



**AGENDA**  
**JOINT MEETING BETWEEN**  
**TAX INCREMENT REINVESTMENT ZONE #1 (TIRZ #1),**  
**AND REGULAR CITY COUNCIL MEETING**  
**MONDAY, NOVEMBER 21, 2022 - 5:30 PM**  
**CITY HALL COUNCIL CHAMBERS**  
**209 S. WASHINGTON STREET**  
**KAUFMAN, TEXAS 75142**  
**AND VIA VIDEOCONFERENCE/TELECONFERENCE**

**This meeting will be held using  
videoconferencing/teleconferencing  
technology with public access via:  
[WWW.ZOOM.US/JOIN](https://www.zoom.us/join) OR  
(888)788-0099 (TOLL FREE)  
MEETING/WEBINAR ID: 883 6927 8412  
PASSWORD: 562304**

**CALL TIRZ #1 MEETING TO ORDER** TIRZ #1: Chairman calls the Meeting to order, states the date and time, state members present, and declares a quorum present.\*\*

**TIRZ #1 ITEMS**

1. Consider and make a recommendation to the City Council on the Second Amended and Restated TIF Residential Development Reimbursement Agreement by and between Reinvestment Zone Number One, City of Kaufman, Texas, and Georgetown KF, Ltd.; and authorizing the Mayor or his designee to execute necessary documents.

**TIRZ #1 ADJOURNMENT**

**PLEDGE OF ALLEGIANCE**

**CALL MEETING TO ORDER** Mayor calls the Meeting to order, states the date and time, states Councilmembers present, and declares a quorum present.\*\*

**CITIZENS COMMENTS / REQUEST TO SPEAK ON AGENDA ITEMS (5 MINUTES)** Comments about any of the Council agenda items may be taken into consideration at this time or during the agenda item. Comments are limited to five (5) minutes per individual unless additional time is otherwise required by law for translation. Speaking time is not transferable. Citizens may address the City Council on any subject but must first complete a Request to Speak Form so that the Mayor may call your name to speak at the appropriate time on the Agenda. Comments must be directed to the Council as a whole. **When addressing the Council, please step forward to the speaker's podium, state your name and address, and direct your comments to the Mayor and City Council.**

**RECOGNITION**

2. Business of the Month- Denny's

3. Police Department- Academy Graduate presentation and discussion
4. Fire Department- Lieutenant- Ferris Watson
5. Development Services- FAICP Planning Excellence Award

### **PROCLAMATION**

6. Fair Housing Month- April 2023

### **CONSENT AGENDA**

7. Consider and take appropriate action on the minutes from the October 24, 2022, Work Session and Regular City Council Meeting.
8. Consider and take appropriate action on Resolution R-38-22, a resolution of the City Council of the City of Kaufman, Texas accepting public improvements for Prairie Creek Phase III; establishing the warranty period for the public improvements; providing for the incorporation of premises; and providing an effective date.
9. Consider and take appropriate action on Resolution R-40-22, a resolution of the City Council of the City of Kaufman, Texas, authorizing an amendment to Resolution R-01-19, authorizing participation in various Cooperative Purchasing Programs.

### **END OF CONSENT AGENDA**

### **PUBLIC HEARING**

10. Conduct a public hearing on the levy of assessments within Phases #2A and 2B of the City of Kaufman Public Improvement District No. 1 (Georgetown Development).
  - a. Presentation.
  - b. Public Hearing.

### **DISCUSSION/ACTION ITEMS**

11. Consider and take appropriate action on Ordinance O-38-22, an ordinance of the City Council of the City of Kaufman, Texas, approving a Service and Assessment Plan and Assessment Roll for Phases #2A-2B for the Kaufman Public Improvement District No. 1 (the "district"); making a finding of special benefit to certain property in the district; levying assessments against certain property within the district and establishing a lien on such property; providing for payment of the assessment in accordance with Chapter 372, Texas Local Government Code, as amended; providing for the method of assessment and the payment of the assessments; providing penalties and interest on delinquent assessments; providing for severability and providing an effective date.

12. Consider and take appropriate action on Ordinance O-39-22, an ordinance of the City Council of the City of Kaufman, Texas, approving and authorizing the issuance and sale of the City of Kaufman Special Assessment Revenue Bonds, Series 2022 Kaufman Public Improvement District No. 1 Phases #2A-2B Project); approving and authorizing an indenture of trust, a bond purchase agreement, limited offering memorandum, a continuing disclosure agreement, and other agreements and documents in connection therewith; making findings with respect to the issuance of such bonds; and providing an effective date
13. Consider and take appropriate action on the First Amended and Restated Georgetown at Kings Fort Development Agreement entered into by and between Georgetown KF, Ltd., and the City of Kaufman, Texas; and authorizing the Mayor or his designee to execute necessary documents.
14. Consider and take appropriate action on the Facilities Agreement between the City of Kaufman, Texas and Georgetown KF, Ltd., for the installation of public improvements and facilities for the Georgetown Development-Phase 2A and Phase 2B; and authorizing the Mayor or his designee to execute necessary documents.
15. Consider and take appropriate action on the Kaufman Public Improvement District No. 1, Phases 2A-2B Construction, Funding, and Acquisition Agreement; and authorizing the Mayor or his designee to execute necessary documents.
16. Consider and take appropriate action on the Second Amended and Restated TIF Residential Development Reimbursement Agreement by and between Reinvestment Zone Number One, City of Kaufman, Texas, and Georgetown KF, Ltd.; and authorizing the Mayor or his designee to execute the necessary documents.
17. Presentation and discussion regarding an overview of Section 3 in relation to the TxCDBG Grant No. CPC-21-0058.
18. Consider and take appropriate action on Resolution R-41-22, a resolution of the City Council of the City of Kaufman, Texas, regarding Civil Rights and adopting the following policies:
  - a. Citizens Participation Plan and Grievance Procedures
  - b. Excessive Force Policy
  - c. Fair Housing Policy Form
  - d. Section 504 Policy and Grievance Procedures
  - e. Code of Conduct Policy
19. Consider and take appropriate action on Resolution R-42-22, a resolution of the City Council of the City of Kaufman, Texas, approving an authorized signatory in matters pertaining to TxCDBG Grant No. CPC-21-0058.
20. Consider and take appropriate action on the award of bid and contract to AquaGreen Global, LLC for the construction of pedestrian paving and landscape/irrigation improvements for the Kaufman Downtown Square and authorizing the Mayor or his designee to execute necessary documents.
21. Consider and take appropriate action on an amendment to the agreement for Emergency Medical Services between the City of Kaufman and CareFlite; and authorizing the Mayor or his

designee to execute necessary documents

### **APPOINTMENT**

22. Consider and take appropriate action on the appointment of three (3) members to the Planning and Zoning Commission for two-year terms to expire in November 2024 and the appointment of one (1) member to the Planning and Zoning Commission for a term expiring in November 2023.
23. Consider and take appropriate action on Resolution R-39-22, a resolution of the City of Kaufman, Texas, appointing a member to the Kaufman Central Appraisal District Board of Directors.

### **ANNOUNCEMENTS AND REPORTS FROM CITY MANAGER**

24. Receive an update and discussion regarding the following:
  - a. Melody Circle Update
  - b. Freeman Farms Update
  - c. KISD/Highland Meadow Off-Site Utilities Update
  - d. Christmas on the Square- December 3rd from 12 pm to 8 pm
  - e. FY22 Performance Measures
  - f. Discussion Items Report (DIR)
  - g. STAR Transit Ridership Report- October 2022
  - h. Careflite Compliance Report- October 2022
  - i. Fire Department Monthly Report- October 2022
  - j. Police Department Monthly Report- October 2022
  - k. Development Services Monthly Report- October 2022
  - l. Monthly Calendars Attached

### **EXECUTIVE SESSION**

25. The City Council will recess into Executive Session pursuant to Texas Government Code for an executive session regarding the following:
  - a. Sec. 551.072. DELIBERATION REGARDING REAL PROPERTY; CLOSED MEETING. To deliberate the purchase, exchange, lease, or value of real property regarding: Property ID # 3700; 112 S. Jackson St.

- b. Sec. 551.087. DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS; CLOSED MEETING. (1) To discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1): Project Pegasus
- c. Sec. 551.074: Personnel Matters, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee: City Manager.

**RECONVENE INTO OPEN SESSION** In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session.

26. Consider and take appropriate action, if any, on matters discussed in Executive Session.

**ADJOURNMENT**

I, JESSIE HANKS, CITY SECRETARY, DO HEREBY CERTIFY THAT THIS NOTICE OF MEETING WAS POSTED ON THE WINDOW AT KAUFMAN MUNICIPAL COMPLEX, 209 S. WASHINGTON, KAUFMAN, TEXAS, A PLACE CONVENIENT AND READILY ACCESSIBLE TO THE GENERAL PUBLIC AT ALL TIMES AND SAID NOTICE WAS POSTED AT THE KAUFMAN MUNICIPAL COMPLEX, 209 S. WASHINGTON, KAUFMAN, TEXAS AT 4:30 P.M. ON FRIDAY, NOVEMBER 18, 2022, AND REMAINED SO POSTED CONTINUOUSLY FOR AT LEAST 72 HOURS PRECEDING THE SCHEDULE TIME OF SAID MEETING.



  
JESSIE HANKS  
CITY SECRETARY

THE CITY COUNCIL RESERVES THE RIGHT TO ADJOURN INTO EXECUTIVE SESSION AT ANY TIME DURING THE COURSE OF THIS MEETING TO DISCUSS ANY OF THE MATTERS LISTED ABOVE, AS AUTHORIZED BY THE TEXAS GOVERNMENT CODE. SECTION 551.071 (CONSULTATION WITH ATTORNEY).

**\*\*PURSUANT TO SECTION 551.127, TEXAS GOVERNMENT CODE, ONE OR MORE COUNCILMEMBERS OR EMPLOYEES MAY ATTEND THIS MEETING REMOTELY USING VIDEOCONFERENCING TECHNOLOGY. THE VIDEO AND AUDIO FEED OF THE VIDEOCONFERENCING EQUIPMENT CAN BE VIEWED AND HEARD BY THE PUBLIC BY ACCESSING WWW.ZOOM.US/JOIN OR (888)788-0099 (TOLL FREE) MEETING/WEBINAR ID: 883 6927 8412 PASSWORD: 562304**

THE BUILDING IN WHICH THE ABOVE MEETING WILL BE CONDUCTED IS WHEELCHAIR ACCESSIBLE AND PARKING SPACES FOR THE MOBILITY IMPAIRED ARE AVAILABLE.

**PERSONS WITH DISABILITIES WHO PLAN TO ATTEND THIS MEETING AND WHO MAY NEED AUXILIARY AIDS OR SERVICES SUCH AS INTERPRETERS FOR PERSONS WHO ARE DEAF OR HEARING IMPAIRED, READERS, OR LARGE PRINT ARE REQUESTED TO CONTACT THE CITY SECRETARY'S OFFICE AT 972-932-2216 AT LEAST TWO (2) WORKING DAYS PRIOR TO THE TIME OF THE MEETING SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.**



Meeting  
Date: 11/21/2022

Date: 11/18/2022

Item #: 1.

Dept.: Administration

**Action Item**

**SUBJECT:**

Consider and make a recommendation to the City Council on the Second Amended and Restated TIF Residential Development Reimbursement Agreement by and between Reinvestment Zone Number One, City of Kaufman, Texas, and Georgetown KF, Ltd.; and authorizing the Mayor or his designee to execute necessary documents.

**BACKGROUND:**

The amendment to this agreement is necessary to provide equality to all residents of the PID within Georgetown development. The primary amendment to this agreement increases the amount of the TIRZ #1 contribution amount to the PID. See note below:

**“Reimbursement Amount” shall mean the amount to be paid to offset assessments levied by a public improvement district for the development of the residential subdivision, which shall be a maximum of the following totals per Lot Type (as defined in the Service and Assessment Plan): Lot Type 1 (60 Ft.): \$42,805.96; Lot Type 2 (55 Ft.): \$40,665.67; Lot Type 3 (50 Ft.): \$36,813.13; Lot Type 4 (65 Ft.): \$44,946.26.”**

Author:  
Mike Slye, City Manager

Reviewed:  
Mike Slye, City Manager

**Cost:** **Funds Available:** **Source:**

**Recommendation: Staff recommends approval of the Seconded Amended and Restated TIF Residential Reimbursement Agreement.**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship      |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input checked="" type="checkbox"/>       | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |

**SECOND AMENDED AND RESTATED TIF RESIDENTIAL DEVELOPMENT  
REIMBURSEMENT AGREEMENT**

This **SECOND AMENDED AND RESTATED TIF RESIDENTIAL DEVELOPMENT REIMBURSEMENT AGREEMENT** (the "Agreement") dated as of November \_\_, 2022, by and between **REINVESTMENT ZONE NUMBER ONE, CITY OF KAUFMAN, TEXAS** (the "TIF"), a tax increment reinvestment zone created by the **CITY OF KAUFMAN, TEXAS** (the "City") pursuant to Chapter 311 of the Texas Tax Code, as amended, acting by and through its governing body, the **TIF BOARD OF DIRECTORS** (the "Board"), the City, and **GEORGETOWN KF, LTD.**, a Texas limited partnership (the "Developer") which together with the TIF, the Board and the City are sometimes herein each referred to as a "Party" and collectively as the "Parties."

**RECITALS**

**WHEREAS**, the City, by passage of Ordinance No. 0-27-15, created a tax increment financing district titled Reinvestment Zone Number One, City of Kaufman, Texas, consisting of approximately 675 acres of land within the City's corporate limits (the "Original TIF Zone"), and committed to participate by allocating 75% of the property taxes levied and collected by the City from the acres within the Original TIF Zone; and

**WHEREAS**, the City subsequently passed Ordinance No. 0-27-16 (as amended, the "TIF Ordinance") that amended Ordinance No. 0-27-15 by adding approximately 355 acres of land (the "Expanded TIF Zone") to the Original TIF Zone to encompass in total approximately 1,030 acres of land, as more fully described in the TIF Ordinance, as amended (the "Zone"); and

**WHEREAS**, the City, by passage of the TIF Ordinance, amended Ordinance No. 0-27-15 by decreasing the City's participation rate to 75% of the maintenance and operations portion of property taxes levied and collected by the City, as more fully described in the TIF Ordinance; and

**WHEREAS**, the City subsequently passed Ordinance No. 0-28-16 (as amended, the "TIF Project and Financing Plan") for the Zone; and

**WHEREAS**, the Parties previously entered into a TIF Reimbursement and Development Agreement dated April 24, 2017, regarding the construction of certain public infrastructure improvements (the "Public Improvements TIF Agreement"); and

**WHEREAS**, the Parties subsequently entered into a TIF Agreement for Purchase of 4.51 Acres dated December 18, 2017, regarding the sale of certain real property from the JWS Land, Ltd., a Texas limited partnership ("JWS") to the City (the "TIF Purchase Agreement"); and

**WHEREAS**, this Agreement amends that certain TIF Residential Development Reimbursement Agreement by and between the Board, the City, and JWS, dated as of December 18, 2017 (the “Original Agreement”); and

**WHEREAS**, the Parties entered into a First Amended and Restated Residential Reimbursement Agreement on November 13, 2018 (the “First Amendment”); and

**WHEREAS**, the Parties acknowledge and agree that the Original Agreement and the First Amendment is-are hereby amended and restated as set forth in this Second Amended and Restated Residential Reimbursement Agreement and that this Agreement fully restates, supersedes, and entirely replaces the Original Agreement and the First Amendment as of the Effective Date; and

**WHEREAS**, JWS has transferred approximately 85.500 acres of real property located within the Zone to the Developer; and

**WHEREAS**, the Developer has presented to the Board and City an amended concept plan (the “Amended Concept Plan”) for the development of a tract of approximately 85.500 acres of real property located within the Zone as a single-family residential subdivision, as more particularly described by metes and bounds and depicted in **Exhibit A** attached hereto and incorporated herein for all purposes (the “Subdivision”); and

**WHEREAS**, the City and the Board have determined that it is in the best interest of the City to provide funds for the development of the Subdivision, so long as such development is generally in accordance with the Amended Concept Plan or any approved amendments thereto; and

**WHEREAS**, the Act provides that the TIF and the City may enter into agreements as the Board and City consider necessary or convenient to implement the Project and Financing Plan (as defined herein) and achieve its purposes; and

**WHEREAS**, the Developer will develop and construct the Subdivision within the boundaries of the Zone in accordance with the Amended Concept Plan, which development and construction may occur in one or more phases; and

**WHEREAS**, the City has adopted a Revised Project and Finance Plan on November 26, 2018, which Revised Project and Finance Plan amended the TIF Project and Finance Plan (the “Revised P&FP”); and

**WHEREAS**, the Board has determined that it is in the best interest of the TIF and the City and conforms to the Revised P&FP to pay for certain Project Costs (as defined below) in an amount equal to the Reimbursement Amount (as defined below) pursuant to this Agreement.

**NOW THEREFORE**, for and in consideration of the mutual promises, covenants, obligations, and benefits herein set forth, the Board, the City and the Developer contract, covenant and agree as follows:

## **ARTICLE 1 GENERAL TERMS**

1.1 Definitions. The terms “Agreement,” “Amended Concept Plan,” “City,” “TIF,” “Board,” “JWS,” “Developer,” “Expanded TIF Zone,” “Original TIF Zone,” “Parties,” “Party,” “Project and Financing Plan,” “Public Improvements TIF Agreement,” “Subdivision,” “TIF Ordinance,” “TIF Project and Financing Plan,” “TIF Purchase Agreement,” “Revised P&FP,” “Original Agreement,” and “Zone” have the above meanings, and the following terms have the following meanings:

“Act” shall mean the Tax Increment Financing Act, Chapter 311, Texas Tax Code, as amended.

“Administrative Costs” shall mean the actual third party or out-of-pocket costs of the City and the TIF for the administration of the TIF incurred after January 1, 2015.

“City Contribution” shall mean the amount of revenue in the TIF Fund that is attributable to the City Tax Increment contributed to the TIF Fund each year, which should equal 75% of the Tax Increment attributable to the City's maintenance and operations portion of its tax rate.

“Completion” shall mean finished construction by the Developer of the Subdivision in accordance with the Plans and Specifications approved by the City.

“County Contribution” shall mean the amount of revenue in the TIF Fund that is attributable to the County Tax Increment contributed to the TIF each year pursuant to the County Participation Agreement, which should equal 50% of the Tax Increment attributable to the County's tax rate allocated to the general fund.

“County Participation Agreement” shall mean the agreement between the TIF, the City of Kaufman and Kaufman County regarding the County's participation in the TIF, if any.

“Effective Date” shall mean the date in the first sentence of this Agreement.

“Per Annum Interest Rate” shall mean an interest rate that is the lesser of either 5.47% or the actual rate for any bond issued to fund the reimbursement amount.

“Plans and Specifications” shall mean the designs, plans and specifications for the Subdivision as approved by the City.

“Plat” shall mean a preliminary plat approved by the City for the Subdivision, or any portion or phase thereof.

“Project Costs” shall mean the costs of all planning, benching, construction and development work within the Subdivision as contemplated on the Plat, including, but not limited to, all capital costs and other costs paid or incurred by the Developer in financing, planning, managing, designing, constructing, installing and performing all or any portion of the work necessary to develop the Subdivision, or any portions thereof, in accordance with any Plat, which have been incurred before the date of this Agreement or are incurred on or after the date of this Agreement. Such Project Costs shall be submitted to the City in accordance with the Revised P&FP.

“Reimbursement Amount” shall mean the amount to be paid to offset assessments levied by a public improvement district for the development of the residential subdivision, which shall be a maximum of the following SEVENTEEN THOUSAND SIX HUNDRED TWO Dollars (\$17,602.00) per lot totals per Lot Type (as defined in the Service and Assessment Plan): Lot Type 1 (60 Ft.): \$42,805.96; Lot Type 2 (55 Ft.): \$40,665.67; Lot Type 3 (50 Ft.): \$36,813.13; Lot Type 4 (65 Ft.): \$44,946.26.

“Report” shall have the meaning assigned in Section 4.2 of this Agreement.

“State” shall mean the State of Texas.

