

ESCROW AGREEMENT – COTTONWOOD CREEK MARINA

THIS ESCROW AGREEMENT – COTTONWOOD CREEK MARINA (“**Agreement**”) is executed as of _____, 2024 (“**Effective Date**”), between Cottonwood Creek Marina, Inc. (“**Marina**”), and **THE TOWN OF LITTLE ELM, TEXAS** (“**Town**”). Marina and the Town are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

A. The Town has undertaken a construction project for Cottonwood Park and has engaged AUI as the contractor for the project.

B. As part of the project, certain improvements are being made to Cottonwood Creek Marina, for which it has been determined that Marina should bear the costs of such improvements.

C. The improvements are generally shown on the attached exhibit and include earthwork and grading, paving, construction materials testing, landscaping, and fencing.

D. The Town has agreed to undertake these improvements as part of the Town’s contract with AUI, provided that Marina escrows, in advance, the initial funding for such improvements with the Town.

E. The Town agrees to escrow such funding, which has been determined to be \$502,344.27, pursuant to the terms and conditions of this Agreement, which escrowed funds will be used to pay AUI for the improvements which will benefit the Cottonwood Creek Marina.

F. In connection with the Town’s agreement with AUI for AUI to construct and complete the improvements to Cottonwood Creek Marina, Marina agrees to escrow the initial sum of \$502,344.27 (“**Escrow Funds**”), and which Escrow Funds are to be deposited with and held and disbursed by the Town in accordance with the terms and conditions hereof.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants of the Parties set forth herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. **Town to Serve as Escrow Agent.** Marina hereby appoints, and consents to, the Town as the Escrow Agent to hold and disburse the Escrow Funds in accordance with the terms of this Agreement.

2. **Improvements to Cottonwood Creek Marina.** The Parties agree that the improvements generally described in the attached exhibit, which improvements are part of the Town’s overall construction agreement with AUI for improvements to Cottonwood Park, shall be funded through the Escrow Funds.

3. **Delivery of Funds to Escrow Agent.** Within five (5) days after execution of this Agreement, Marina shall deliver the first deposit of Escrow Funds, in immediately available funds, to the Town. Upon receipt of the Escrow Funds, the Town shall hold the Escrow Funds on behalf of Marina under the terms of this Agreement and disburse the Escrow Funds as provided herein. Future deposits of Escrow Funds shall be made according to the following schedule:

- (a) \$200,000 – First Deposit
- (b) \$200,000 – due by June 30, 2024

(c) Remaining Balance – due by September 30, 2024

4. **Investment of Escrow Funds.** The Town shall hold and maintain all cash funds comprising the Escrow Funds in an FDIC-insured deposit account (“**Escrow Account**”) established and maintained by Escrow Agent. All earnings and interest from the Escrow Funds shall be retained by the Town in consideration of the Town’s agreement to act as Escrow Agent.

5. **Construction of Improvements.** The Town shall (subject to withdrawals and disbursements of the Escrow Funds as provided hereunder) construct the improvements in substantial accordance with the attached exhibit and in compliance with all applicable laws and any requirements of the Town. The improvements shall be completed on or before December 30, 2024, or as otherwise agreed to according to the contractor’s construction schedule. For purposes of this Agreement, the improvements shall be deemed completed when the improvements have been accepted by the Town and Marina. Upon completion of the improvements, any remaining Escrow Funds shall be released to Marina within 60 days.

6. **Grant of Easements.** Marina agrees to grant to the Town any and all easements, rights of entry, and permissions requested by the Town for the performance by the Town of the construction of the improvements.

7. **Additional Funds.** In the event that the cost to construct the improvements should exceed the Escrow Funds, then Marina shall be responsible for funding 100% of any and all additional amounts necessary to complete the improvements. The amount of such funds will be determined through contract change orders with AUI approved by the Town and Marina, with Marina to fund such additional amounts within 30 days of the approval of the change order amount.

8. **Changes to the Scope of the Improvements.** The Town, with the consent of Marina, reserve the right to approve, modify, or disapprove of any proposed changes to the scope of the improvements.

9. **Disbursement of Escrow Funds by the Town.**

(a) The Town agrees to disburse the Escrow Funds on a monthly basis to AUI.

(b) Marina shall have the right to review and approve/comment on AUI contract pay applications that include work applicable to Cottonwood Creek Marina within 10 days of receipt of such pay applications.

(c) The Town is hereby authorized and instructed to deliver sums out of the Escrow Funds from time to time to AUI to pay the construction costs for the improvements.

10. **Termination of Agreement.** This Agreement shall automatically terminate without any further action or notice by any Party three (3) months after completion of the improvements and all payments have been received and processed.

11. **Governing Law.** This Agreement is being delivered and is intended to be performed in the State of Texas and shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the State of Texas without regard for conflicts of laws principles. Venue for any legal action brought hereunder shall lie in Denton County, Texas.

12. **Governmental Powers; Waivers of Immunity.** By execution of this Agreement, the Town does not waive or surrender any of its governmental powers, immunities, or rights. The Parties specifically agree that this Agreement does not constitute a contract for goods or services under Chapter 271 of the Texas Local Government Code. Nothing in this Agreement shall be construed as creating or

giving rise to any rights in any third parties or any persons other than the Parties hereto. Nothing in this Agreement is intended to delegate or impair the performance by the Town of its governmental functions.

13. **General.** Unless otherwise provided in this Agreement, the term “**days**” means calendar days. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings, written and oral with respect to the subject matter hereof. No Party has relied on any representations or agreements of any other, except as specifically set forth in this Agreement. Except as expressly provided herein, this Agreement or any provision hereof may be terminated, amended or modified only by written instrument duly signed by the Parties. This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective heirs, devisees, executors, administrators, personal representatives, successors, trustees, receivers and permitted assigns. This Agreement is for the sole and exclusive benefit of the Parties and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person or entity any rights, remedies or any other types of benefits. Except as expressly provided herein, this Agreement may not be assigned by any Party without the written consent of the other Parties and any attempted assignment without such written consent shall be null and void and without legal effect. The person executing this Agreement on behalf of the applicable Party has the requisite power and authority to enter into this Agreement and to take any action on behalf of such Party in connection with the transactions contemplated hereby. If any provision of this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

[Signature Page Follows]

EXECUTED effective as of the Effective Date.

_____:

By: _____

Name: _____

Title: _____

LITTLE ELM:

THE TOWN OF LITTLE ELM

By: _____

Name: Matt Mueller

Title: Town Manager

EXHIBIT "A"
Improvements Exhibit