25' AND SCREENED PER TOWN OF LITTLE ELM STANDARDS.

VICINITY MAP
NTS

SITE DATA SUMMARY TABLE – 4.99 ACRES	
GENERAL SITE DATA	A0226A D.M. CULE, TR 56 & 56A
EXISTING ZONING	LIGHT COMMERCIAL
PROPOSED ZONING	PLANNED DEVELOPMENT–LIGHT COMMERCIAL
EXISTING LAND USE	VACANT/AGRICULTURE
PROPOSED LAND USE	RETAIL, COMMERCIAL, OFFICE/WAREHOUSE
LOT AREA (SQUARE FEET AND AC)	217,364 SF, 4.99 AC
BUILDING FOOTPRINT AREA (SQUARE FEET)	60,000 SF
TOTAL BUILDING AREA (SQUARE FEET)	60,000 SF
BUILDING HEIGHT (# STORIES)	1
LOT COVERAGE (PERCENT)	28.39%
OPEN AREA (PERCENT)	23.22% (15% MIN.)
FLOOR AREA RATIO (RATIO, PERCENT)	27.60%
PARKING	
REQUIRED PARKING (# SPACES)	140
PROVIDED PARKING (# SPACES)	143
SEE PARKING TABLE, BELOW FOR DETAILS	

PARKING TABLE

BUILDING ID:	A		B		C		D		E		Total	
Use / Park Ratio	12,000 sf		12,000 sf		12,000 sf		12,000 sf		12,000 sf		60,000 sf	
Office: 1:300	30%	3,600	12.0	40%	4,800	16.0	40%	4,800	16.0	40%	4,800	16.0	22,678 sf	
Showroom: 1:1000	0%	0	0.0	60%	7,200	7.2	60%	7,200	7.2	60%	7,200	7.2	28,831 sf	
Retail: 1:200	35%	4,200	21.0										4,221 sf	
Restaurant: 1:100	35%	4,200	42.0										4,242 sf	
Required	1: 160	75		1: 400	24		1: 250	24		1: 475	24	171	1: 319
With 30% Reduction:	1: 200	60		1: 480	20		1: 300	20		1: 570	20	140	1: 390
Provided:	1: 222	54		1: 600	16		1: 171	35		1: 250	24	143	1: 382

PREPARED: SEPTEMBER 4, 2018
REVISED: NOVEMBER 8, 2018

REV. 1
REV. 2
REV. 3
REV. 4
REV. 5

Allison Engineering Group
Planning Communities - Designing the Systems That Serve Them
4400 W. 13th, SUITE 109
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THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF
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P.E. 101886
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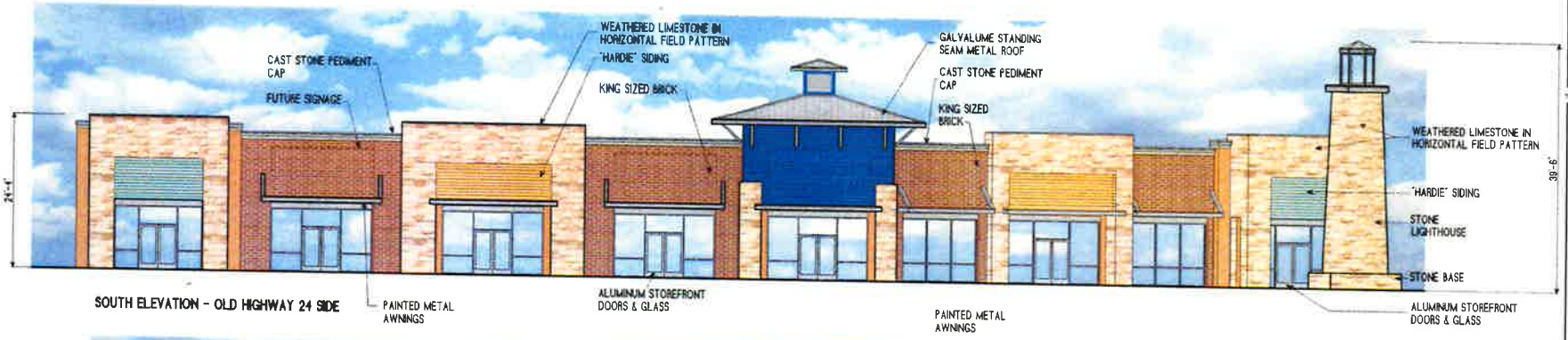
Drawn by: JSM
Checked by: JPF

PROPOSED MIXED USE DEVELOPMENT
LAKESIDE SHOPS AND BUSINESS PARK
OLD STATE HWY 24 - 5.0 ACRES
TOWN OF LITTLE ELM, DENTON COUNTY, TEXAS

CONCEPT PLAN

SHEET
EXHIBIT A



SOUTH ELEVATION - OLD HIGHWAY 24 SIDE

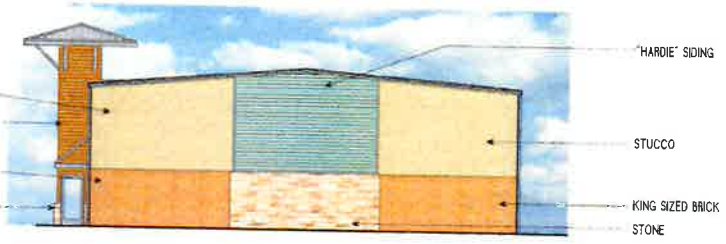
WEST ELEVATION - PUBLIC SIDE

EAST ELEVATION - PRIVATE SIDE

OVERALL PERCENTAGES

STUCCO	35%
"HARDIE" SIDING	24%
BRICK	36%
SONE	5%

NORTH ELEVATION - PRIVATE SIDE



SOUTH ELEVATION - PUBLIC SIDE

DATE:

NEW PLANS FOR:
LAKESIDE SHOPS & BUSINESS PARK
OLD STATE HWY 24
LITTLE ELM, TEXAS

BATES MARTIN ARCHITECTS
MARK M. MARTIN, ARCHITECT
MICHAEL A. BATES, ARCHITECT
DENTON, TEXAS 76205

PROJECT NO.
18-229

SHEET A1
OF 1