“Tax Increment” means the amount of property taxes levied and collected by a taxing unit each year on the captured appraised value of real property taxable by a taxing unit and located within the TIF’s boundaries, where the captured appraised value of real property taxable by a taxing unit for a year is the total appraised value of all real property taxable by the taxing unit and located within the TIF for that year, less the tax increment base of the taxing unit. The tax increment base of a taxing unit is the total appraised value of all real property taxable by the unit and located in a reinvestment zone for the year in which the zone was designated. For the TIF, the base year is 2015.

“TIF Fund” means the TIF Fund, as established by the City pursuant to the Act, into which the City Contribution and the County Contribution shall be deposited.

1.2 Singular and Plural. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa.

## **ARTICLE 2 REPRESENTATIONS**

2.1 Representations of TIF and City. The TIF, the Board, and the City hereby represent to the Developer that:

(A) As of the date of this Agreement, the TIF and the City are duly authorized, created, and existing in good standing under the laws of the State and are duly

qualified and authorized to carry on the governmental functions contemplated by this Agreement.

(B) As of the date of this Agreement, the Board and the City have the power, authority and legal right to enter into and perform their obligations set forth in this Agreement and the execution, delivery and performance hereof: (i) have been duly authorized; (ii) will not violate any applicable judgment, order, law or regulation; and (iii) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any of their assets under any agreement or instrument to which the TIF or the City are a party or by which they or their assets, may be bound or affected.

(C) The execution, delivery and performance of this Agreement by the Board and the City does not require the consent or approval of any person or entity which has not been obtained.

2.2 Representations of the Developer. The Developer hereby represents to the TIF, the Board, and the City that:

(A) The Developer is a Texas limited partnership duly authorized, created and existing in good standing under the laws of the State of Texas.

(B) The Developer has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof: (i) has been duly authorized; (ii) will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to the Developer; and (iii) does not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Developer, under any agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.

(C) The execution, delivery and performance of this Agreement by the Developer does not require the consent or approval of any person or entity which has not been obtained.

### **ARTICLE 3 [INTENTIONALLY OMITTED]**

### **ARTICLE 4 REIMBURSEMENT PAYMENT**

4.1 Eligible Project Costs. All Project Costs must be an eligible cost under the Act and shall be identified in the Revised P&FP, as amended from time to time.

#### 4.2 TIF Participation.

(A) Pursuant to the Revised P&FP, the Board agrees, subject to the conditions contained in this Agreement, to offset assessments levied by a public improvement district to pay for actual Project Costs; provided, however, that the Board's obligation to reimburse the Project Costs of developing and constructing the Subdivision shall be limited to the Reimbursement Amount.

(B) It shall be the obligation of the Board and City to pay the Reimbursement Amount as set forth in this Agreement until the expiration of the term of this Agreement pursuant to Section 7.10 hereof.

(C) The Developer shall submit documentation to the Board concerning the expenditure of funds for the Subdivision and concerning the Completion of such Subdivision. Such documentation shall be in a form acceptable to the Parties and shall be certified by the Developer and by engineer certification or by similar method acceptable to the City and the Board.

(D) The Board and City shall offset assessments up to the annual portion of the Reimbursement Amount for each parcel in the residential portion of the development ~~as each annual installment of beginning in the same year that parcel in the residential portion of the development's the~~ assessment becomes due. A parcel in the residential portion of the development may have an assessment due regardless of whether a residential structure or structures are built or have yet to be built on that parcel. The annual portion of the reimbursement amount ~~is \$ \_\_\_\_\_~~ per Lot Type shall be determined annually pursuant to the Service and Assessment Plan. A parcel which has an assessment due is a qualified residential parcel (a "Qualified Residential Parcel"), and each Qualified Residential Parcel which the current ~~service~~ Service and ~~assessment~~ Assessment plan ~~Plan has one or multiple residential units planned for that parcel which the then current Service and Assessment Plan identifies as having one or multiple residential units planned for that parcel~~ shall receive the annual portion of the Reimbursement ~~Amount for each planned residential unit.~~

(E) The Board and City shall pay on or before the first (1st) day of each month during the term of the TIF beginning in the year that the revenues in the TIF Fund are sufficient to reimburse all or any portion of the Project Costs. For any and all Project Costs not paid to offset assessments on or before the first (1<sup>st</sup>) day of each applicable month, interest shall accrue at the Per Annum Interest Rate. Disbursements from the TIF Fund shall be made for the following purposes and in the following order of priority unless otherwise approved by the City and Developer:

FIRST, to reimburse the City for Administrative Costs;

SECOND, to pay the annual portion of the Reimbursement Amount for each qualified residential parcel under this Agreement;

THIRD, to reimburse the Developer under the Public Improvements TIF Agreement, as amended;  
FOURTH, to pay the Developer under the TIF Purchase Agreement, as amended; and  
FIFTH, the reimburse the Developer the Park Improvement Fee of \$1,470,000.00 plus interest accrued under the TIF Agreement for Park Improvement Fee Reimbursement; and  
SIXTH, to pay for the costs of the Lift Station pursuant to the TIRZ #1 Lift Station Reimbursement Agreement dated December 14, 2020-

The City shall maintain the TIF Fund as a segregated account which shall not be commingled with any other funds of the City. The TIF Fund shall be invested in the same manner as other municipal funds, and all interest earned shall be part of the TIF Fund.

(F) The City shall prepare and submit an annual report in accordance with the Act (the "Report") to the Board and to the Developer detailing: (i) the amount due to be paid to offset assessments for Project Costs, and (ii) the amount of funds that are available to make such payment from the TIF Fund. The Developer shall review the Report and notify the Board in writing no later than fifteen (15) days from the receipt of the Report of acceptance of the Report or any deficiency found in the Report. The Board, the City and the Developer shall work cooperatively to mutually resolve any discrepancies or deficiencies in the Report within 30 days of receipt of the Report. During such time, the Developer shall be able to provide evidence demonstrating its compliance with this Agreement. If any discrepancy, deficiency or dispute remains after the expiration of the thirty (30) days, the Parties agree to attend mediation within 90 days in an effort to resolve the dispute.

**(G) Under no circumstance shall the City or the Board be obligated to offset assessments, unless there are funds net of the Administrative Costs in the TIF Fund to pay for Project Costs.**

(H) If the Developer fails to pay when due any ad valorem taxes owed to the City on any property in the TIF that is owned by the Developer, the City shall have the right to offset (or to direct the offset of) the amount of such unpaid ad valorem taxes against any TIF Funds payable under this Agreement.

(I) Commencing on the Effective Date and continuing until the amount paid equals the Reimbursement Amount provided under this Agreement, the City shall not enter into any tax abatement agreements affecting property located within the Zone, described in **Exhibit B** and the City and Board shall not approve any project and finance plan, which would create a reimbursement out of TIF Fund that has priority over the reimbursement of monies in the TIF Fund to the Developer under the terms of this Agreement. Specifically, and without limiting the generality of the foregoing, the following payments, as obligated by the following existing

contractual obligations, shall have priority over payment by the Board of all or any portion of the Reimbursement Amount:

1) TIF Administrative Costs

**ARTICLE 5**

**EVENTS OF DEFAULT**

5.1 Events of Default.

(A) A non-performing Party shall be in "Default" under this Agreement if such Party fails to perform any duty or obligation under this Agreement and such failure is not cured within thirty (30) days after written notice from any other Party specifying the nature and the period of existence thereof and what action, if any, the non-defaulting Parties require or propose to require with respect to curing the default (or if the failure is not reasonably capable of being cured within thirty (30) days, the non-performing Party does not begin to cure within such 30-day period and thereafter continuously and diligently complete a cure at the earliest possible time).

(B) An event of default shall occur under this Agreement if any ad valorem taxes owed to the City become delinquent on any portion of the property in the TIF that is owned by the Developer. Upon the occurrence of such default, the City shall notify Developer in writing and the Developer shall: (i) have thirty (30) calendar days to cure such default, or (ii) if Developer has diligently pursued cure of the default but such default is not reasonably curable within thirty (30) calendar days, then such extension of time that the City allows as is necessary to cure such default. If the default has not been fully cured by such time, the City shall have the right to offset any amounts due pursuant to Section 4.2(0) herein or to pursue any remedies under Article 6 herein.

**ARTICLE 6**

**REMEDIES ON DEFAULT**

6.1 Remedies. If a Party is in Default under this Agreement, the other Parties shall have available all remedies at law or in equity (including, but not limited to, injunctive relief and specific performance) except as follows: no Default shall: (i) relieve the Board from its obligation to verify Project Costs for completed portions of the Subdivision that are to be reimbursed from the TIP Fund; or (ii) relieve the City from its obligation to reimburse from the TIF Fund the Reimbursement Amount based on actual Project Costs that are verified by the Board, subject to the City's right of offset as described in Section 4.2(G) herein.

**ARTICLE 7**

**GENERAL**

7.1 Inspections, Audits. The Developer agrees to keep operating records related to construction of the Subdivision and to any particular Project Cost for four (4) years after disbursements from the TIF Fund for any Project Costs associated with the improvement; or as may be required by the TIF, the City, or by State and federal law or regulation. The Developer shall allow the City and/ or the Board reasonable access to documents and records in the Developer's possession, custody or control that the City and/or the Board deem necessary to assist the City and/or the Board in determining the Developer's compliance with this Agreement.

7.2 Personal Liability of Public Officials. To the extent permitted by State law, no director, officer, employee or agent of the TIF, the Board, or the City shall be personally responsible for any liability arising under or growing out of this Agreement.

7.3 Notices. Any notice required or contemplated by this Agreement shall be in writing and shall be deemed given and received: (i) when delivered (with evidence of delivery) by a nationally recognized delivery service (e.g., FedEx or UPS) to the address shown below whether or not signed for by the individual to whose attention the notice is addressed; or (ii) three business days after deposited with the US Postal Service, CERTIFIED MAIL, RETURN RECEIPT REQUESTED, for delivery to the address shown below whether or not signed for by the individual to whose attention the notice is addressed.

To the City: City Manager  
City of Kaufman  
209 S. Washington Street  
Kaufman, TX 75142

With a copy to: Patricia Adams  
Messer Fort & McDonald, PLLC  
6371 Preston Road, Suite 200  
Frisco, Texas 75034

To Developer: Kelly Cannell  
Georgetown KF, Ltd.  
~~5900 S. Lake Forest, Suite 295~~  
6621 P.O. Box  
McKinney, Texas ~~75070~~75071

With a copy to: Robert Miklos  
Miklos Cinclair, PLLC  
1800 Valley View Lane, Suite 360  
Farmers Branch, Texas 75234

Each Party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this Section shall be deemed to be given when so mailed, any notice so sent by facsimile transmission shall be deemed to be given when such transmission is sent, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by, the addressee.

7.4 Amendments and Waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the Board, the Developer, and the City. No course of dealing on the part of any Party, nor any failure or delay by any Party with respect to exercising any right, power or privilege of a Party under this Agreement shall operate as a waiver thereof, except as otherwise provided in this Section.

7.5 Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement.

7.6 Successors and Assigns. All covenants and agreements contained by or on behalf of the TIF in this Agreement shall bind its successors and assigns and shall inure to the benefit of the Developer and its successors and assigns. This Agreement and the right to reimbursement set forth herein may be assigned, from time to time and in whole or in part, by the Developer to any person or entity. The assignment must be in writing and must obligate the assignee to be bound by this Agreement. A copy of the assignment shall be given to the City within 30 days after its effective date; however, City consent to the assignment is not required. Upon any such assignment and notice to the City, Developer shall NOT be released from performing the duties or obligations that are assigned and that arise after the effective date or the date that the City receives notice of the assignment, whichever later occurs; further, the Developer is NOT released from any liabilities that arose prior to the effective date or date of notice to the City, whichever later occurs, unless the City and the Board agree. The Developer's rights under this Agreement are a personal obligation and do not constitute a covenant running with the land.

7.7 Exhibits: Titles of Articles, Sections and Subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the Parties and shall not be construed to have any effect or meaning as to the agreement between the Parties hereto. Any reference herein to a Section or Subsection shall be considered a reference to such Section or Subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

7.8 Construction. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, as such laws are now in effect.

7.9 Entire Agreement. This written Agreement represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. There are no unwritten oral agreements between the Parties.

7.10 Term. This Agreement shall be in force and effect from the date of execution hereof by the City for a term expiring on the earlier of: (i) the date on which the Reimbursement Amount for all phases is paid; or (ii) the expiration of the TIF on December 31, 2050.

7.11 Venue for Performance or Litigation. This Agreement is performable only in Kaufman County, Texas. Venue for any action affecting this Agreement shall lie in Kaufman County.

7.12 Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the Parties, the Parties agree that such approval or consent shall not be unreasonably withheld, conditioned or delayed.

7.13 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

7.14 Severability and Legal Construction. If a court of competent jurisdiction finds any provision of this Agreement to be invalid, illegal, or unenforceable as to any person or circumstance, such finding shall not render that provision invalid, illegal or unenforceable as to any other persons or circumstances. It is the intention and agreement of the Parties to this Agreement that each such illegal, invalid or unenforceable provision shall be amended by the Parties hereto to the extent necessary to make it legal, valid and enforceable while achieving the same object of such provision, or, if that is not possible, by substituting therefore another provision that is legal, valid and enforceable and achieves the same objectives (or, if such provision cannot be amended or a provision substituted therefore in a manner that is legal, valid and enforceable and achieves the same objectives, then such provision shall be amended or a new provision substituted therefore that achieves as closely as possible the same objectives or economic position as the illegal, invalid, or unenforceable provision.)

[EXECUTION PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties hereto have caused this instrument to be duly executed.

**TIRZ NO. 1 BOARD:**

REINVESTMENT ZONE NUMBER ONE,  
CITY OF KAUFMAN, TEXAS

By: \_\_\_\_\_  
Chair

**ATTEST:**

\_\_\_\_\_  
Jessie Hanks, City Secretary

**CITY:**

CITY OF KAUFMAN, TEXAS

By: \_\_\_\_\_  
Jeff Jordan, Mayor

**ATTEST:**

\_\_\_\_\_  
Jessie Hanks, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Patricia A. Adams, City Attorney

**DEVELOPER:**

GEORGETOWN KF, LTD.,  
a Texas limited partnership

By: Seascope GP, LLC  
a Texas limited liability company  
Its General Partner

By: \_\_\_\_\_  
Name: Kelly Cannell  
Its: President



American Planning Association  
**Texas Chapter**

**2022**

*Creating Great Communities for All*

**CERTIFICATE OF ACHIEVEMENT**  
**Richard R. Lillie, FAICP Program for**  
**PLANNING EXCELLENCE**

*Presented to the*

**City of Kaufman**

*Recognizing a commitment to professional planning by City Administration, Elected and Appointed Officials,  
and exemplary professional standards demonstrated by the Planning Staff*

Awarded by

Texas Chapter of the American Planning Association

A handwritten signature in black ink that reads 'Heather Nick'.

Heather Nick, AICP, MPA  
Chapter President



American Planning Association  
**Texas Chapter**

*Creating Great Communities for All*

October 5, 2022

**Chapter Officers**

Heather Nick, AICP  
President  
903.245.4459  
[hnick@tylertexas.com](mailto:hnick@tylertexas.com)

Kelly Porter, AICP  
President-Elect  
817.392.7259  
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Rolandra Russell  
TML Representative  
954.871.7683  
[rolandrearussell@ymail.com](mailto:rolandrearussell@ymail.com)

**Executive Administrator**

Mike McAnelly, FAICP  
9629 Fallbrook Drive  
Dallas, Texas 75243  
214.850.9046  
[administrator@apatexas.org](mailto:administrator@apatexas.org)

The Honorable Jeff Jordan, Mayor  
City of Kaufman  
209 S. Washington Street  
Kaufman, Texas 75142

Dear Mayor Jordan,

As the President of the Texas Chapter of the American Planning Association, it is my pleasure to present a 2022 Certificate of Achievement for the Richard R. Lillie, FAICP Planning Excellence Program to the City of Kaufman and its Planning Department. Kaufman is one of 44 Texas cities and towns to receive such recognition this year.

As Richard R. Lillie was the epitome of the highest standards of planning, this award given in his name, recognizes the professional planning standards exhibited by your planning staff and the support of your City Council and Planning Commission. Additionally, the City of Kaufman meets the Chapter's goals for increasing awareness of professional planning in meeting a variety of professional requirements. Please share this award with your City Council, Planning Commission, and staff.

The Board of Directors and members of the APA Texas Chapter thank you for your continued support of your community's planning program.

With warmest regards,

Heather Nick, AICP, MPA  
Chapter President, APA Texas Chapter

cc: Mike McAnelly, FAICP, Executive Administrator  
[administrator@apatexas.org](mailto:administrator@apatexas.org)



# City of Kaufman

## Proclamation

**WHEREAS**, The Fair Housing Act, enacted on April 11, 1968, enshrined into federal law the goal of eliminating racial segregation and ending housing discrimination in the United States; and

**WHEREAS**, The Fair Housing Act prohibits discrimination in housing based on race, color, religion, sex, familial status, national origin, and disability, and commits recipients of federal funding to affirmatively further fair housing in their communities; and

**WHEREAS**, the City of Kaufman is committed to the mission and intent of Congress to provide fair and equal housing opportunities for all; and

**WHEREAS**, our social fabric, the economy, health, and environment are strengthened in diverse, inclusive communities; and

**WHEREAS**, More than fifty years after the passage of the Fair Housing Act, discrimination persists, and many communities remain segregated; and

**WHEREAS**, Acts of housing discrimination and barriers to equal housing opportunity are repugnant to a common sense of decency and fairness.

**NOW, THEREFORE**, I, Jeff Jordan, Mayor of the City of Kaufman, do hereby proclaim April 2023 as:

# Fair Housing Month

In the City of Kaufman is an inclusive community committed to fair housing and to promoting appropriate activities by private and public entities to provide and advocate for equal housing opportunities for all residents and prospective residents of Kaufman.

IN WITNESS WHEREOF, I have set my hand and caused the Seal of the City to be affixed this 21<sup>st</sup> day of November 2022.

---

**Jeff Jordan, Mayor, City of Kaufman**



**Meeting**  
**Date: 11/21/2022**

**Date: 10/31/2022**

**Item #: 7.**

**Dept.: Administration**

**Consent Agenda**

**SUBJECT:**

Consider and take appropriate action on the minutes from the October 24, 2022, Work Session and Regular City Council Meeting.

**BACKGROUND:**

The minutes from October 24, 2022, Work Session and Regular City Council Meeting are attached for review.

**Author:**  
Jessie Hanks, City Secretary

**Reviewed:**  
Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation: Staff recommends approval of the minutes as presented.**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|--------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input type="checkbox"/>                  | <input type="checkbox"/>                    | <input type="checkbox"/>       |



**MINUTES OF THE  
CITY COUNCIL MEETING  
MONDAY, OCTOBER 24, 2022 - 5:00 PM  
CITY HALL COUNCIL CHAMBERS  
209 S. WASHINGTON STREET  
KAUFMAN, TEXAS 75142**

**CALL WORK SESSION TO ORDER** Mayor calls the Work Session to order, states the date and time, states Councilmembers present, and declares a quorum present.\*\*

Mayor Jordan called the work session to order at 5:27 PM. Councilmembers present were Jeff Jordan, Quattro Borders, Patty Patterson, Carole Aga, Charles Gillenwater, and Lisa Parker. Councilmember Matt Phillips was absent. Mayor Jordan declared a quorum present. Also present were City Manager Mike Slye, Assistant City Manager Mike Holder, City Attorney Pam Liston, City Secretary Jessie Hanks, Finance Director Mary Wennerstrom, Economic Development Director Stewart McGregor, Planning Manager Andrew Bogda, Fire Chief Ronnie Davis, Fire Captain Jeremy Hatcher, and Police Chief Les Edwards.

1. Discussion regarding the Public Improvement District.

Adbi Yassin, Senior Vice President of MuniCap Inc., gave a presentation reviewing the purpose, types, and financing options of a Public Improvement District. He outlined the three current Public Improvement Districts that the city has.

**ADJOURNMENT**

There being no further business, Mayor Jordan adjourned the work session at 6:08 PM.

**PLEDGE OF ALLEGIANCE**

**CALL MEETING TO ORDER** Mayor calls the Meeting to order, states the date and time, states Councilmembers present, and declares a quorum present.\*\*

Mayor Jordan called the City Council meeting to order at 6:13 PM. Councilmembers present were Jeff Jordan, Quattro Borders, Patty Patterson, Carole Aga, Charles Gillenwater and Lisa Parker. Councilmember Matt Phillips was absent. Mayor Jordan declared a quorum present. Also present were City Manager Mike Slye, Assistant City Manager Mike Holder, City Attorney Pam Liston, City Secretary Jessie Hanks, Finance Director Mary Wennerstrom, Economic Development Director Stewart McGregor, Planning Manager Andrew Bogda, Fire Chief Ronnie Davis, Fire Captain Jeremy Hatcher, and Police Chief Les Edwards.

**CITIZENS COMMENTS / REQUEST TO SPEAK ON AGENDA ITEMS (5 MINUTES)** Comments about any of the Council agenda items may be taken into consideration at this time or during the agenda item. Comments are limited to five (5) minutes per individual unless additional time is otherwise required by law for translation. Speaking time is not transferable. Citizens may address the City Council on any subject but must first complete a Request to Speak Form so that the Mayor may call your name to speak at the appropriate time on the Agenda. Comments must be directed to the Council as a whole. **When addressing the Council, please step forward to the speaker's podium, state your name and address, and direct your comments to the Mayor and City Council.**

No comments were given.

**RECOGNITION**

2. Police Department- Academy Graduate presentation and discussion

This item was tabled to the next City Council meeting.

3. Business of the Month- Barry J. Pierce, CPA

Mr. McGregor recognized Barry J. Pierce, CPA as the Business of the Month for October. Mr. Pierce thanked the Council, KEDC, and Chamber of Commerce for the recognition. He gave a brief overview on the services and history of his business.

**CONSENT AGENDA**

4. Consider and take appropriate action on the minutes from the September 26, 2022, Joint TIRZ #2 and Regular City Council Meeting.
5. Consider and take appropriate action on the minutes from the October 3, 2022, Special City Council Meeting.
6. Consider and take appropriate action on Resolution R-35-22, a resolution of the City Council of the City of Kaufman, Texas, authorizing the City Manager to enter into an Agreement with the Texas Department of Transportation to close the Kaufman County Courthouse Square on December 3, 2022, from 9:00 A.M. to 10:00 P.M. for the Kaufman "Christmas On The Square."
7. Consider and take appropriate action on Resolution R-36-22, a resolution of the City Council of the City of Kaufman, Texas, authorizing the City Manager to enter into an Agreement with the Texas Department of Transportation to close SH 34 (South Washington St) for the purpose of a Lighted Christmas Parade on December 3, 2022, from 6:00 p.m. to 8:00 p.m.
8. Consider and take appropriate action on a contract for administrative services between the Kaufman Economic Development Corporation and the City of Kaufman; and authorize the mayor and his designee to execute necessary documents.

Councilmember Gillenwater made a motion to approve consent agenda items 4 through 8. The motion was seconded by Councilmember Patterson and passed 6/0.

**END OF CONSENT AGENDA**

**DISCUSSION/ACTION ITEMS**

9. Consider and take appropriate action on the **Interlocal Development Agreement for Water and Sewer Lines and Roadways** between **Kaufman Independent School District** and the **City of Kaufman**, for the development of new elementary and junior high school campuses and other related facilities on approximately 85.213 acres out of the W.M. Peters Survey, Abstract No. 407, said property being located on the north side of SH 243 and the west side of FM 2727 (Property ID 187223 & 51233); and authorizing the Mayor or designee to execute necessary documents.

Mr. Slye informed the Council about the proposed Interlocal Development Agreement for water and sewer lines and roadways for the development of new elementary and junior high school campuses. He reviewed the proposed site plans, public improvements, and traffic impact remedies for the additional developments. He presented the proposed costs for the needed public improvements to the development.

Councilmember Parker made a motion to approve the Interlocal Development Agreement for Water and

Sewer Lines and Roadways between Kaufman Independent School District and the City of Kaufman, for the development of new elementary and junior high school campuses and other related facilities as presented. The motion was seconded by Councilmember Aga and passed 6/0.

10. Consider and take appropriate action on the **Final Plat of Belmont** consisting of an approximate 2.055 acres out of the D. Falcon Survey, Abstract No. 151, City of Kaufman, said property being located at the northwest corner of Tabor Parkway and Lions Den Trail (Property ID 5321). The property is zoned TH Townhouse Residential District. (Case No. FP-09-22)

Mr. Bogda presented the proposed Final Plat for the purpose of creating townhomes on the properties.

Councilmember Borders made a motion to approve the **Final Plat of Belmont** with the condition that civil plan review comments noted in a memo from the City Engineer dated October 14, 2022 are addressed to the City Engineer's satisfaction. The motion was seconded by Councilmember Gillenwater and passed 6/0.

11. Consider and take appropriate action on the **Land Study and Preliminary Plat of Five Points** consisting of an approximate 99.520 acres of land out of the T. Jefferson Survey, Abstract No. 255 and the D. Falcon Survey, Abstract No. 151, City of Kaufman, said property being located on the northwest side of S. Washington St. at Five Points Dr. (Property ID 54860 & 54862). The property is zoned PD-22 Planned Development-22. (Case No. PP-04-22)

Mr. Bogda reviewed the proposed Land Study and Preliminary Plat for the Five Points Development. He outlined the various uses of the property.

Councilmember Gillenwater made a motion to approve the Land Study and Preliminary Plat of Five Points as presented. The motion was seconded by Councilmember Patterson and passed 6/0.

12. Consider and take appropriate action on the **Preliminary Plat of Kings Fort Addition, Block A, Lots 5-A, 5-B and 5-C**, being a partial tract of land containing approximately 4.18 acres (Property ID 5404), situated in the D. Falcon Survey, Abstract No. 151, City of Kaufman, Kaufman County, Texas. The property is zoned Planned Development-15 ("PD-15") and is generally located on Kings Fort Parkway, south of Meara Drive. The preliminary plat is for 3 commercial lots. (Case No. PP-05-22)

Mr. Bogda presented the proposed preliminary plat for a future development of two hotels and a restaurant site in the Kings Fort Addition.

Councilmember Aga made a motion to approve the Preliminary Plat of Kings Fort Addition, Block A, Lots 5-A, 5-B and 5-C as presented. The motion was seconded by Councilmember Patterson and passed 6/0.

13. Consider and take appropriate action on the **Site Plan for two hotels and one restaurant**, situated on approximately 4.18 acres of land out of D. Falcon Survey, Abstract No. 407, City of Kaufman, and being located on the southwest side of Kings Fort Parkway at Meara Drive (Property ID 5404). The property is zoned PD-15-C Planned Development-15-Commercial. (Case No. SP-04-22)

Mr. Bodga reviewed the proposed Site Plan, the layout, parking accommodations, and proposed uses of the property located on the southwest side of Kings Fort Pkwy at Meara Drive. Jim Meara addressed the Council regarding the hotel development in Kings Fort.

Councilmember Aga made a motion to approve the Site Plan for two hotels and one restaurant located

on Kings Fort Pkwy at Meara Drive as presented. The motion was seconded by Councilmember Patterson and passed 6/0.

14. Consider and take appropriate action on the **Site Plan of J.R. Phillips Elementary School**, situated on approximately 85.213 acres of land out of the W.M. Peters Survey, Abstract No. 407, City of Kaufman, and being located on the north side of SH 243 and the west side of FM 2727 (Property ID 187223 & 51233). The property is zoned A-O Agriculture-Open District. (Case No. SP-01-22)

Mr. Bogda outlined the proposed Site Plan of J.R. Phillips Elementary School. He presented the proposed layout for the building, the elevations, and the landscaping plans.

Councilmember Patterson made a motion to approve the Site Plan of J.R. Phillips Elementary School as presented. The motion was seconded by Councilmember Parker and passed 6/0.

15. Consider and take appropriate action on Resolution R-37-22, a resolution of the City Council of the City of Kaufman, Texas, accepting an Amended and Restated Service and Assessment Plan for authorized improvements within the Kaufman Public Improvement District No. 1 including a proposed assessment roll for Phases #2A-2B; setting a date for public hearing on amendments to the service and assessment plan and proposed assessment roll for Phases #2A-2B and to the levy of assessments in the district; authorizing the publication and mailing of notice; and enacting other provisions relating thereto.

Abdi Yassin, Senior Vice President of MuniCap, presented the Resolution and outlined the purpose of the resolution.

Councilmember Aga made a motion to approve Resolution R-37-22 as presented. The motion was seconded by Councilmember Parker and passed 6/0.

#### **ANNOUNCEMENTS AND REPORTS FROM CITY MANAGER**

16. Receive an update and discussion regarding the following:
  - a. Freeman Farm Update
  - b. Highland Meadow Update
  - c. South Pointe Update
  - d. Senior Citizen Building Update
  - e. Melody Circle Update
  - f. Discussion Items Report (DIR)
  - g. STAR Transit Ridership Report- September 2022
  - h. Careflite Compliance Report- September 2022
  - i. Fire Department Monthly Report- September 2022

- j. Police Department Monthly Report- September 2022
- k. Development Services Monthly Report- September 2022
- l. Monthly Calendars Attached

Mr. Slye gave an update on the above-stated items.

**ADJOURNMENT**

There being no further business, Mayor Jordan adjourned the meeting at 7:14 PM.

**ATTEST:**

---

**JEFF JORDAN  
MAYOR**

---

**JESSIE HANKS  
CITY SECRETARY**



Meeting  
Date: 11/21/2022

Date: 10/31/2022

Item #: 8.

Dept.: Administration

### Consent Agenda

#### SUBJECT:

Consider and take appropriate action on Resolution R-38-22, a resolution of the City Council of the City of Kaufman, Texas accepting public improvements for Prairie Creek Phase III; establishing the warranty period for the public improvements; providing for the incorporation of premises; and providing an effective date.

#### BACKGROUND:

The resolution provides for the acceptance of public improvements to Prairie Creek Phase 3. All construction and additional conditions have been met.

Author:  
Mike Slye, City Manager

Reviewed:  
Mike Slye, City Manager

Cost:

Funds Available:

Source:

**Recommendation: Staff recommends approval of Resolution R-38-22 as presented.**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|--------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input type="checkbox"/>                  | <input checked="" type="checkbox"/>         | <input type="checkbox"/>       |

## **RESOLUTION NO. R-38-22**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KAUFMAN, TEXAS ACCEPTING PUBLIC IMPROVEMENTS FOR PRAIRIE CREEK PHASE III; ESTABLISHING THE WARRANTY PERIOD FOR THE PUBLIC IMPROVEMENTS; PROVIDING FOR THE INCORPORATION OF PREMISES; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City and SRP Development, LCC, (“Contractor”), entered into an agreement dated December 20, 2021, (the “Agreement”), pursuant to which Contractor was to construct public improvements to serve Phase III of the Prairie Creek Development (the “Public Improvements”); and

**WHEREAS**, Contractor has constructed all required Public Improvements and City Council accepts the actual quantities and construction of said Public Improvements pursuant to final estimate; and

**WHEREAS**, having accepted the Public Improvements via the adoption of this Resolution, the City Council hereby establishes that the two (2) year warranty period for said Public Improvements commences as of the date of this Resolution; and

**WHEREAS**, a two (2) year maintenance bond covering the Public Improvements has been received by the City.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KAUFMAN, TEXAS:**

**SECTION 1.** That the foregoing recitals are true and correct and are incorporated herein.

**SECTION 2.** That effective as of the date of this Resolution, the City accepts the Public Improvements as approved by final inspection of City of Kaufman Public Works Department.

**SECTION 3.** That the City establishes the warranty period to be in effect commencing on October 26, 2022, the effective date of this Resolution, and remaining in full force and effect until October 26, 2024, at 12:00 a.m., midnight (24 months from the effective date of this Resolution). Further, pursuant to the terms of the Agreement, the City has received a maintenance bond that shall remain in effect throughout the warranty period established herein and shall guarantee repairs to the Public Improvements occurring within the warranting period.

**PASSED AND APPROVED** this 21<sup>st</sup> day of November 2022.

---

**JEFF JORDAN**  
**MAYOR**

**ATTEST:**

---

**JESSIE HANKS**  
**CITY SECRETARY**

**APPROVED AS TO FORM:**

---

**PATRICIA A. ADAMS**  
**CITY ATTORNEY**

October 26, 2022

SRP Development, LLC  
500 N. Central Expwy, Suite 105  
Plano, TX 75074  
Attn: Crockett Boney  
(via email)

**Re: Final Acceptance for Georgetown at Prairie Creek Estates, Phase 3**

Dear Mr. Boney,

This is your letter of Final Acceptance for the above project. The final inspection and the corrected punch list items indicate that the work is complete and is therefore accepted by the City of Kaufman. In accordance with the contract documents, the maintenance bond shall be in effect for two (2) years from the date indicated above.

If you have any questions, please do not hesitate to contact us.

Sincerely,  
**tnp**  
**teague nall & perkins**



Philip C. Varughese, P.E.  
Associate/Team Leader

cc: Mike Slye, City Manager - City of Kaufman (via email)  
Mike Holder, Assistant City Manager - City of Kaufman (via email)  
Tim Hopwood, Director of Public Works - City of Kaufman (via email)  
Charles Lamping, P.E., Engineering Concepts & Design, L.P. (via email)  
KAU 21005 File



**Meeting**  
**Date: 11/21/2022**

**Date: 11/16/2022**

**Item #: 9.**

**Dept.: Administration**

**Resolution**

**SUBJECT:**

Consider and take appropriate action on Resolution R-40-22, a resolution of the City Council of the City of Kaufman, Texas, authorizing an amendment to Resolution R-01-19, authorizing participation in various Cooperative Purchasing Programs.

**BACKGROUND:**

Public Works has been pricing out several pieces of budgeted equipment. In the process, they determined the cheapest and best option is to use SourceWell Purchasing Cooperative. SourceWell was not included in the City's Purchasing Cooperative Resolution. Therefore, the staff is recommending adding SourceWell to the list so we can utilize their pricing.

**Author:**

Mike Holder, Assistant City Manager

**Reviewed:**

Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation: Staff recommends approval of Resolution R-40-22 as presented.**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|--------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input type="checkbox"/>                  | <input type="checkbox"/>                    | <input type="checkbox"/>       |

## RESOLUTION NO. R-40-22

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KAUFMAN, TEXAS, AUTHORIZING PARTICIPATION IN VARIOUS COOPERATIVE PURCHASING PROGRAMS AND AMENDING RESOLUTION R-01-19 AUTHORIZING PARTICIPATION IN VARIOUS COOPERATIVE PURCHASING PROGRAMS IN ACCORDANCE WITH THE CITY'S PROCUREMENT POLICIES AND PROCEDURES; IDENTIFYING THOSE COOPERATIVE PURCHASING PROGRAMS APPROVED FOR CITY PARTICIPATION; APPOINTING THE CITY MANAGER OR HIS DESIGNEE AS THE PROGRAM COORDINATOR OF COOPERATIVE PURCHASING PROGRAMS; AUTHORIZING EXECUTION OF ANY AND ALL NECESSARY AGREEMENTS FOR PARTICIPATION IN THE COOPERATIVE PROGRAMS BY THE MAYOR OR HIS DESIGNEE AND APPROVING RELATED CONTRACTS AND THE PAYMENT OF RELATED FEES IN ACCORDANCE WITH THE BUDGET; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 271 of the Texas Local Government Code authorizes a local government to participate in a cooperative purchasing program and provides that purchases made pursuant to an agreement with a local cooperative organization satisfy state laws requiring the local government to seek competitive bids for the purchase of the goods or services; and

**WHEREAS**, the Procurement Policies and Procedures of the City of Kaufman authorize purchases from a cooperative purchasing program or other approved state program provided that the City Council has approved participation; and

**WHEREAS**, City's participation in the cooperative purchasing programs and other approved state programs will improve efficiency in the purchasing process by allowing the City to meet competitive bid requirements, to identify and purchase goods and services from qualified vendors, to relieve the burdens of the governmental purchasing function, and to realize the various potential economies, including administrative cost savings that such programs provide; and

**WHEREAS**, upon consideration of the cooperative purchasing programs specified in this Resolution, and all matters attendant and related thereto, the City Council is of the opinion that the City's participation in these programs is beneficial and should be approved, that this Resolution should be adopted, and that the City Manager or his designee is appointed as the Program Coordinator for the City's membership in such cooperative programs; and

**WHEREAS**, in the event that the participation in any of the cooperative purchasing programs approved by this Resolution requires the execution of an Agreement and/or the payment of a fee, such Agreement and fee are hereby approved and the Mayor or his designee is hereby authorized to execute any necessary Agreements for participation in such program(s) and the Program Coordinator is authorized to approve the payment of applicable fees provided that funds are budgeted and available for such participation.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KAUFMAN, TEXAS, THAT:**

**Section 1.** The foregoing premises, which are hereby found to be true and to be in the best interest of the City of Kaufman and its citizens, are hereby adopted.

**Section 2.** The City of Kaufman's participation in the following cooperative purchasing programs is hereby authorized and approved in accordance with the terms of this Resolution and the City of Kaufman Procurement Policies and Procedures:

Buyboard  
Department of Information Resources (DIR)  
Houston-Galveston Area Council Cooperative Purchasing Program (H-GAC)  
North Central Texas Council of Government Cooperative Purchasing Program (NCTCOG)  
Dallas County  
City of Desoto  
Texas Building and Procurement Commission (TBPC)  
The Local Government Purchasing Cooperative (LGPC)  
U.S. Communities Government Purchasing Alliance  
National Joint Powers Association (NJPA)  
**Sourcewell**

**Section 3.** The City Manager or his designee is appointed as the Program Coordinator for the City's membership in approved cooperative purchasing programs. The Program Coordinator is authorized to approve the payment of applicable fees for approved programs provided that funds are budgeted and available for such participation.

**Section 4.** The Mayor or his designee is hereby authorized to execute any necessary Agreements for participation in such program(s) according to the terms and conditions set forth in this Resolution and the City's Procurement Policies and Procedures.

**Section 5.** This Resolution shall become effective immediately upon its passage.

**PASSED AND APPROVED** by the City Council of the City of Kaufman, Texas, this the 21<sup>st</sup> day of November 2022.

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**JEFF JORDAN**  
**MAYOR**

**ATTEST:**

**JESSIE HANKS  
CITY SECRETARY**

**APPROVED AS TO LEGAL FORM:**

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**PATRICIA ADAMS  
CITY ATTORNEY**



**Meeting**  
**Date: 11/21/2022**

**Date: 11/09/2022**

**Item #: 10.**

**Dept.: Administration**

**Action Item**

**SUBJECT:**

Conduct a public hearing on the levy of assessments within Phases #2A and 2B of the City of Kaufman Public Improvement District No. 1 (Georgetown Development).

**BACKGROUND:**

Required action prior to considering a PID#1 Assessment Ordinance for Phases 2A & 2B

Author:  
Mike Slye, City Manager

Reviewed:  
Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation:** Staff recommends opening the public hearing for the levy of assessments within Phases #2A and 2B for the City of Kaufman PID #1.

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|--------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input checked="" type="checkbox"/>       | <input type="checkbox"/>                    | <input type="checkbox"/>       |



**Meeting**  
**Date:** 11/21/2022

**Date:** 11/09/2022

**Item #:** a.

**Dept.:** Administration

**Presentation**

**SUBJECT:**

Presentation.

**BACKGROUND:**

**Author:**

**Reviewed:**

Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation:**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|--------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input type="checkbox"/>                  | <input type="checkbox"/>                    | <input type="checkbox"/>       |



**Meeting**  
**Date: 11/21/2022**

**Date: 11/09/2022**

**Item #: b.**

**Dept.: Administration**

**Presentation**

**SUBJECT:**

Public Hearing.

**BACKGROUND:**

Author:

Reviewed:

Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation:**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|--------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input type="checkbox"/>                  | <input type="checkbox"/>                    | <input type="checkbox"/>       |



**Meeting**  
**Date: 11/21/2022**

**Date: 11/09/2022**

**Item #: 11.**

**Dept.: Administration**

**Action Item**

**SUBJECT:**

Consider and take appropriate action on Ordinance O-38-22, an ordinance of the City Council of the City of Kaufman, Texas, approving a Service and Assessment Plan and Assessment Roll for Phases #2A-2B for the Kaufman Public Improvement District No. 1 (the "district"); making a finding of special benefit to certain property in the district; levying assessments against certain property within the district and establishing a lien on such property; providing for payment of the assessment in accordance with Chapter 372, Texas Local Government Code, as amended; providing for the method of assessment and the payment of the assessments; providing penalties and interest on delinquent assessments; providing for severability and providing an effective date.

**BACKGROUND:**

This ordinance codifies the assessments and approves the Service and Assessment Plan for Georgetown Phases 2A & 2B. Assessments are in line and equitable to the corresponding assessments in Phases 1A & 1B.

Author:  
Mike Slye, City Manager

Reviewed:  
Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation: Staff recommends approval of Ordinance O-38-22 as presented.**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|--------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>       | <input type="checkbox"/>                    | <input type="checkbox"/>       |

ORDINANCE NO. O-38-22

AN ORDINANCE OF THE CITY OF KAUFMAN, TEXAS APPROVING A SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL FOR PHASES #2A-2B FOR THE KAUFMAN PUBLIC IMPROVEMENT DISTRICT NO. 1 (THE “DISTRICT”); MAKING A FINDING OF SPECIAL BENEFIT TO CERTAIN PROPERTY IN THE DISTRICT; LEVYING ASSESSMENTS AGAINST CERTAIN PROPERTY WITHIN THE DISTRICT AND ESTABLISHING A LIEN ON SUCH PROPERTY; PROVIDING FOR PAYMENT OF THE ASSESSMENT IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED; PROVIDING FOR THE METHOD OF ASSESSMENT AND THE PAYMENT OF THE ASSESSMENTS; PROVIDING PENALTIES AND INTEREST ON DELINQUENT ASSESSMENTS; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Kaufman, Texas (the “City”) received a petition meeting the requirements of Sec. 372.005 of the Public Improvement District Assessment Act (the “Act”) requesting the creation of a public improvement district over a portion of the area within the corporate limits of the City to be known as the Kaufman Public Improvement District No. 1 (the “District”); and

WHEREAS, the petition contained the signatures of the owners of taxable property representing more than fifty percent of the appraised value of taxable real property liable for assessment within the boundaries of the proposed District, as determined by the then current ad valorem tax rolls of the Kaufman Central Appraisal District and the signatures of property owners who own taxable real property that constitutes more than fifty percent of the area of all taxable property that is liable for assessment by the City; and

WHEREAS, on September 24, 2018, the City Council opened a public hearing in the manner required by law on the advisability of the public improvements and services described in the petition as required by Sec. 372.009 of the PID Act and continued such public hearing to November 13, 2018; and

WHEREAS, on November 13, 2018, the City Council reconvened the public hearing and made the findings required by Sec. 372.009(b) of the pID Act and, by Resolution No. R-27-18 (the “Authorizing Resolution”) adopted by a majority of the members of the City Council, authorized and created the District in accordance with its finding as to the advisability of the Phases #2A-2B Improvements; and

WHEREAS, on November 22, 2018, the City published the Authorization Resolution in *The Kaufman Herald*, a newspaper of general circulation of the City; and

WHEREAS, no written protests regarding the creation of the District from any owners of record of property within the District were filed with the City Secretary within 20 days after November 22, 2018; and

**WHEREAS**, the District is to be developed in phases and assessments are anticipated to be levied in each development phase; and

**WHEREAS**, pursuant to Sections 372.013, 372.014, and 372.016 of the Act, the City Council has directed the preparation of an amended and restated Service and Assessment Plan (the “Service and Assessment Plan”) for the financing of certain public improvements within Phases #2A-2B of the District (the “Phases #2A-2B Improvements”) and an assessment roll for Phases #2A-2B of the District (the “Assessment Roll”) that states the assessment against each parcel of land within Phases #2A-2B of the District (the “Assessments”); and

**WHEREAS**, the City called a public hearing regarding the proposed levy of Assessments pursuant to the Preliminary Plan and the proposed Assessment Roll on property within the District, pursuant to Section 372.016 of the Act; and

**WHEREAS**, the City, pursuant to Section 372.016(b) of the Act, published notice on November 3, 2022, in a newspaper of general circulation within the City to consider the proposed Service and Assessment Plan for the District and the levy of the Assessments, as defined in the Service and Assessment Plan, on property in the District; and

**WHEREAS**, the City Council, pursuant to Section 372.016(c) of the Act, caused the mailing of notice of the public hearing to consider the proposed Service and Assessment Plan and the Assessment Roll attached to the Service and Assessment Plan and the levy of Assessments on property in the District to the last known address of the owners of the property liable for the Assessments; and

**WHEREAS**, the City Council convened the public hearing at 6:00 p.m. on the \_\_\_ day of November, 2022, at which all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Service and Assessment Plan, the Assessment Roll, and the proposed Assessments, and to offer testimony pertinent to any issue presented on the amount of the Assessments, the allocation of the costs of the Phases #2A-2B Improvements, the purposes of the Assessments, the special benefits of the Assessments, and the penalties and interest on annual installments and on delinquent annual installments of the Assessments; and

**WHEREAS**, the City wishes to levy assessments on the property within the District for the Phases #2A-2B Improvements as set forth in the Service and Assessment Plan; and

**WHEREAS**, the City Council finds and determines that the Service and Assessment Plan and Assessment Roll attached thereto should be approved and that the Assessments should be levied on property within the District as provided in this Ordinance and the Service and Assessment Plan and Assessment Roll; and

**WHEREAS**, the City Council further finds that there were no written objections or evidence submitted to the City Secretary in opposition to the Service and Assessment Plan, the allocation of the costs of the Phases #2A-2B Improvements, the Assessment Roll or the levy of Assessments; and

**WHEREAS**, the City Council closed the hearing, and, after considering all written and documentary evidence presented at the hearing, including all written comments and statements filed with the District, determined to proceed with the adoption of this Ordinance in conformity with the requirements of the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KAUFMAN, TEXAS, THAT:

Section 1.     Findings. The findings and determinations set forth in the preambles hereto are hereby incorporated by reference for all purposes.

Section 2.     Terms. Terms not otherwise defined herein are defined in the Service and Assessment Plan attached hereto as Exhibit A.

Section 3.     Findings. The findings and determinations set forth in the preambles are hereby incorporated by reference for all purposes. The City Council hereby finds, determined and orders, as follows:

- a. The apportionment of the Costs of the Phase #2A-2B Improvements, and the Administrative Expenses pursuant to the Service and Assessment Plan is fair and reasonable, reflects an accurate presentation of the special benefit each property will receive from the Phases #2A-2B Improvements identified in the Service and Assessment Plan, and is hereby approved;
- b. The Service and Assessment Plan covers a period of at least five years and defines the annual indebtedness and projected costs for the Phase #2A-2B Improvements;
- c. The Service and Assessment Plan apportions the costs of the Phases #2A-2B Improvements to be assessed against each Assessed Property in the District and such apportionment is made on the basis of special benefits accruing to each Assessed Property because of the Phase #2A-2B Improvements.
- d. All of the real property in the District which is being assessed in the amounts shown in the Service and Assessment Plan and Assessment Roll will be benefited by the Phase #2A-2B Improvements proposed to be provided through the District in the Service and Assessment Plan, and each parcel of real property in the District will receive special benefits during the term of the Assessments equal to or greater than the total amount assessed;
- e. The method of apportionment of the costs of the Phase #2A-2B Improvements and Administrative Expenses set forth in the Service and Assessment Plan results in imposing equal shares of the costs of the Phase #2A-2B Improvements and Administrative Expenses on property similarly benefited, and results in a reasonable classification and formula for the apportionment of the costs;
- f. The Service and Assessment Plan should be approved as the service plan and assessment plan for the District, as described in Sections 372.013 and 372.014 of the Act;

- g. The Assessment Roll in the form attached to the Service and Assessment Plan should be approved as the assessment roll for the District;
- h. The provisions of the Service and Assessment Plan relating to due and delinquency dates for the Assessments, interest on Annual Installments, interest and penalties on delinquent Assessments and delinquent Annual Installments, and procedures in connection with the imposition and collection of Assessments should be approved and will expedite collection of the Assessments in a timely manner in order to provide the improvements needed and required for the area within the District; and
- i. A written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public for the time required by law preceding this meeting, as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter hereof has been discussed, considered and formally acted upon.

Section 4. Assessment Plan. The Service and Assessment Plan is hereby accepted and approved pursuant to Sections 372.013 and 372.014 of the Act as a service plan and an assessment plan for the Phases #2A-2B Improvements within the District.

Section 5. Assessment Roll. The Assessment Roll is hereby accepted and approved pursuant to Section 372.016 of the Act as the assessment roll for the Phase #2A-2B Improvements within the District.

Section 6. Levy and Payment of Assessments for Costs of Phase #2A-2B Improvements.

- a. The City Council hereby levies Assessments on each Assessed Property located within Phases #2A-2B of the District, as shown and described in the Service and Assessment Plan and the Assessment Roll, in the respective amounts shown on the Assessment Roll, as special assessments on the properties within the District as set forth in the Service and Assessment Plan and the Assessment Roll.
- b. The levy of the Assessments shall be effective on the date of execution of this Ordinance levying assessments and strictly in accordance with the terms of the Service and Assessment Plan.
- c. The collection of the Assessments shall be as described in the Service and Assessment Plan.
- d. Each Assessment may be pre-paid or paid in Annual Installments pursuant to the terms of the Service and Assessment Plan.
- e. Each Assessment shall bear interest at the rate or rates specified in the Service and Assessment Plan.

- f. Each Annual Installment shall be collected each year in the manner set forth in the Service and Assessment Plan.
- g. The Administrative Expenses for Assessed Properties shall be calculated pursuant to the terms of the Service and Assessment Plan.

Section 7. Method of Assessment. The method of apportioning the costs of the Phases #2A-2B Improvements is as set forth in the Service and Assessment Plan.

Section 8. Penalties and Interest on Delinquent Assessments. Delinquent Assessments shall be subject to the penalties, interest, procedures and foreclosure sales set forth in the Service and Assessment Plan. The Assessments shall have lien priority as specified in the Act and the Service and Assessment Plan.

Section 9. Prepayments of Assessments. As provided in Section 372.018(f) of the Act and in the Service and Assessment Plan, the owner (the “Owner”) of any Assessed Property may prepay the Assessments levied by this Ordinance as set forth in the Service and Assessment Plan.

Section 10. Lien Priority. As provided in the Act, the City Council and owners of the Assessed Property intend for the obligations, covenants and burdens on the owners of Assessed Property, including without limitation such owner’s obligations related to payment of the Assessments and the Annual Installments, to constitute a covenant running with the land. The Assessments and the Annual Installments levied hereby shall be binding upon the Assessed Property, and the owners of Assessed Properties, and their respective transferees, legal representatives, heirs, devisees, successors and assigns in the same manner and for the same period as such parties would be personally liable for the payment of ad valorem taxes under applicable law. Assessments shall have lien priority as specified in the Act.

Section 11. Administrator and Collector of Assessments.

- a. Administrator. The City shall administer the Service and Assessment Plan and the Assessments levied by this Ordinance. The City has appointed a third-party administrator (the “Administrator”) to administer the Service and Assessment Plan and the Assessments. The Administrator shall perform the duties of the Administrator described in the Service and Assessment Plan and in this Ordinance. The Administrator’s fees, charges and expenses for providing such services shall constitute an Administrative Expense.
- b. Collector. The City may collect the assessments or may, by future action, appoint a third-party collector of the Assessments. The City is hereby authorized to enter into an agreement with a third-party for the collection of the Assessments. The City may also contract with any other qualified collection agent selected by the City or may collect the Assessments on its own behalf. The costs of such collection contracts shall constitute an Administrative Expense.

Section 12. Applicability of Tax Code. To the extent not inconsistent with this Ordinance and the Act or other laws governing public improvement districts, the provisions of

the Texas Tax Code shall be applicable to the imposition and collection of Assessments by the City.

Section 13. Severability. If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or the application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council that no portion hereof, or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 14. Effective Date. This Ordinance shall take effect, and the levy of the Assessments, and the provisions and terms of the Service and Assessment Plan shall be and become effective upon passage and execution thereof.

PASSED AND APPROVED this \_\_\_\_ day of November, 2022.

[Remainder of Page left Intentionally Blank]

\_\_\_\_\_  
Jeff Jordan  
Mayor, City of Kaufman

**ATTEST:**

\_\_\_\_\_  
Jessie Hanks  
City Secretary, City of Kaufman

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Patricia Adams  
City Attorney, City of Kaufman

THE STATE OF TEXAS     §

COUNTY OF KAUFMAN     §

Before me, the undersigned authority, on this day personally appeared Jeff Jordan, Mayor of the City of Kaufman, Texas, known to me to be such persons who signed the above and acknowledged to me that such persons executed the above and foregoing Ordinance in my presence for the purposes stated therein.

Given under my hand and seal of office this \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

[NOTARY STAMP]

\_\_\_\_\_  
*Signature Page to Ordinance Levying Assessments Kaufman Public Improvement District No. 1 – Phases #2A-2B*

EXHIBIT A

SERVICE AND ASSESSMENT PLAN  
AND ASSESSMENT ROLL



Meeting  
Date: 11/21/2022

Date: 11/09/2022

Item #: 12.

Dept.: Administration

**Ordinance**

**SUBJECT:**

Consider and take appropriate action on Ordinance O-39-22, an ordinance of the City Council of the City of Kaufman, Texas, approving and authorizing the issuance and sale of the City of Kaufman Special Assessment Revenue Bonds, Series 2022 Kaufman Public Improvement District No. 1 Phases #2A-2B Project); approving and authorizing an indenture of trust, a bond purchase agreement, limited offering memorandum, a continuing disclosure agreement, and other agreements and documents in connection therewith; making findings with respect to the issuance of such bonds; and providing an effective date

**BACKGROUND:**

Ordinance O-39-22 is the formal action to issue PID bonds for the public improvements for Georgetown Phases 2A & 2B and approving all the necessary agreements to codify Council action.

Author:  
Mike Slye, City Manager

Reviewed:  
Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation: Staff recommends approval of Ordinance O-39-22 as presented.**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|--------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/>          | <input checked="" type="checkbox"/>       | <input type="checkbox"/>                    | <input type="checkbox"/>       |

ORDINANCE NO. O-39-22

AN ORDINANCE APPROVING AND AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF KAUFMAN SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2022 (KAUFMAN PUBLIC IMPROVEMENT DISTRICT NO. PHASES #2A-2B PROJECT); APPROVING AND AUTHORIZING AN INDENTURE OF TRUST, A BOND PURCHASE AGREEMENT, LIMITED OFFERING MEMORANDUM, A CONTINUING DISCLOSURE AGREEMENT, AND OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION THEREWITH; MAKING FINDINGS WITH RESPECT TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Kaufman, Texas (the “City”), pursuant to and in accordance with the terms, provisions and requirements of the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code (the “PID Act”), has previously established the Kaufman Public Improvement District No. 1 (the “District”), pursuant to a Resolution adopted by the City Council of the City (the “City Council”) on November 3, 2018; and

WHEREAS, the City is authorized by the PID Act to issue its revenue bonds payable from assessments levied on property within the District (the “Assessments”) for the purposes of (i) paying or reimbursing the costs of certain public improvements within the District (the “Authorized Improvements”) identified in a service and assessment plan (the “Service and Assessment Plan”), (ii) paying capitalized interest on Bonds, (iii) funding a reserve fund for payment of principal and interest on the Bonds, (iv) funding a portion of the Delinquency and Prepayment Reserve Account, and (v) paying the costs of issuing the Bonds; and

WHEREAS, the City Council has found and determined that it is in the best interests of the citizens of the City to issue its bonds in a single series to be designated “City of Kaufman Special Assessment Revenue Bonds, Series 2022 (Kaufman Public Improvement District No. 1 Phases #2A-2B Project)” (the “Bonds”), such series to be payable solely from and secured by Assessments levied on property within Phases 2A and 2B of the District (the “Assessed Property”) as set forth in the Service and Assessment Plan; and

WHEREAS, the City Council has found and determined to (i) approve the issuance of the Bonds to finance the Authorized Improvements benefitting Phases 2A and 2B of the District identified in the Service and Assessment Plan on the terms described herein, (ii) approve the form, terms and provisions of the Indenture (as defined herein) securing the City’s Bonds authorized hereby, (iii) approve the form, terms and provisions of a Bond Purchase Agreement between the City and the purchasers of the Bonds, (iv) approve a Limited Offering Memorandum, and (iv) approve a Continuing Disclosure Agreement relating to the Bonds; and

WHEREAS, the meeting at which this Ordinance is considered 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 by Chapter 551, Texas Government Code, as amended;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KAUFMAN, TEXAS, THAT:

Section 1. Findings. The findings and determinations set forth in the preamble hereof are hereby incorporated by reference for all purposes as if set forth in full herein. Terms not otherwise defined in Sections 2 through 6 herein shall have the definitions as set forth in the Indenture (defined herein).

Section 2. Approval of Issuance of Bonds and Indenture of Trust. (a) The issuance of the Bonds in the principal amount of \$\_\_\_\_\_ for the purpose of providing funds for (i) paying or reimbursing a portion of the costs of the Phases 2A and 2B Improvements, (ii) paying capitalized interest on the Bonds, (iii) funding the Bond Reserve Account of the Reserve Fund (and defined in the Indenture), (iv) funding a portion of the Delinquency and Prepayment Reserve Account (as defined in the Indenture), (v) paying capitalized interest on the Bonds, and (vi) paying the costs of issuance of the Bonds, are hereby authorized and approved.

(b) The Bonds shall be issued and secured under an indenture of trust, the form, terms and provisions of which are hereby approved in the substantially final form presented at this meeting of that certain Indenture of Trust (the "Indenture"), dated as of November 15, 2022, between the City and Wilmington Trust, National Association, as trustee (the "Trustee"), with such changes as may be necessary or desirable to carry out the intent of this Ordinance and as approved by the Mayor of the City, such approval to be evidenced by the execution and delivery of the Indenture. The Mayor of the City is hereby authorized and directed to execute the Indenture and the City Secretary is hereby authorized and directed to attest such signature of the Mayor.

(c) The Bonds shall be dated, shall mature on the date or dates and in the principal amounts, shall bear interest, shall be subject to redemption and shall have such other terms and provisions as set forth in the Indenture. The Bonds shall be in substantially the form set forth in the Indenture with such insertions, omissions and modifications as may be required to conform the form of bond to the actual terms of the Bonds. The Bonds shall be payable from and secured solely by the Assessments levied on the Assessed Property for the Phases 2A and 2B Improvements, as set forth in the Service and Assessment Plan and other assets of the "Trust Estate" (as defined in the Indenture) pledged to such Bonds, and shall never be payable from ad valorem taxes.

Section 3. Sale of Bonds: Approval of Bond Purchase Agreement. The Bonds shall be sold to FMSbonds, Inc. (the "Underwriter") at the price and on the terms and provisions set forth in that certain Bond Purchase Agreement (the "Bond Purchase Agreement"), dated the date hereof, between the City and the Underwriter. The form, terms and provisions of the Bond Purchase Agreement are hereby authorized and approved and the Mayor of the City is hereby authorized and directed to execute and deliver the Bond Purchase Agreement. It is hereby officially found, determined and declared that the terms of this sale are the most advantageous reasonably obtainable.

Section 4. Limited Offering Memorandum. The form and substance of the Preliminary Limited Offering Memorandum for the Bonds and any addenda, supplement or amendment thereto presented to and considered by the City Council are hereby in all respects approved and adopted. The City hereby authorizes the preparation of a final Limited Offering Memorandum reflecting the terms of the Bond Purchase Agreement and other relevant information. The Limited Offering Memorandum as thus approved and delivered, with such appropriate variations as shall be approved by the City Manager and the Underwriter, may be used by the Underwriter in the offering and sale of the Bonds, and the Preliminary Limited Offering Memorandum is hereby deemed final as of its date (except for the omission of pricing and related information) within the meaning and for the purposes of paragraph (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended. The City Secretary is hereby authorized and directed to include and maintain a copy of the Preliminary Limited Offering Memorandum and Limited Offering Memorandum and any addenda, supplement or amendment thereto thus approved among the permanent records of this meeting. The use and distribution of the Preliminary Limited Offering Memorandum in the offering of the Bonds is hereby ratified, approved and continued. Notwithstanding the execution, approval and delivery of such Preliminary Limited Offering Memorandum and Limited Offering Memorandum by the Mayor, the Mayor and this City Council are not responsible for and proclaim no specific knowledge of the information contained in the Preliminary Limited Offering Memorandum and Limited Offering Memorandum pertaining to development, the Developer (as defined in the Limited Offering Memorandum) or its financial ability, the homebuilders, the landowners, or the appraisal of the property in the District performed by Integra Realty.

Section 5. Continuing Disclosure Agreement. The form, terms and provisions of that certain Continuing Disclosure Agreement (the “Continuing Disclosure Agreement” dated as of November 15, 2022 among the City, HTS Continuing Disclosure Services, a Division of Hilltop Securities, Inc. and MuniCap, Inc. is hereby authorized and approved in substantially final form presented at this meeting and the Mayor of the City is hereby authorized and directed to execute and deliver such Continuing Disclosure Agreement with such changes as may be required to carry out the purpose of this Ordinance and approved by the Mayor, such approval to be evidenced by the execution thereof, the Mayor’s signature on the Agreement may be attested by the City Secretary.

Section 6. Approval of Construction and Funding Agreement Phases #2A-2B. The Construction and Funding Agreement (the “CFA”) for Phases #2A and 2B between the City and Georgetown KF, Ltd. a Texas Limited partnership is hereby approved as presented at this meeting and the Mayor or City Manager is authorized to execute the CFA.

Section 7. Additional Actions. The Mayor, the City Manager and each other officer, employee and agent of the City are hereby authorized and directed to take any and all actions on behalf of the City necessary or desirable to carry out the intent and purposes of this Ordinance and to issue the Bonds in accordance with the terms of this Ordinance, including the making of modifications to this Ordinance and the Indenture as necessary to obtain approval of the Bonds by the Attorney General of the State, the Mayor, the City Manager and each other officer, employee and agent of the City are hereby authorized and directed to execute and deliver any and all certificates, agreements, notices, instruction letters, requisitions, and other documents which may be necessary or advisable in connection with the sale, issuance and delivery of the Bonds and the carrying out of the purposes and intent of this Ordinance. Further, in connection with the submission of the record of proceedings for the Bonds to the Attorney General of the State of Texas for examination and approval of such Bonds, the appropriate officer of the City is hereby authorized and directed to issue a check of the City payable to the Attorney General of the State of Texas as a nonrefundable examination fee in the amount required by Chapter 1202, Texas Government Code (such amount not to exceed \$9,500).

Section 8. Effective Date. This Ordinance shall take effect immediately upon its adoption by the City Council of the City.

FINALLY PASSED, APPROVED AND EFFECTIVE this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

[Signature Page Follows]

BY:

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MAYOR,  
CITY OF KAUFMAN, TEXAS

ATTEST:

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CITY SECRETARY,  
CITY OF KAUFMAN, TEXAS

APPROVED AS TO FORM:

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CITY ATTORNEY,  
CITY OF KAUFMAN, TEXAS

**KAUFMAN PUBLIC IMPROVEMENT DISTRICT NO. 1 PHASES #2A-2B  
CONSTRUCTION, FUNDING, AND ACQUISITION AGREEMENT**

**THIS KAUFMAN PUBLIC IMPROVEMENT DISTRICT NO. 1 PHASES #2A-2B CONSTRUCTION, FUNDING, AND ACQUISITION AGREEMENT** (this “Agreement”), dated as of \_\_\_\_\_, 2022, is by and among the **CITY OF KAUFMAN, TEXAS**, a home-rule municipality of the State of Texas (the “City”), and **GEORGETOWN KF, LTD**, a Texas limited partnership (the “Developer”).

**ARTICLE I  
DEFINITIONS**

The following terms shall have the meanings ascribed to them in this Article I for purposes of this Agreement. Unless otherwise indicated, any other terms, capitalized or not, when used herein shall have the meanings ascribed to them in the Service and Assessment Plan (as hereinafter defined).

“**Act**” means the Public Improvement District Assessment Act, Texas Local Government Code, Chapter 372, as amended.

“**Actual Costs**” means the costs of the Phases #2A-2B Improvements actually paid or incurred for the design, construction and installation of the Phases #2A-2B Improvements.

“**Administrator**” means, initially, MuniCap, Inc, or any other individual or entity designated by the City to administer the District.

“**Annual Service Plan Update**” means the annual update to the Service and Assessment Plan conducted by the Administrator pursuant to the Service and Assessment Plan.

“**Bond Ordinance**” means the ordinance adopted by the City Council on \_\_\_\_\_, 2022 authorizing the issuance of the Bonds pursuant to the Indenture.

“**Bonds**” means the City’s bonds designated "City of Kaufman, Texas, Special Assessment Revenue Bonds, Series 2022 (Kaufman Public Improvement District No. 1 Phases #2A-2B Project)".

“**Budgeted Costs**” means the anticipated, agreed upon costs of the Phases #2A-2B Improvements as shown in Exhibit B of the Service and Assessment Plan.

“**Certification for Payment**” means a certificate, substantially in the form of **Exhibit B** hereto or otherwise agreed to by the Developer, the Administrator, and the City Representative, executed by an engineer, construction manager or other person or entity acceptable to the City, as evidenced by the signature of a City Representative, provided no more frequently than once per each month to the City Representative and the Trustee, specifying the amount of work performed

and the amount charged for that work, including materials and labor costs, presented to the Trustee to request payment for Actual Costs of the Phases #2A-2B Improvements.

**“City Inspector”** means an individual employed by or an agent of the City whose job is, in part or in whole, to inspect infrastructure to be owned by the City for compliance with all rules and regulations applicable to the development and the infrastructure inspected.

**“City Manager”** means the City Manager of the City, or its designee.

**“City Representative”** means the City Manager, or any other official or agent of the City later authorized by the City to undertake the action referenced herein.

**“Closing Disbursement Request”** means the certificate, substantially in the form of **Exhibit A** hereto or otherwise mutually agreed to by the Developer, Administrator, and City Representative, executed by an engineer, construction manager or other person or entity acceptable to the City, as evidenced by the signature of a City Representative, specifying the amounts to be disbursed for the costs related to the operation of the District and the costs of issuance of the Bonds.

**“Construction Contracts”** means the contracts for the construction of an Phases #2A-2B Improvement. **“Construction Contract”** means any one of the Construction Contracts.

**“Cost”** means the Budgeted Costs or the cost of a Phases #2A-2B Improvement as reflected in a Construction Contract, if greater than the Budgeted Costs.

**“Cost of Issuance Account”** means the account of such name in the Project Fund created under Section 6.1 of the Indenture.

**“Cost Overrun”** means, with respect to each Phases #2A-2B Improvement, the Actual Cost, as appropriate, of such Phases #2A-2B Improvement in excess of the Budgeted Cost.

**“Development Agreement”** means that certain Georgetown at Kings Fort Development Agreement executed by and between the Developer and the City effective November 13, 2018, as the same may be amended from time to time.

**“District”** shall mean the Kaufman Public Improvement District No. 1 created by the City on November 13, 2018.

**“Final Completion”** means completion of a Phases #2A-2B Improvement in compliance with existing City standards for dedication under the City’s ordinances and the Development Agreement.

**“Force Majeure”** means (A) any act that (constitutes a force majeure or a right to extend the time for completion under the terms of a construction agreement between the Developer and a General Contractor (except for change orders unrelated to (a)-(z) below, which shall not constitute force majeure events) or (B) any act that (i) materially and adversely affects the affected Party’s

ability to perform the relevant obligations under this Agreement or delays such affected Party's ability to do so, (ii) is beyond the reasonable control of the affected Party, (iii) is not due to the affected Party's fault or negligence and (iv) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts, including the expenditure of any reasonable sum of money and, subject to the satisfaction of the conditions set forth in (B) (i) through (iv) above, "Force Majeure" shall include: (a) natural phenomena, such as storms, floods, lightning and earthquakes; (b) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (c) transportation disasters, whether by ocean, rail, land or air; (d) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (e) fires; (f) actions or omissions of a Governmental Authority (including the actions of the City in its capacity as a Governmental Authority or in the exercise of its governmental functions) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Agreement or any Governmental Rule; and (g) epidemic or pandemic that is not in effect as of the date of this Agreement pursuant to which a Governmental Authority has issued a stop work order for residential or commercial development applicable to the Project; (h) failure of the other Party to perform any of its obligations under this Agreement within the time or by the date required pursuant to the terms of this Agreement for the performance thereof; provided, however, that under no circumstances shall Force Majeure under Clause B include any of the following events: (u) economic hardship; (v) changes in market condition; (w) any strike or labor dispute involving the employees of the Developer or any Affiliate of the Developer, other than industry or nationwide strikes or labor disputes; (x) weather conditions which could reasonably be anticipated by experienced contractors operating the relevant location; (y) the occurrence of any manpower, material or equipment shortages other than regional or nationwide shortages that are not in effect as of the date of this Agreement; or (z) any delay, default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of the Developer, or any construction contracts for the Phases #2A-2B Improvements.

**"Governmental Authority"** means any Federal, state or local governmental entity (including a local government corporation, whether formed under Section 431 of the Subchapter D of the Texas Transportation Code or otherwise), authority (including any taxing authority) or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) and any arbitrator to whom a dispute has been presented under Governmental Rule, pursuant to the terms of this Agreement or by agreement of the Parties.

**"Governmental Rule"** means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority. Governmental Rules shall include, but not be limited to, the City codes and ordinances.

**"Indenture"** means that certain Indenture of Trust between Wilmington Trust, National Association, as trustee, dated as of November 15, 2022 relating to the Bonds.

**"Phases #2A-2B"** shall have the meaning set forth in the Service and Assessment Plan.

**"Phases #2A-2B Improvements"** shall have the meaning set forth in the Service and

Assessment Plan.

**“Phases #2A-2B Improvements Account”** means the account of such name in the Project Fund created under Section 6.1 of the Indenture.

**“Plans”** means the plans, specifications, schedules and related construction contracts for the Phases #2A-2B Improvements, respectively, approved pursuant to the applicable standards, ordinances, procedures, policies and directives of the City, as applicable, the Development Agreement, and any other applicable governmental entity.

**“Project Fund”** means the fund, including the accounts created and established under such fund, where monies from the proceeds of the sale of the Bonds, excluding those deposited in other funds in accordance with the Indenture, shall be deposited, and the fund by such name created under the Indenture.

**“Service and Assessment Plan”** means the Kaufman Public Improvement District No. 1 Amended and Restated Service and Assessment Plan, adopted by the City Council on \_\_\_\_\_, 2022, as the same may be updated, amended, or supplemented, for the purpose of assessing allocated cost(s) against the property located within the boundaries of the District having terms, provisions and findings approved and agreed to by the Developer and the City, as required by this Agreement and in accordance with the PID Act.

**“Substantial Completion”** means the time at which the construction of a Phases #2A-2B Improvement (or specified segment, section or part thereof) Phases #2A-2B Improvement is sufficiently complete in accordance with the Construction Contracts related thereto including (i) the City has designated such improvement to be substantially complete, (ii) the City has received a waiver of liens, and the constructing party has received a certificate of occupancy or such similar document for the improvement so that such Phases #2A-2B Improvement (or a specified segment, section or part thereof) can be utilized for the purposes for which it is intended.

## **ARTICLE II RECITALS**

### **Section 2.01. The District and the Phases #2A-2B Improvements.**

(a) The City has created the District under the Act for the financing of, among other things, the acquisition, construction and installation of the Phases #2A-2B Improvements.

(b) The City has authorized the issuance of the Bonds in accordance with the provisions of the Act, the Bond Ordinance and the Indenture, the proceeds of which Bonds shall be used, in part, to finance all or a portion of the Phases #2A-2B Improvements in accordance with the terms

and limitations of the Development Agreement, this Agreement, and the Service and Assessment Plan.

(c) All Phases #2A-2B Improvements are eligible to be financed with proceeds of the Bonds to the extent specified herein.

(d) Proceeds, if any, from the issuance and sale of the Bonds and funds received from the Developer at the time of the issuance of the Bonds shall be deposited in accordance with the Indenture.

(e) The Developer will undertake, oversee, or ensure the construction and development of the Phases #2A-2B Improvements for acquisition and acceptance by the City, in accordance with the terms and conditions contained in the Development Agreement and this Agreement.

Section 2.02. Agreements. In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth herein.

### **ARTICLE III FUNDING**

#### **Section 3.01. Bonds.**

(a) The City, in connection with this Agreement, is proceeding with the issuance and delivery of the Bonds.

(b) The projects to be financed with a portion of the proceeds of the Bonds are the Phases #2A-2B Improvements. The payment of costs from the proceeds of the Bonds for the Phases #2A-2B Improvements shall be made from the Phases #2A-2B Improvements Account of the Project Fund established under the Indenture. Money on deposit in the Phases #2A-2B Account of the Project Fund shall only be used to pay Actual Costs of Phases #2A-2B Improvements, except as provided in the Indenture.

(c) The City's obligation with respect to the payment of the Phases #2A-2B Improvements shall be limited to the lesser of the Actual Costs or Budgeted Costs, and shall be payable solely from amounts on deposit for the payment of such costs as provided herein and in the Indenture. The Developer agrees and acknowledges that it is responsible for all Cost Overruns and all expenses related to the Phases #2A-2B Improvements, qualified, however, by the distribution of Cost Underrun (as defined in Section 4.04 hereof) monies, as detailed in Section 4.04.

(d) The City shall have no responsibility whatsoever to the Developer with respect to the investment of any funds held in the Project Fund by the Trustee under the provisions of the Indenture, including any loss of all or a portion of the principal invested or any penalty for

liquidation of an investment. The obligation of the Developer to pay Assessments is not in any way dependent on the availability of amounts in the Project Fund to pay for all or any portion of the Actual Costs of the Phases #2A-2B Improvements.

(e) The Developer acknowledges that, in accordance with Section 3.01 of this Agreement, some funds in the Phases #2A-2B Improvements Account may not be available for the reimbursement of the Actual Costs of the Phases #2A-2B Improvements that the Developer has submitted and would otherwise be approved and that any lack of availability of amounts in the funds or accounts established in the Indenture to pay the Actual Costs of the Phases #2A-2B Improvements shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for the Phases #2A-2B Improvements required by this Agreement, the Development Agreement, or any other agreement to which the Developer is a party or any governmental approval to which the Developer or any land within the District is subject.

Section 3.02 Accounts. All disbursements from the Phases #2A-2B Improvements Account of the Project Fund shall be made by the City in accordance with provisions, including provisions governing the timing and sequencing of withdrawals from the respective accounts of the Project Fund, of the Development Agreement, the Service and Assessment Plan, this Agreement, and the Indenture.

## **ARTICLE IV CONSTRUCTION OF PHASES #2A-2B IMPROVEMENTS**

### **Section 4.01. Duty of Developer to Construct.**

(a) All Phases #2A-2B Improvements shall be constructed by or at the direction of the Developer in accordance with the Plans and in accordance with this Agreement and the Development Agreement. The Developer shall perform, or cause to be performed, all of its obligations and shall conduct, or cause to be conducted, all operations with respect to the construction of Phases #2A-2B Improvements in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of all Phases #2A-2B Improvements to be acquired and accepted by the City, from the Developer as provided in this Agreement.

(b) The Developer shall not be relieved of its obligation to construct or cause to be constructed each Phases #2A-2B Improvement and, upon completion, inspection, and acceptance, shall convey each such Phases #2A-2B Improvement to the City, where applicable, in accordance with the terms hereof, even if there are insufficient funds in the Project Fund to pay the Actual Costs thereof. In any event, this Agreement shall not affect any obligation of the Developer under

any other agreement to which the Developer is a party or any governmental approval to which the Developer or any land within the District is subject, with respect to the Phases #2A-2B Improvements required in connection with the development of the land within the District.

Section 4.02. No Competitive Bidding. The Phases #2A-2B Improvements shall not require competitive bidding pursuant to Section 252.022(a)(9) of the Texas Local Government Code, as amended.

Section 4.03. Independent Contractor. In performing this Agreement, the Developer is an independent contractor and not the agent or employee of the City with respect to the Phases #2A-2B Improvements.

Section 4.04. Remaining Funds After Completion of a Phases #2A-2B Improvement. Upon the Final Completion of a Phases #2A-2B Improvement and payment of all outstanding invoices for such Phases #2A-2B Improvement, if the Actual Cost of such Phases #2A-2B Improvement is less than the Budgeted Cost (a “Cost Underrun”), any remaining Budgeted Cost may be made available to pay Cost Overruns on any other Phases #2A-2B Improvement with the approval of the Administrator and the City. The elimination of a category of Phases #2A-2B Improvements from the Service and Assessment Plan will require an amendment to the Service and Assessment Plan. The City shall promptly confirm to the Administrator when such remaining amounts are available to pay such Cost Overruns, and the Developer, the Administrator and the City Representative will agree how to use such monies to secure the payment and performance of the work for other Phases #2A-2B Improvements. Any Cost Underrun for any Phases #2A-2B Improvement is available to pay Cost Overruns on any other Phases #2A-2B Improvement with the approval of the City.

Section 4.05. Contracts and Change Orders. The Developer shall be responsible for entering into all contracts and any supplemental agreements (herein referred to as “change orders”) required for the construction of the Phases #2A-2B Improvements. The Developer or its contractors may approve and implement any change orders, even if such change order would increase the Cost of a Phases #2A-2B Improvement, but the Developer shall be solely responsible for payment of any Cost Overruns resulting from such change orders except to the extent amounts are available pursuant to Section 4.04. If any change order is for work that requires changes to be made by an engineer to the construction and design documents and plans previously approved under Section 4.01, then such revisions made by an engineer must be submitted to the City for approval by the City’s engineer prior to execution of the change order.

## **ARTICLE V**

### **ACQUISITION, CONSTRUCTION, AND PAYMENT**

Section 5.01. Payment Requests for Disbursements at Closing. In order to receive the disbursement from the Cost of Issuance Account of the Project Fund and/or from the Phases

#2A-2B Improvements Account of the Project Fund at closing of the Bonds related to costs of issuance of the Bonds or costs incurred in the creation of the District, the Developer shall execute a Closing Disbursement Request, substantially in the form of **Exhibit A** hereto or otherwise acceptable and agreed to by the City, to be delivered to the City and the Administrator no less than five (5) business days prior to the scheduled Closing Date for the Bonds for payment in accordance with the provisions of the Indenture. Disbursements for Costs of Issuance shall be made by the Trustee at closing pursuant to a closing memorandum prepared by the City's financial advisor. In order to receive the disbursement for a Phases #2A-2B Improvement from the Phases #2A-2B Improvements Account of the Project Fund, the Developer shall execute a Certification for Payment, substantially in the form of **Exhibit B** hereto or otherwise agreed to by the City, to be delivered to the City no later than five (5) business days prior to the scheduled Closing Date for the Bonds for payment in accordance with the provisions of the Indenture. Upon approval by the City, the City shall submit a Closing Disbursement Request or a Certification for Payment, as applicable, to the Trustee for disbursement to be made from the Cost of Issuance Account of the Project Fund or the Phases #2A-2B Improvements Account of the Project Fund, as applicable, and in accordance with the provisions hereof and in the provisions of the Indenture.

Section 5.02. Certification for Payment for a Phases #2A-2B Improvement.

(a) No payment hereunder shall be made from the Project Fund to the Developer for work on a Phases #2A-2B Improvement until a Certification for Payment is received from the Developer. Upon receipt of a Certification for Payment substantially in the form of **Exhibit B** hereto (and all accompanying documentation required by the City) from the Developer, the City Inspector (for a City owned Phases #2A-2B Improvement) shall conduct a review in order to confirm that such request is complete, that the work with respect to such Phases #2A-2B Improvement identified therein for which payment is requested was completed in accordance with all applicable governmental laws, rules and regulations and applicable Plans therefor and with the terms of this Agreement, the Development Agreement, and to verify and approve the Actual Cost of such work specified in such Certification for Payment (collectively, the "Developer Compliance Requirements"). The City Inspector and/or the City Representative shall also conduct such review as is required in his discretion to confirm the matters certified in the Certification for Payment. The Developer agrees to cooperate with the City Inspector and/or City Representative in conducting each such review and to provide the City Inspector and/or City Representative with such additional information and documentation as is reasonably necessary for the City Inspector and/or City Representative to conduct each such review.

(b) Within fifteen (15) business days of receipt of any completed and verified Certification for Payment including review by the City Inspector, the City Representative shall either (i) approve and execute the Certification for Payment and forward the same to the Administrator for approval and delivery to the Trustee for payment to the Developer in accordance with Section 5.03(a) hereof or (ii) in the event the City Representative disapproves the Certification

for Payment, give written notification to the Developer of the City Representative's disapproval, in whole or in part, of such Certification for Payment, specifying the reasons for such disapproval and the additional requirements to be satisfied for approval of such Certification for Payment. If a Certification for Payment seeking reimbursement is approved only in part, the City Representative shall specify the extent to which the Certification for Payment is approved and shall deliver such partially approved Certification for Payment to the Administrator for approval in accordance with Section 5.03 hereof and delivery to the Developer in accordance with Section 5.02(c) hereof, and any such partial work shall be processed for payment under Section 5.03 notwithstanding such partial denial.

(c) If the City Representative denies the Certification for Payment, the denial must be in writing, stating the reason(s) for denial. The denial may be appealed to the City Council by the Developer in writing within thirty (30) days of being denied by the City Representative. Denial of the Certification for Payment by the City Council shall be attempted to be resolved by half-day mediation between the parties in the event an agreement is not otherwise reached by the parties, with the mediator's fee being paid by Developer. The Certification for Payment shall not be forwarded to the Trustee for payment until the dispute is resolved by the City and the Developer.

(d) The Developer shall deliver the approved or partially approved Certification for Payment to the Trustee for payment and the Trustee shall make such payment from the Project Fund in accordance with Section 5.03 below.

#### Section 5.03. Payment for the Phases #2A-2B Improvements.

(a) Upon receipt of a reviewed and approved Certification for Payment, the Trustee shall make payment from the Phases #2A-2B Improvements Account of the Project Fund as designated in the Certification for Payment pursuant to the terms of the Certification for Payment and the Indenture in an amount not to exceed the Budgeted Cost for the particular Phases #2A-2B Improvement (or its completed segment), unless a Cost Overrun amount has been approved for a particular Phases #2A-2B Improvement. If a Cost Overrun amount has been approved, then the amount reimbursed shall not exceed the Budgeted Amount plus the approved Cost Overrun amount.

(b) Certifications for Payment shall not accrue interest.

(c) Notwithstanding any other provisions of this Agreement, when payment is made, the Trustee shall make payment as set forth in the Certification for Payment. If the request for payment results in ninety percent (90%) or more of the Budgeted Costs for such Phases #2A-2B Improvement identified in such request for payment being paid, then Trustee shall hold the payment until work with respect to that Phases #2A-2B Improvement has been completed and accepted by the City.

(d) Withholding Payments.

Nothing in this Agreement shall be deemed to prohibit the Developer or the City from contesting in good faith the validity or amount of any mechanics or materialman's lien and/or judgment nor limit the remedies available to the Developer or the City with respect thereto, including the withholding of any payment that may be associated with the exercise of such remedy, so long as such delay in performance shall not subject the Phases #2A-2B Improvements to foreclosure, forfeiture, or sale. In the event that any such mechanics or materialman's lien and/or judgment with respect to any Phases #2A-2B Improvements is contested, the Developer shall either (i) clear such lien or (ii) post or cause delivery of a surety bond in the amount determined by the City or, alternatively, the City may decline to accept the Phases #2A-2B Improvements until such mechanics or materialman's lien and/or judgment is satisfied, and no such payment for such Phases #2A-2B Improvement shall be made pursuant to the Indenture until (i) such lien is released or (ii) the City accepts the surety bond and the Phases #2A-2B Improvement for ownership.

## **ARTICLE VI**

### **OWNERSHIP AND TRANSFER OF THE PHASES #2A-2B IMPROVEMENTS**

Section 6.01. Phases #2A-2B Improvements to be Owned by the City – Title Evidence. If required by the City, the Developer shall furnish to the City, a preliminary title report for land with respect to a Phases #2A-2B Improvement to be acquired and accepted by the City from the Developer and not previously dedicated or otherwise conveyed to the City, for review and approval at least thirty (30) calendar days prior to the transfer of title of a Phases #2A-2B Improvement to the City. The City shall approve the preliminary title report unless it reveals a matter which, in the reasonable judgment of the City, could materially affect the City's clean title or use and enjoyment of any part of the property or easement covered by the preliminary title report. In the event the City does not approve the preliminary title report, the City shall not be obligated to accept title to the Phases #2A-2B Improvement until the Developer has cured such objections to title to the satisfaction of the City.

Section 6.02. Phases #2A-2B Improvements Constructed on City Land or Developer Land. If the Phases #2A-2B Improvement is on land owned by the City, the City hereby grants to the Developer a license to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance) of the Phases #2A-2B Improvement. If the Phases #2A-2B Improvement is on land owned by the Developer, the Developer hereby grants to the City an easement to enter upon such land for purposes related to inspection and maintenance (pending acquisition and acceptance) of the Phases #2A-2B Improvement. The grant of the permanent easement shall not relieve the Developer of any obligation to grant the City title to property and/or easements related to the Phases #2A-2B Improvement as required by the Development Agreement or as should in the City's reasonable judgment be granted to provide for convenient access to and routine and emergency maintenance of such Phases #2A-2B Improvement. The provisions for inspection and acceptance of such Phases #2A-2B Improvement otherwise provided herein shall apply.

## **ARTICLE VII**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 7.01. Representations, Covenants and Warranties of the Developer. The Developer represents and warrants for the benefit of the City as follows:

(a) Organization. The Developer consists of limited liability companies duly formed, organized and validly existing under the laws of the State of Texas, is in compliance with the laws of the State of Texas, and has the power and authority to own its properties and assets and to fulfill its obligations in this Agreement and the Development Agreement and to carry on its business in the State of Texas as now being conducted as hereby contemplated.

(b) Authority. The Developer has the power and authority to enter into this Agreement and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the Developer.

(c) Binding Obligation. This Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to bankruptcy and other equitable principles.

(d) Compliance with Law. The Developer shall not commit, suffer or permit any act to be done in, upon or to the lands in the District or the Phases #2A-2B Improvements in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the District or the Phases #2A-2B Improvements.

(e) Requests for Payment. The Developer represents and warrants that (i) it will not request payment from the Project Fund for the acquisition construction or installation of any improvements that are not part of the costs associated with the Phases #2A-2B Improvements, and (ii) it will diligently follow all procedures set forth in this Agreement with respect to the Certification for Payments.

(f) Financial Records. For a period of two years after completion of the Phases #2A-2B Improvements, the Developer covenants to maintain proper books of record and account for the construction of the Phases #2A-2B Improvements and all Costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the City or its agents at any reasonable time during regular business hours on reasonable notice.

(g) Plans. The Developer represents that it has obtained or will obtain approval of the Plans from all appropriate departments of the City and from any other public entity or public utility from which such approval must be obtained. The Developer further agrees that, subject to the terms hereof, the Phases #2A-2B Improvements have been or will be constructed in full

compliance with such Plans and any change orders thereto consistent with the Act, this Agreement and the Development Agreement. Developer shall provide as-built plans for all Phases #2A-2B Improvements to the City.

(h) Additional Information. The Developer agrees to cooperate with all reasonable written requests for nonproprietary information by the initial purchaser of the Bonds, the City Manager and the City Representative related to the status of construction of Phases #2A-2B Improvements within the District, the anticipated completion dates for future improvements and any other matter that the initial purchaser of the Bonds or City Representative deems material to the investment quality of the Bonds.

(i) Continuing Disclosure Agreement. The Developer agrees to provide the information required pursuant to the Continuing Disclosure Agreement executed by the Developer in connection with the Bonds.

(j) Tax Certificate. The City will deliver a certificate relating to the Bonds (such certificate, as it may be amended and supplemented from time to time, being referred to herein as the “Tax Certificate”) containing covenants and agreements designed to satisfy the requirements of 26 U.S. Code Sections 103 and 141 through 150, inclusive, and the federal income tax regulations issued thereunder relating to the use of the proceeds of the Bonds or of any monies, securities or other obligations on deposit to the credit of any of the funds and accounts created by the Indenture or this Agreement or otherwise that may be deemed to be proceeds of the Bonds within the meaning of 26 U.S. Code Section 148 (collectively, “Bond Proceeds”).

The Developer covenants to provide, or cause to be provided, such facts and estimates as the City reasonably considers necessary to enable it to execute and deliver its Tax Certificate. The Developer further covenants that (i) such facts and estimates will be based on its reasonable expectations on the date of issuance of the Bonds and will be, to the best of the knowledge of the officers of the Developer providing such facts and estimates, true, correct and complete as of that date, and (ii) the Developer will make reasonable inquiries to ensure such truth, correctness and completeness. The Developer covenants that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use or investment of the Bond Proceeds (including, but not limited to, the use of the Phases #2A-2B Improvements) that would cause any of the covenants or agreements of the City contained in the Tax Certificate to be violated or that would otherwise have an adverse effect on the tax-exempt status of the interest payable on the Bonds for federal income tax purposes.

(k) Financial Resources. The Developer represents and warrants that it has the financial resources, or the ability to obtain sufficient financial resources, to meet its obligations under this Agreement, the Service and Assessment Plan and the Development Agreement.

Section 7.02. Indemnification and Hold Harmless. THE DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY INSPECTOR, THE CITY, ITS

OFFICIALS, EMPLOYEES, OFFICERS, REPRESENTATIVES AND AGENTS (EACH AN "INDEMNIFIED PARTY"), FROM AND AGAINST ALL ACTIONS, DAMAGES, CLAIMS, LOSSES OR EXPENSE OF EVERY TYPE AND DESCRIPTION TO WHICH THEY MAY BE SUBJECTED OR PUT: (I) BY REASON OF, OR RESULTING FROM THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY THE DEVELOPER; (II) THE NEGLIGENT DESIGN, ENGINEERING, AND/OR CONSTRUCTION BY THE DEVELOPER OR ANY ARCHITECT, ENGINEER OR CONTRACTOR HIRED BY THE DEVELOPER OF ANY OF THE PHASES #2A-2B IMPROVEMENTS ACQUIRED FROM THE DEVELOPER HEREUNDER; (III) THE DEVELOPER'S NONPAYMENT UNDER CONTRACTS BETWEEN THE DEVELOPER AND ITS CONSULTANTS, ENGINEERS, ADVISORS, CONTRACTORS, SUBCONTRACTORS AND SUPPLIERS IN THE PROVISION OF THE PHASES #2A-2B IMPROVEMENTS; (IV) ANY CLAIMS OF PERSONS EMPLOYED BY THE DEVELOPER OR ITS AGENTS TO CONSTRUCT THE PHASES #2A-2B IMPROVEMENTS; OR (V) ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO DEVELOPER'S RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES AND/OR TRUSTEES, REGARDING OR RELATED TO THE PHASES #2A-2B IMPROVEMENTS OR ANY AGREEMENT OR RESPONSIBILITY REGARDING THE PHASES #2A-2B IMPROVEMENTS, INCLUDING CLAIMS AND CAUSES OF ACTION WHICH MAY ARISE OUT OF THE SOLE OR PARTIAL NEGLIGENCE OF AN INDEMNIFIED PARTY (THE "CLAIMS"). NOTWITHSTANDING THE FOREGOING, NO INDEMNIFICATION IS GIVEN HEREUNDER FOR ANY ACTION, DAMAGE, CLAIM, LOSS OR EXPENSE DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE DIRECTLY ATTRIBUTABLE TO THE WILLFUL MISCONDUCT OF ANY INDEMNIFIED PARTY, DEVELOPER IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS, AND CITY IS REQUIRED TO REASONABLY COOPERATE AND ASSIST DEVELOPER IN PROVIDING SUCH DEFENSE.

IN ITS REASONABLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY DEVELOPER IN FULFILLING ITS OBLIGATIONS HEREUNDER TO DEFEND AND INDEMNIFY THE INDEMNIFIED PARTIES, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. THE INDEMNIFIED PARTIES RESERVE THE RIGHT TO PROVIDE A PORTION OR ALL OF THEIR/ITS OWN DEFENSE, AT THEIR/ITS SOLE COST; HOWEVER, INDEMNIFIED PARTIES ARE UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY AN INDEMNIFIED PARTY IS NOT TO BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO DEFEND INDEMNIFIED PARTIES OR AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY INDEMNIFIED PARTIES, PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF WRITTEN NOTICE FROM AN INDEMNIFIED PARTY THAT IT IS INVOKING ITS RIGHT TO INDEMNIFICATION

UNDER THIS AGREEMENT. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND DEVELOPER SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ALL REASONABLE COSTS INCURRED BY INDEMNIFIED PARTIES.

THIS SECTION 7.02 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

THE PARTIES AGREE AND STIPULATE THAT THIS INDEMNIFICATION COMPLIES WITH THE CONSPICUOUSNESS REQUIREMENT AND THE EXPRESS NEGLIGENCE TEST, AND IS VALID AND ENFORCEABLE AGAINST THE DEVELOPER.

Section 7.03. Use of Monies by City; Changes to Indenture. The City agrees not to take any action or direct the Trustee to take any action to expend, disburse or encumber the monies held in the Project Fund, except as set forth in the Indenture, and any monies to be transferred thereto for any purpose other than the purposes permitted by the Indenture.

Section 7.04. No Reduction of Assessments. The Developer agrees not to take any action or actions to reduce the total amount of such Assessments to be levied as of the effective date of this Agreement.

## **ARTICLE VIII TERMINATION**

Section 8.01. Mutual Consent. This Agreement may be terminated by the mutual, written consent of the City and the Developer, in which event the City may either execute contracts for or perform any remaining work related to the Phases #2A-2B Improvements not accepted by the City or other appropriate entity and use all or any portion of funds on deposit in the Project Fund or other amounts transferred to the Project Fund under the terms of the Indenture to pay for same, and the Developer shall have no claim or right to any further payments for the Costs of a Phases #2A-2B Improvement hereunder, except as otherwise may be provided in such written consent.

Section 8.02. City's Election for Cause.

(a) The City, upon notice to Developer and the passage of the cure period identified in subsection (b) below, may terminate this Agreement, without the consent of the Developer if the Developer shall breach any material covenant or default in the performance of any material obligation hereunder.

(b) If any such event described in Section 8.02(a) occurs, the City shall give written notice of its knowledge of such event to the Developer, and the Developer agrees to promptly meet

and confer with the City Inspector and other appropriate City staff and consultants as to options available to assure timely completion, subject to the terms of this Agreement, of the Phases #2A-2B Improvements. Such options may include, but not be limited to, the termination of this Agreement by the City. If the City elects to terminate this Agreement, the City shall first notify the Developer (and any mortgagee or trust deed beneficiary specified in writing by the Developer to the City to receive such notice) of the grounds for such termination and allow the Developer a minimum of 45 days to eliminate or to mitigate to the satisfaction of the City the grounds for such termination. Such period may be extended, at the sole discretion of the City, if the Developer, to the reasonable satisfaction of the City, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined reasonably by the City, the Developer has not eliminated or completely mitigated such grounds to the satisfaction of the City, the City may then terminate this Agreement. In the event of the termination of this Agreement, the Developer is entitled to payment for work pursuant to an approved Certificate for Payment and accepted by the City related to a Phases #2A-2B Improvement only as provided for under the terms of the Indenture and this Agreement prior to the termination date of this Agreement. Notwithstanding the foregoing, so long as the Developer has breached any material covenant or defaulted in the performance of any material obligation hereunder, notice of which has been given by the City to the Developer, and such event has not been cured or otherwise eliminated by the Developer, the City may in its discretion cause the Trustee to cease making payments for the Actual Costs of Phases #2A-2B Improvements, provided that the Developer shall receive payment of the Actual Costs of any Phases #2A-2B Improvements that were the subject of an approved Certificate for Payment and were accepted by the City at the time of the occurrence of such breach or default by the Developer upon submission of the documents and compliance with the other applicable requirements of this Agreement.

(c) If this Agreement is terminated by the City for cause, the City may either execute contracts for or perform any remaining work related to the Phases #2A-2B Improvements not accepted by the City and use all or any portion of the funds on deposit in the Project Fund or other amounts transferred to the Project Fund and the Developer shall have no claim or right to any further payments for the Phases #2A-2B Improvements hereunder, except as otherwise may be provided upon the mutual written consent of the City and the Developer. The City shall have no obligation to perform any work related to a Phases #2A-2B Improvement or to incur any expense or cost in excess of the remaining balance of the Project Fund.

Section 8.03. Termination. This Agreement will terminate automatically and with no further action by the City or the Developer upon (i) the redemption or defeasance of all outstanding Bonds (including any refunding bonds issued to fund the Bonds) issued under the Indenture, and (ii) completion of all of the Phases #2A-2B Improvements, acceptance by the City and payment thereof pursuant to the Indenture and Service and Assessment Plan.

Section 8.04. Construction of the Phases #2A-2B Improvements Upon Termination of this Agreement. Notwithstanding anything to the contrary contained herein, upon the termination

of this Agreement pursuant to this Article VIII, the Developer shall perform its obligations with respect to the Phases #2A-2B Improvements in accordance with this Agreement and the Development Agreement.

Section 8.05. Force Majeure. Whenever performance is by a party hereunder, that performance may be extended by Force Majeure.

## **ARTICLE IX MISCELLANEOUS**

Section 9.01. Limited Liability of City. The Developer agrees that any and all obligations of the City arising out of or related to this Agreement are special obligations of the City, and the City's obligations to make any payments hereunder are restricted entirely to the monies, if any, in the Project Fund and from no other source. Neither the City, the City Inspector, City Representative nor any other City employee, officer, official or agent shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

Section 9.02. Audit. The City Inspector, City Representative or a finance officer of the City shall have the right, during normal business hours and upon the giving of three business days' prior written notice to a Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer with respect to any of the Phases #2A-2B Improvements and any bids taken or received for the construction thereof or materials therefor.

Section 9.03. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to any party shall be deemed to have been received when personally delivered or transmitted by email or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

|                 |                                                                                                             |
|-----------------|-------------------------------------------------------------------------------------------------------------|
| To the City:    | Attn: City Manager<br>City of Kaufman<br>209 S. Washington Street<br>Kaufman, TX 75142                      |
| With a copy to: | Attn: Patricia Adams<br>Messer, Fort & McDonald PLLC<br>6371 Preston Road, Suite 200<br>Frisco, Texas 75034 |
| And to:         | Attn: Julie Partain<br>Bracewell LLP<br>1445 Ross Avenue Suite 3800                                         |

Dallas, Texas 75202

To the Developer:

Attn: Kelly Cannell  
Georgetown KF, Ltd  
PO Box 6621  
McKinney, Texas 75071

With a copy to:

Attn: Robert Miklos  
Miklos Cinclair, PLLC  
1755 Wittington Pl, Suite 305  
Farmers Branch, Texas 75234

Any party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

The City shall advise the Developer of the name and address of any person who is to receive any notice or other communication pursuant to this Agreement.

Section 9.04. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

Section 9.05. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Any receivables due under this Agreement may be assigned by the Developer without the consent of, but upon written notice to the City pursuant to Section 9.03 of this Agreement. The City shall not be required to execute any document or make any representations with respect to such assignment. The obligations, requirements, or covenants of this Agreement shall be able to be assigned to an affiliate or related entity of the Developer, or any lien holder on the Property, without prior written consent of the City. The obligations, requirements, or covenants of this Agreement shall not be assigned by the Developer to a non-affiliate or non-related entity of the Developer without prior written consent of the City Manager, except pursuant to a collateral assignment to any person or entity providing construction financing to the Developer for the Developer for a Phases #2A-2B Improvement, provided such person or entity expressly agrees to assume all obligations of the Developer hereunder if there is a default under such financing and such Person elects to complete the Phases #2A-2B Improvement. No such assignment shall be made by the Developer or any successor or assignee of the Developer that results in the City being an “obligated person” within the meaning of Rule 15c2-12 of the United States Securities and Exchange Commission without the express written consent of the City. In connection with any consent of the City, the City may condition its consent upon the acceptability of the financial condition of the proposed assignee, upon the assignee’s express assumption of all obligations of the Developer hereunder and/or upon any other reasonable factor which the City deems relevant in the circumstances. In any event, any such

assignment shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned. The City may assign by a separate writing certain rights as described in this Agreement and in the Indenture, to the Trustee and the Developer hereby consents to such assignment.

Section 9.06. Other Agreements. The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of property in the District. Nothing herein shall be construed as affecting the City's or the Developer's rights or duties to perform their respective obligations under other agreements, use regulations, ordinances or subdivision requirements relating to the development of the lands in the District, including the applicable Construction Contracts and the Development Agreement. To the extent there is a conflict between this Agreement and the Development Agreement, the Development Agreement shall control. To the extent there is a conflict between this Agreement and the Indenture, the Indenture shall control.

Section 9.07. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by any other party, or the failure by a party to exercise its rights upon the default of any other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by such other party with the terms of this Agreement thereafter.

Notwithstanding, any completed and accepted Phases #2A-2B Improvements for which a Certificate for Payment has been approved at the time of termination of the Agreement shall be paid.

Section 9.12. Term. The term of this Agreement, other than the provisions contained in Section 7.02, which shall survive the termination of this Agreement, shall be the lesser of (i) thirty (30) years, (ii) upon redemption or defeasance of the Bonds (including any refunding bonds issued to refund the Bonds) issued under the Indenture, and (iii) completion of the Phases #2A-2B Improvements and acceptance by the City and payment of reimbursement of costs as set forth in the Indenture and Service and Assessment Plan up to the amount on deposit for such purposes in the Project Fund, or (iv) default by the Developer pursuant to this Agreement or the Development Agreement, pursuant to which the City has terminated this Agreement. If the Developer defaults under this Agreement or the Development Agreement, this Agreement and the Development Agreement shall not terminate with respect to the costs of the Phases #2A-2B Improvements that have been approved by the City pursuant to a Certification for Payment prior to the date of default.

Section 9.13 No Waiver of Powers or Immunity. The City does not waive or surrender any of its governmental powers, immunities, or rights except as necessary to allow Developer to enforce its remedies under this Agreement.

Section 9.14. No Boycott Israel. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2271.002, Texas Government Code, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott

Israel during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel,’ a term defined in Section 2271.001, Texas Government Code, by reference to Section 808.001(1), Texas Government Code, means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

Section 9.15. Not a Listed Company. The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to enable the City to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Developer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. As used in this Section, the Developer understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 133(f), 17 C.F.R. § 230.133(f), and exists to make a profit.

Section 9.16. Verification Regarding Energy Company Boycotts. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies,” a term defined in Section 2274.001(1), Texas Government Code (as enacted by such Senate Bill) by reference to Section 809.001, Texas Government Code (also as enacted by such Senate Bill), shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a

company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above. As used in this Section, the Developer understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 133(f), 17 C.F.R. § 230.133(f), and exists to make a profit.

Section 9.17. Verification Regarding Discrimination Against Firearm Entity or Trade Association. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification and the following definitions:

(i) ‘discriminate against a firearm entity or firearm trade association,’ a term defined in Section 2274.001(3), Texas Government Code (as enacted by such Senate Bill), (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association;

(ii) ‘firearm entity,’ a term defined in Section 2274.001(6), Texas Government Code (as enacted by such Senate Bill), means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (defined in Section 2274.001(4), Texas Government Code, as enacted by such Senate Bill, as weapons that expel projectiles by the action of explosive

or expanding gases), firearm accessories (defined in Section 2274.001(5), Texas Government Code, as enacted by such Senate Bill, as devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (defined in Section 2274.001(1), Texas Government Code, as enacted by such Senate Bill, as a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (defined in Section 250.001, Texas Local Government Code, as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting); and

(iii) ‘firearm trade association,’ a term defined in Section 2274.001(7), Texas Government Code (as enacted by such Senate Bill), means any person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

As used in this Section, the Developer understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 133(f), 17 C.F.R. § 230.133(f), and exists to make a profit.

*[Execution pages follow.]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of \_\_\_\_\_, 2022.

**CITY OF KAUFMAN, TEXAS**

By: \_\_\_\_\_  
Name: Jeff Jordan, Mayor

ATTEST:

\_\_\_\_\_  
Jessie Hanks, City Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
Patricia A. Adams, City Attorney

**DEVELOPER:**

**GEORGETOWN KF, LTD,**  
a Texas limited partnership

By: Seascope GP, LLC,  
a Texas limited liability company  
Its General Partner

By: \_\_\_\_\_  
Printed Name: Kelly Cannell  
Title: President

**Exhibit A**

**FORM OF CLOSING DISBURSEMENT REQUEST**

The undersigned is an agent for \_\_\_\_\_, (the “Developer”) and requests payment from:

[the Cost of Issuance Account of the Project Fund][the Phase 2A and 2B Improvement Account of the Project Fund] from Wilmington Trust, National Association, (the “Trustee”) in the amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) for costs incurred in the establishment, administration, and operation of the Kaufman Public Improvement District (the “District”), as follows:

| <b>Closing Costs Description</b> | <b>Cost</b> | <b>PID Allocated Cost</b> |
|----------------------------------|-------------|---------------------------|
|                                  |             |                           |
|                                  |             |                           |
| <b>TOTAL</b>                     |             |                           |

In connection to the above referenced payments, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Closing Disbursement Request on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the above referenced establishment, administration, and operation of the District at the time of the delivery of the Bonds has not been the subject of any prior payment request submitted to the City.
3. The amount listed for the below itemized costs is a true and accurate representation of the Actual Costs incurred by Developer with the establishment of the District at the time of the delivery of the Bonds, and such costs are in compliance with and within the costs as set forth in the Service and Assessment Plan.
4. The Developer is in compliance with the terms and provisions of the Development Agreement, the Indenture, and the Service and Assessment Plan.
5. All conditions set forth in the Indenture for the payment hereby requested have been satisfied.
6. The Developer agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

**Payments requested hereunder shall be made as directed below:**

- a. X amount to Person or Account Y for Z goods or services.

b. Payment instructions

I hereby declare that the above representations and warranties are true and correct.

\_\_\_\_\_.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVAL OF REQUEST**

The City is in receipt of the attached Closing Disbursement Request, acknowledges the Closing Disbursement Request, and finds the Closing Disbursement Request to be in order. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request to the extent set forth below and authorizes and directs payment by Trustee in such amounts and from the accounts listed below, to the Developer or other person designated by the Developer herein.

| Closing Costs | Amount to be Paid by Trustee<br>from Cost of Issuance<br>Account | Amount to be paid by Trustee<br>from Phase 2A and 2B<br>Improvement Account |
|---------------|------------------------------------------------------------------|-----------------------------------------------------------------------------|
| \$ _____      | \$ _____                                                         | \$ _____                                                                    |

**CITY OF KAUFMAN, TEXAS**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Exhibit B**

### FORM OF PAYMENT CERTIFICATE

PAYMENT CERTIFICATE NO. \_\_\_\_

Reference is made to that certain Indenture of Trust by and between the City and the Trustee dated as of \_\_\_\_\_ (the “Indenture”) relating to the “City of Kaufman, Texas, Special Assessment Revenue Bonds, Series 2022 (Kaufman Public Improvement District No. 1 Phases 2A - 2B Project)” (the “Bonds”). Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the Indenture.

The undersigned is an agent for \_\_\_\_\_, a Texas limited partnership (the “Developer”) and requests payment to the Developer (or to the person designated by the Developer) from:

\_\_\_\_\_ the Phase 2A and 2B Improvement Account of the Project Fund from Wilmington Trust, National Association, (the “Trustee”), in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) for labor, materials, fees, and/or other general costs related to the creation, acquisition, or construction of certain Phase 2A and 2B Improvements providing a special benefit to property within the Kaufman Public Improvement District No. 1.

In connection with the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Certificate for Payment Form on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The itemized payment requested for the below referenced Phase 2A and 2B Improvements has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.
3. The itemized amounts listed for the Phase 2A and 2B Improvements below is a true and accurate representation of the Phase 2A and 2B Improvements associated with the creation, acquisition, or construction of said Phase 2A and 2B Improvements and such costs (i) are in compliance with the Development Agreement, and (ii) are consistent with and within the cost identified for such Phase 2A and 2B Improvements as set forth in the Service and Assessment Plan.
4. The Developer is in compliance with the terms and provisions of the Development Agreement, the Indenture, and the Service and Assessment Plan.
5. The Developer has timely paid all ad valorem taxes and Annual Installments of Phase 2A and 2B Assessments it owes or an entity the Developer controls owes, located in the Kaufman Public Improvement District No. 1 and has no outstanding delinquencies for such Phase 2A and 2B Assessments.

6. All conditions set forth in the Indenture and the Development Agreement for the payment hereby requested have been satisfied.

7. The work with respect to Phase 2A and 2B Improvements referenced below (or its completed segment) has been completed, and the City has inspected such Phase 2A and 2B Improvements (or its completed segment).

8. The Developer agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

9. No more than ninety percent (90%) of the budgeted or contracted costs for the P Phase 2A and 2B Improvements identified may be paid until the work with respect to such Phase 2A and 2B Improvements (or segment) has been completed and the City has accepted such Phase 2A and 2B Improvements (or segment).

10. The amount of this request when combined with all previous Certificates for Payment submitted by the Developer, [check one] (i) \_\_\_\_\_ does not exceed an amount that would leave \$ \_\_\_\_\_ remaining in the Phase 2A and 2B Improvement Account of the Project Fund or (ii) \_\_\_\_\_ the Developer hereby certifies the following:

(1) All of the Phase 2A and 2B Improvements have been construction or installed and accepted by the City;

45 building permits have been issued by the City for Phase 2A and 2B.

**Payments requested are as follows:**

| <b>Payee / Description<br/>of Phase 2A and<br/>2B Improvement</b> | <b>Total Cost of Phase<br/>2A and 2B<br/>Improvement</b> | <b>Budgeted Cost of<br/>Phase 2A and<br/>2B Improvement</b> | <b>Amount requested<br/>be paid from the<br/>Phase 2A and 2B<br/>Improvement<br/>Account</b> |
|-------------------------------------------------------------------|----------------------------------------------------------|-------------------------------------------------------------|----------------------------------------------------------------------------------------------|
|                                                                   |                                                          |                                                             |                                                                                              |
|                                                                   |                                                          |                                                             |                                                                                              |

Attached hereto are receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments. Also attached hereto are "bills paid" affidavits and supporting documentation in the standard form for City construction projects.

Pursuant to the Development Agreement, after receiving this payment request, the City has inspected the Phase 2A and 2B Improvements (or completed segment) and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations.

**Payments requested hereunder shall be made as directed below:**

- c. X amount to Person or Account Y for Z goods or services.
- d. Payment instructions

I hereby declare that the above representations and warranties are true and correct.

\_\_\_\_\_, a Texas limited  
**partnership**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

### **APPROVAL OF REQUEST**

The City is in receipt of the attached Certificate for Payment, acknowledges the Certificate for Payment, and finds the Certificate for Payment to be in order. After reviewing the Certificate for Payment, the City approves the Certificate for Payment and authorizes and directs payment of the amounts set forth below by Trustee from the Project Fund to the Developer or other person designated by the Developer as listed and directed on such Certificate for Payment. The City's approval of the Certificate for Payment shall not have the effect of estopping or preventing the City from asserting claims under the Development Agreement, the Indenture, the Service and Assessment Plan, or any other agreement between the parties or that there is a defect in the Phase 2A and 2B Improvements.

| Amount of Payment<br>Certificate Request | Amount to be Paid by Trustee<br>from Phase 2A and 2B<br>Improvement Account |
|------------------------------------------|-----------------------------------------------------------------------------|
| \$ _____                                 | \$ _____                                                                    |

### **CITY OF KAUFMAN, TEXAS**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



Meeting  
Date: 11/21/2022

Date: 11/09/2022

Item #: 13.

Dept.: Administration

**Action Item**

**SUBJECT:**

Consider and take appropriate action on the First Amended and Restated Georgetown at Kings Fort Development Agreement entered into by and between Georgetown KF, Ltd., and the City of Kaufman, Texas; and authorizing the Mayor or his designee to execut necessary documents.

**BACKGROUND:**

The Amended and Restated DA is required because of the changes to the TIF Reimbursement Agreement increasing the TIRZ contributions to Georgetown property owners to secure equitable assessments for all phases of this development.

Author:  
Mike Slye, City Manager

Reviewed:  
Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation: Staff recommends approval of the First Amended and Restated Georgetown at Kings Fort Development Agreement.**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship      |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input checked="" type="checkbox"/>       | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |

**FIRST AMENDED AND RESTATED  
GEORGETOWN AT KINGS FORT DEVELOPMENT AGREEMENT**

This First Amended and Restated Georgetown at Kings Fort Development Agreement- is entered into by and between **Georgetown KF, Ltd.**, a Texas limited partnership, (the “Developer”) and the **City of Kaufman, Texas** (the “City”), to be effective on the date upon which the last of all of the Parties has approved and duly executed this Agreement (“Effective Date”).

**ARTICLE I**  
**RECITALS**

**WHEREAS**, certain terms used herein are defined in Article II; and

**WHEREAS**, the City is a home-rule municipality of the State of Texas located within Kaufman County (the “County”); and

**WHEREAS**, the Developer and the City (which are sometimes individually referred to as a “Party” and collectively as the “Parties”) desire to enter into this First Amended and Restated Development Agreement; and

**WHEREAS**, the Parties entered into the Georgetown at Kings Fort Development Agreement on November 13, 2018 (the “Development Agreement”); and

**WHEREAS**, on June 22, 2022, the Parties executed a First Amendment to Georgetown at Kings Fort Development (the “First Amendment”); and

**WHEREAS**, since that date, the Parties have determined it necessary to make additional amendments to certain terms of the Development Agreement and First Amendment and have determined it necessary and efficient to adopt this Amended and Restated Development Agreement with the intent that this First Amended and Restated Development Agreement (hereinafter the “Agreement”) shall supersede the terms of the Development Agreement and the First Amendment and replace the Terms of the Development Agreement and the First Amendment in their entirety; and

**WHEREAS**, at the time of the Development Agreement, the Developer was the owner of approximately 85.500 acres of real property, which property is described by metes and bounds on **Exhibit A** and depicted on **Exhibit B** (the “Property”) and since that time, portions of the Property have been developed and sold; and

**WHEREAS**, the Property is located wholly within the corporate limits of the City and not within the extraterritorial jurisdiction or corporate limits of any other municipality; and

**WHEREAS**, the Property is located wholly within the County; and

**WHEREAS**, the Public Infrastructure is not currently available to serve the Property; and

**WHEREAS**, the cost of the Public Infrastructure does not allow for Developer's intended development of the Property in a cost-effective and market competitive manner without participation by the City; and

**WHEREAS**, the Developer intends to develop the Property as a residential development in accordance with the Concept Plan attached hereto as **Exhibit D-1** in phases, as such phases are shown on the Phase Plan attached hereto as **Exhibit D-2**, consisting of approximately 291 single-family homes; and

**WHEREAS**, the Parties are authorized to alter existing requirements of the City Regulations (as defined below) for property located within the corporate limits of the City pursuant to state law; and

**WHEREAS**, the Developer intends to construct and/or make financial contributions to certain on-site and off-site public improvements to serve the development of the Property ("**Authorized Improvements**"), which Authorized Improvements are generally identified in **Exhibit C**; and

**WHEREAS**, in consideration of the Developer's agreements contained herein to accomplish the high-quality development of the Property envisioned by the Parties and to provide financing for the Authorized Improvements, subject to final approval of the City Council, the City created a public improvement district, Public Improvement District No. 1 ("**PID**") in accordance with Chapter 372 of the Texas Local Government Code, as amended (the "**PID Act**"), and to amend Reinvestment Zone No. 1, City of Kaufman, Texas (the "**TIRZ**") created in accordance with Chapter 311 of the Texas Tax Code, as amended (the "**TIF Act**"), for the Property proposed to be developed with single-family homes; and

**WHEREAS**, this Agreement is intended to establish certain legally binding restrictions and commitments to be imposed upon the development of the Property, and to provide for the construction and funding of the Authorized Improvements, which provide a special benefit to the Property; and

**WHEREAS**, the Developer intends to acquire, design, construct and install the Authorized Improvements and to dedicate such Authorized Improvements to the City for use and maintenance, subject to approval of the plans and inspection of the Authorized Improvements in accordance with this Agreement and the City Regulations, and contingent upon the issuance of Bonds for partial or total financing such Authorized Improvements in accordance with the terms of this Agreement, but subject to City Council approval; and

**WHEREAS**, the Developer and the City estimate that the cost of the Authorized Improvements will not exceed \$10,000,000.00, which represents the maximum amount that may be financed and reimbursed to the Developer; and

**WHEREAS**, in consideration of the Developer's agreements contained herein and subject to final approval of the City Council, the City intends to provide or approve alternative financing arrangements that will enable the Developer, in accordance with the PID Act, to: (i) fund a

specified portion of the costs of the Authorized Improvements using the proceeds of Bonds issued by the City; or (ii) obtain reimbursement for the specified portion of the costs of the Authorized Improvements, the source of which reimbursement will be installment payments from Assessments within the Property, provided that such reimbursements shall be subordinate to the payment of Bonds and Administrative Expenses; and

**WHEREAS**, the City, and in accordance with the terms of this Agreement and all requirements of applicable laws, considered and acted upon the creation of a PID encompassing the Property, in accordance with the PID Act; (ii) adopted a SAP; and (iii) adopted an Assessment Ordinance to pay for the estimated cost of the Authorized Improvements shown on Exhibit C and the costs associated with the administration of the PID; and

**WHEREAS**, prior to the closing of the first Bond issue: (i) the City Council approved and adopted the PID Resolution, the SAP, and an Assessment Ordinance (collectively, the “PID Documents”); (ii) the Developer will create the Home Buyer Disclosure Program in the form as attached in Exhibit F, and provide a copy of the program to the City Manager; (iii) all owners of the Property shall have executed a Landowner Agreement; and (iv) the Developer shall have delivered a fully executed copy of Landowner Agreement(s) to the City Manager; and

**WHEREAS**, the City has levied and expects to levy assessments (the “Assessments”) pursuant to Chapter 372, Texas Local Government Code, as amended, on the Property within the PID (the “Assessed Property”); and

**WHEREAS**, the Parties agree that the Authorized Improvements are also improvements that qualify as projects under the TIF Act, as amended; and

**WHEREAS**, the City created Tax Increment Reinvestment Zone No. 1, City of Kaufman, Texas (the “TIRZ”) pursuant to the TIF Act approved by Ordinance No. O-27-15 on December 28, 2015, encompassing the Property and dedicated a portion of the revenues on deposit in the TIRZ Fund (as defined below) to subsidize Assessments on the Assessed Property in the PID; and

**WHEREAS**, Ordinance No. O-27-16 amended Ordinance No. O-27-15 to expand the boundaries of the TIRZ by adding an additional approximately 355 acres of land and to reduce the City’s participation rate from seventy-five percent (75%) of the property taxes levied and collected by the City to seventy-five percent (75%) of the maintenance and operations portion of property taxes levied and collected by the City; and

**WHEREAS**, the Developer and the City now desire to amend the Development Agreement to modify the amount of funds on deposit in the TIRZ Fund dedicated to the subsidy of the Assessment on each Assessed Property; and

**WHEREAS**, the County’s current participation rate in the TIRZ is fifty percent (50%) of the maintenance and operations portion of property taxes levied and collected by the County; and

**WHEREAS**, the TIRZ will terminate on December 31, 2045; and

**WHEREAS**, subject to the approval of the TIRZ Board and City Council, the Parties intend to extend the term of the existing TIRZ for an additional five (5) years over the Property and the property identified in the existing TIRZ to terminate on December 31, 2050; and

**WHEREAS**, as soon as is practicable and prior to the first Bond issue, in consideration of the Developer's agreements contained herein, the Parties shall use best efforts to have agreed to the final form of the following documents, which will enable the Developer to be reimbursed for a specified portion of TIRZ eligible reimbursement costs: (i) an amended TIRZ project and finance plan for the TIRZ; (ii) an ordinance amending the TIRZ; and (iii) the ordinance approving the final amended TIRZ project and finance plan required by the TIF Act; and

**WHEREAS**, in consideration of the Developer's agreements contained herein and subject to the approval of the TIRZ Board and City Council, the City intends to exercise its powers under the TIF Act to adopt, approve, and execute the TIRZ Documents to (i) extend the term of the TIRZ for an additional five (5) years, and (ii) dedicate seventy-five percent (75%) of the maintenance and operations portion of the City's collected *ad valorem* tax increment based on the City's tax rate in effect on the date of the establishment of the TIRZ and dedicate fifty percent (50%) of the maintenance and operations portion of the County's collected *ad valorem* tax increment based on the County's tax rate in effect on the date of the establishment of the TIRZ; and

**WHEREAS**, the Parties intend for the moneys in the TIRZ Fund to pay for the following improvements in the order of priority set forth in Section 9.2, "TIRZ Priority" of this Agreement; and

**WHEREAS**, all of the City's Administrative Expenses associated with the PID will be funded by the annual levy of Assessments on the Property, and the City will not be responsible for payment of such costs; and

**WHEREAS**, all of the City's Administrative Expenses associated with the TIRZ will be paid in accordance with Chapter 311 of the Texas Tax Code, as amended, and the City will not be responsible for payment of such costs; and

**WHEREAS**, to the extent funds must be advanced to pay for any costs associated with the creation of the PID Documents and the TIRZ Documents, the Developer shall be responsible for advancing such funds, and the City will not be responsible for the payment of such costs; and

**WHEREAS**, the Developer and City each agree that the City shall provide water and sewer service to the Property; and

**WHEREAS**, the Parties intend for this Agreement to establish certain restrictions and impose certain commitments in connection with the development of the Property; and

**WHEREAS**, the Parties intend that the Property will be developed in accordance with an agreed concept plan ("Concept Plan"), as shown on Exhibit D-1, Planned Development-17 adopted by the City Council on November 27, 2017 by Ordinance No. O-34-17 ("PD-17"); and

**WHEREAS**, the City Council zoned the Property PD-17, and the City intends PD-17 to be consistent with the Concept Plan and other applicable provisions of this Agreement; and

**WHEREAS**, the Developer is responsible for the construction of all on-site and off-site Authorized Improvements for water and sewer facilities as well as Roadway Improvements and Drainage Improvements necessary to serve the development of the Property and, in light of these Developer obligations, the Parties intend for the Developer to receive a credit for (i) payment of park, recreation, and open space fees or dedications of land in lieu of such fees currently in place or that may be adopted and (ii) payment of roadway, water, and wastewater impact fees; and

**WHEREAS**, the City has determined that the full development of the Property as provided herein will promote local economic development within the City and will stimulate business and commercial activity within the City, and the managed growth described in this Agreement will drive infrastructure investment and job creation, both of which will, in turn, have a multiplier effect that increases both the City's tax base and utility revenues; and

**NOW, THEREFORE**, for and in consideration of the mutual covenants of the Parties set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

## **ARTICLE II** **RECITALS AND DEFINITIONS**

Unless the context requires otherwise, the following terms shall have the meanings hereinafter set forth:

Administrative Expenses shall include, without limitation, expenses incurred in the establishment, administration, and operation of the PID and TIRZ including, but not limited to, the costs of (i) legal counsel, engineers, accountants, financial advisors, investment bankers or other consultants and advisors, (ii) creating and organizing the PID and TIRZ and preparing the Assessment Roll(s), (iii) computing, levying, collecting and transmitting the Assessments or the installments thereof, (iv) maintaining the record of installments, payments and reallocations and/or cancellations of the Assessments, (v) investing or depositing the Assessments or other monies, (vi) complying with the PID Act, and (vii) administering the construction of the Public Infrastructure.

Administrator means an employee or designee of the City who shall have the responsibilities provided in the SAP or any other agreement or document approved by the City related to the duties and responsibilities for the administration of the PID.

Assessments means a special assessment levied by the City within the PID pursuant to Chapter 372, Texas Local Government Code, pursuant to an Assessment Ordinance, to pay for a specific portion of the Budgeted Cost, which shall be Authorized Improvement Costs.

Assessment Company means an assessment company or entity mutually acceptable to the City and the Developer utilized for the purposes of compliance with the provisions of this

Agreement relative to the levy of Assessments and related matters and whose services have been procured by City in accordance with State law.

Assessment Ordinance means the ordinance approved by the City Council that levies Assessments on the Property in accordance with the PID Act to pay for the costs of the Authorized Improvements set forth in the SAP as well as the costs associated with the issuance of the Bonds, which provide a special benefit to the Property.

Assessed Property means the Property that will be assessed, upon approval of the City Council, in an amount not to exceed the benefit it receives from the construction of the Authorized Improvements.

Assessment Revenues means the monies collected from the Assessments which are payable in periodic installments as provided in the Assessment Ordinance, including interest, expenses or penalties on Assessments, prepayments, foreclosure proceeds, and proceeds from a guarantor, if any, of Assessments.

Assessment Roll(s) means the assessment roll(s) attached to the SAP or any other assessment roll in an amendment or supplement to the SAP or in an annual updated to the SAP, showing the total amount of the Assessment against each parcel assessed under the SAP.

Authorized Improvements means water, sewer, drainage, and roadway infrastructure and facilities needed to serve and fully develop the Property and to be constructed by the Developer or by or on behalf of the City, including but not limited to the improvements listed in Exhibit C.

Authorized Improvement Costs means the design, engineering, construction, and inspection costs of the Authorized Improvements.

Bond(s) means the assessment revenue bonds issued by the City through the PID to finance the Authorized Improvements that are constructed for the benefit of the PID and are secured solely from the Assessment Revenues.

Bond Indenture means a trust indenture by and between the issuer of Bonds and a trustee bank under which Bonds are issued and funds disbursed.

Bond Ordinance means an ordinance adopted by the City Council that authorizes and approves the issuance and sale of Bonds.

Budgeted Cost means with respect to any given Authorized Improvement, the estimated cost of such improvement as set forth in Exhibit C.

City Council means the city council of the City of Kaufman.

City Manager means the City Manager of the City of Kaufman, Texas or its designee.

City Regulation(s) means any ordinance, rule, regulation, standard, policy, order, guideline or other City-adopted or City-enforced requirement as they presently exist and as they may be amended in the future.

Concept Plan means the concept plan as set forth in **Exhibit D-1**.

Construction, Funding, and Acquisition Agreement or CFA means a construction, funding, and acquisition agreement between the Developer and the City relating to the Kaufman Public Improvement District No. 1.

Developer means **Georgetown KF, Ltd.**, a Texas limited partnership, and its successors and assigns, responsible for developing the Property in accordance with this Agreement.

Drainage Improvements mean drainage facilities needed to serve the Property and not related or connected to a roadway and to be constructed by the City or on behalf of the City, PID or TIRZ by the Developer.

Economic Development Agreement means an agreement between the Developer and City in which the City agrees to reimburse the Developer for costs of the Main Road Improvements in the form of a Chapter 380 grant.

Effective Date means the date upon which the last of all of the Parties has approved and duly executed this Agreement.

End Buyer means any developer, homebuilder, builder, tenant, user, or occupant/owner of a Fully Developed and Improved Lot, including without limitation a builder who acquires a lot with the intent to construct a single-family residence on the lot.

Fully Developed and Improved Lot means any lot, regardless of proposed use, which is served by the Authorized Improvements and for which a final plat has been approved by the City and recorded in the real property records of Kaufman County.

HOA means the homeowner's association to be created by the Developer for management of the Property.

Home Buyer Disclosure Program means the disclosure program, administered by the Assessment Company, as set forth in a document in the form of **Exhibit F**, that establishes a mechanism to disclose to each End Buyer the terms and conditions under which their lot is burdened by the PID.

Impact Fees means as defined in Chapter 395 of the Texas Local Government Code.

Landowner(s) means the Developer and additional owners of the Property.

Landowner Agreement means an agreement of all of the owners and the Developer of the Property consenting to the form and terms of the PID Documents in a form substantially similar to **Exhibit G**, as approved by the City.

Lift Station Improvement means the Lift Station described in Exhibit “A” to the TIRZ Lift Station Reimbursement Agreement between the City of Kaufman, TIRZ#1 Board and JWS Land, Ltd., dated \_\_\_\_\_, and incorporated herein by reference.

Main Road Improvements mean the improvements for Main Road as described and depicted in further detail in **Exhibit H**.

Notice means any notice required or contemplated by this Agreement (or otherwise given in connection with this Agreement).

PID means a public improvement district created by the City for the benefit of the Property in accordance with Chapter 372 of the Texas Local Government Code, to be known as the Kaufman Public Improvement District No. 1.

Park Improvement Fee means a one-time payment to the City in the amount of \$1,470,750.00, which will be reimbursed to the Developer from the TIRZ Funds in accordance with this Agreement.

Per Annum Interest Rate means an interest rate that is the lesser of either 5.47% or the actual rate for any bond issued to fund the reimbursement amount.

PID Resolution means the resolution adopted by the City Council creating the PID pursuant to Section 372.010 of the PID Act and approving the advisability of the Authorized Improvements.

Property means the real property described by metes and bounds in **Exhibit A** and depicted on **Exhibit B**.

Public Infrastructure means water, sewer, drainage, roadway, and other public infrastructure necessary to serve the full development of the Property more particularly described in **Exhibit C**.

Service and Assessment Plan or SAP means the PID service and assessment plan adopted by City Council, as may be amended or updated annually, to assess allocated costs of improvements against Property located within the boundaries of the PID, and which has terms, provisions and findings approved and agreed to by the Developer and the City in accordance with the PID Act.

Roadway Improvements means roadway and related drainage facilities needed to serve the Property.

TIRZ means Reinvestment Zone No. 1, City of Kaufman, Texas.

TIF Act means Chapter 311 of the Texas Tax Code, as amended.

TIRZ Board means the Board of Directors of the TIRZ.

TIRZ Documents means the amended TIRZ project and finance plan, the TIRZ Ordinance, and this Agreement.

TIRZ Fund(s) means the fund(s) set up by the City in order to receive the TIRZ funds in accordance with this Agreement, the TIRZ Documents and state law.

TIRZ Ordinance means City Ordinance No. O-27-15, passed by the City Council on December 28, 2015, establishing the TIRZ pursuant to Chapter 311, Texas Tax Code, and any subsequent ordinances effectuating amendments thereto.

TIRZ Projects means those projects, the same as the Authorized Improvements, as described in Exhibit C, to be undertaken by the PID as well as the TIRZ.

TIRZ Project and Finance Plan means the project and finance plan for the TIRZ, as amended from time to time.

### **ARTICLE III** **PUBLIC IMPROVEMENT DISTRICT**

3.1 Creation. A petition to create a PID encompassing the Property has been submitted to the City. The City has held a public hearing to consider the creation of a public improvement district in accordance with the PID Act. The PID will be created, at the City's discretion, after the public hearing.

3.2 Levy of Assessments. Concurrently with the approval of the creation of the proposed PID, the Developer, the City and the Assessment Company shall prepare a SAP providing for the levy of the Assessments on the Property. Promptly following preparation and approval of an SAP acceptable to the Developer and the City and subject to the City Council making findings that the Authorized Improvements confer a special benefit on the Property, the City Council shall consider an Assessment Ordinance. Concurrently with the Assessment Ordinance, the City shall consider the approval and execution of a CFA and a reimbursement agreement. The City shall use its best efforts to initiate and approve all necessary documents and ordinances required to effectuate this Agreement, to create the PID, and to levy the Assessments. The Developer shall develop the Property consistent with the terms of this Agreement. Nothing contained in this Agreement, however, shall be construed as creating a contractual obligation that controls, waives, or supplants the City Council's legislative discretion.

3.3 Acceptance of Assessments and Recordation of Covenants Running with the Land. Concurrently with the levy of the Assessment, the Developer shall: (i) approve and accept in writing the levy of the Assessment(s) on all land owned or controlled by the Developer; (ii) approve and accept in writing the Home Buyer Disclosure Program; and (iii) cause to be recorded against the Property covenants running with the land that will bind any and all current and

successor Developer or developers and/or owners of any of the Property to pay the Assessment and any subsequent Assessments, with applicable interest and penalties thereon, as and when due and payable hereunder, and to take title to any parcel within the Property subject to and expressly accepting and assuming the terms and provisions of such Assessments and the liens created thereby.

#### **ARTICLE IV** **AUTHORIZED IMPROVEMENTS**

4.1 Authorized Improvements. The Budgeted Costs of Authorized Improvements listed on **Exhibit C** are estimates that are subject to change, shall be updated by the Developer and City consistent with the SAP, the PID Act and the TIRZ Act. Final plat(s) for the Property, each required to be approved by the City, shall reflect the locations, rights-of-way and easements for the Authorized Improvements to be located on the platted Property. The Developer may include an updated **Exhibit C** with each final plat submitted for the Property, which shall be submitted to the City Council for consideration and approval concurrently with the submission of each such final plat. Upon approval by City Council of an updated **Exhibit C**, this Agreement shall be deemed amended to include such approved updated **Exhibit C**. The Authorized Improvement Costs will be reviewed annually by the Parties in an annual update of the SAP adopted and approved by the City. The City agrees that the Developer may fund its share of the costs of the Authorized Improvements from the proceeds of Bonds to the extent the improvements provide a special benefit to the Property.

#### 4.2 Construction, Ownership, and Transfer of Authorized Improvements.

(a) Construction Plans. The Developer shall prepare, or cause to be prepared, plans and specifications for each of the Authorized Improvements and have them submitted to the City for approval in accordance with this section. The City shall have 30 business days from its receipt of the first submittal of construction and/or engineering plans to approve or deny the plans or to provide comments back to the submitter of the plans. If any approved construction and/or engineering plans are amended or supplemented, the City shall have 15 business days from its receipt of such amended or supplemented plans to approve or deny the plans or to provide comments back to the submitter of the plans. Any written City approval or denial must be based on compliance with applicable City Regulations. If any provision in this paragraph conflicts with any other provision in this Agreement, this paragraph controls.

(b) Contract Award. The contracts for construction of Authorized Improvements shall be let in the name of the Developer. The Developer's engineers shall prepare, or cause the preparation of, and provide all contract specifications and necessary related documents for the Authorized Improvements. The Developer shall administer the contracts. The Budgeted Costs of construction, which are estimated on **Exhibit C**, shall be paid by the Developer, or caused to be paid by the Developer or the Developer's assignee, and reimbursed, in whole or in part, from the proceeds of Bonds in accordance with the Bond Indenture, or reimbursed, in whole or in part, by the collected Assessments levied pursuant to the terms of a reimbursement agreement. Until such Authorized Improvement Costs are paid in full by the City pursuant to the terms of the Construction, Funding, and Acquisition Agreement, any reimbursement agreement, or the

Indenture, unpaid monies owed by the City under the Construction, Funding, and Acquisition Agreement, any reimbursement agreement, or the Indenture shall bear interest as described therein.

(c) Construction Standards and Inspection. The Authorized Improvements and all other Public Infrastructure required for the development of the Property will be installed within the public right-of-way or in easements granted to the City. The Authorized Improvements shall be constructed and inspected in accordance with applicable state law, City Regulations, the Bond Ordinance, the Bond Indenture and all other applicable development requirements, including those imposed by any other governing body or entity with jurisdiction over the Authorized Improvements.

(d) Competitive Bidding. This Agreement and construction of the Authorized Improvements, including the TIRZ Projects, are anticipated to be exempt from competitive bidding pursuant to Sections 252.022(a)(9) and 252.022(a)(11) of the Texas Local Government Code based upon current cost estimates. However, in the event that the actual costs for the Authorized Improvements do not meet the parameters for exemption from the competitive bid requirement, then either competitive bid or alternative delivery methods may be used by the City as allowed by law.

(e) Ownership. All of the Authorized Improvements shall be owned by the City upon acceptance of them by the City using procedures established by City Regulations. The Developer agrees to take any action reasonably required by the City where applicable to transfer or otherwise dedicate easements for the Authorized Improvements to the City and the public at no cost to the City.

#### 4.3 Operation and Maintenance.

(a) Upon inspection, approval, and acceptance of part or all of the water or sewer Authorized Improvements, the City shall maintain and operate the accepted water and sewer infrastructure and provide water and/or sewer service to the Property served by the accepted water and/or sewer infrastructure.

(b) Upon inspection, approval, and acceptance of part or all of the roadway or storm water Authorized Improvements, the City shall maintain and operate the accepted roadways and storm water infrastructure.

(c) The Developer will construct and the HOA shall maintain and operate the open spaces, common areas, right-of-way irrigation systems, right-of-way landscaping, screening walls, drainage areas, detention areas and any other common improvements or appurtenances not maintained and operated by the City.

### **ARTICLE V** **ADDITIONAL DEVELOPER OBLIGATIONS**

5.1 Mandatory Homeowners Association. The Developer will create a mandatory homeowner association ("HOA"), which HOA shall be required to levy and collect from home

owners' annual fees in an amount calculated to maintain the amenities, open spaces, common areas, right-of-way irrigation systems, raised medians and other right-of-way landscaping, detention areas, drainage areas and screening walls within the PID. Common areas, including but not limited to all landscaped entrances to the PID and right-of-way landscaping, shall be maintained solely by the HOA. Maintenance of public rights-of-way by the HOA shall comply with City Regulations and shall be subject to oversight by the City. The Parties shall cooperate with each other to execute documents necessary to give the HOA permission to maintain and operate facilities on City-owned property; provided however, that such permission shall be conditioned upon the HOA providing insurance coverage meeting City's requirements for minimum coverages, naming the City, its officers, employees, and agents as additional insured, and providing a waiver of subrogation in favor of the City.

## **ARTICLE VI** **FINANCING**

6.1 City Bond Issuance. The City intends to issue Bonds, in one or more series, solely for the purposes of financing the costs of the Authorized Improvements and related costs (including Administrative Expenses) and paying issuance costs and the cost of funding all reserves, accounts, and funds required by the applicable Bond Indenture (including a capitalized interest account, a debt service reserve fund, and the project fund). The City and the Developer have determined and hereby agree that the estimated maximum aggregate principal amount of Bonds will be \$10,000,000.00. The City staff will, from time to time, submit to the City Council agenda items to approve the issuance of Bonds by the City (in one issue or in a series of issues over the years as agreed upon by the Developer and the City) in an amount up to, but not to exceed, the estimated maximum aggregate principal Bond amount of \$10,000,000.00. Notwithstanding the foregoing, the City's obligation to approve the issuance of Bonds is subject to the City's review and confirmation that the Assessments are reasonable relative to the market as determined by the City Council, that the Developer is in compliance with this Agreement and the Developer's continuing disclosure obligations, and that the Bonds will not negatively impact the City's credit rating, access to capital, or cost of capital. The issuance of Bonds is subject to approval of the Texas Attorney General in addition to the City's review.

Notwithstanding the foregoing, the obligation of the City to issue Bonds is conditioned upon the adequacy of the Bond security and the financial ability and obligation of the Developer to pay the amount, if any, by which costs of the Authorized Improvements exceed the net proceeds from the sale of Bonds and the amount, if any, of cost overruns. The City will require the Developer to secure its obligation to pay such deficit and cost overruns pursuant to Section 8.2 of this Agreement by depositing cash with the City, to be placed in the appropriate fund, prior to the issuance of the Bonds. The net proceeds from the sale of the Bonds will be deposited in and disbursed from a project fund created and administered pursuant to the Bond Indenture under which the Bonds are issued.

### 6.2 Timing of Bonds Issued by City.

(a) The City shall consider issuing Bonds for any phase of development for the Property upon the approval of the City Manager.

**Commented [SL1]:** This was the only amendment that was in the First Amendment to the DA.

### 6.3 Non-Bank Qualified Debt.

(a) If in any calendar year the City issues debt obligations that would be qualified tax-exempt obligations but for the issuance of the Bonds or other bonds supporting Public Infrastructure for non-City owned development projects, including bonds authorized by the Act, then the Developer shall pay to the City a fee (the "PID Bond Fee") to compensate the City for the interest savings the City would have achieved had the debt issued by the City been qualified tax-exempt obligations, provided that all other developers or owners benefitting from the City issuing debt for non-City owned development projects are similarly burdened with an obligation to compensate the City proportionately based on the original principal amount of such Bonds or other City debt supporting Public Infrastructure for non-City owned development projects. The City and the Developer shall approve an estimate of the PID Bond Fee for all series of Bonds at least 10 business days prior to pricing the first series of Bonds. The Developer agrees to pay the approved estimated PID Bond Fee to the City on the later of (1) five business days prior to the closing of any series of Bonds or other City-issued debt, or (2) five business days after the City and the Developer approve the estimated PID Bond Fee. The City shall not be required to sell any series of Bonds until the Developer has paid the approved estimated PID Bond Fee.

(b) To the extent any developer or owner (including the Developer, as applicable) has paid all or part of a PID Bond Fee estimate for any particular calendar year, any such PID Bond Fee estimate paid subsequently by a developer or owner (including the Developer, as applicable) to the City applicable to the same calendar year shall be reimbursed by the City to the developer or owner (including the Developer, as applicable) as necessary so as to put all developers and owners so paying for the same calendar year in the required payment proportion as set forth above, said reimbursement to be made by the City within 10 business days after its receipt of such subsequent payments of the estimated PID Bond Fee. The City will deposit all payments of a PID Bond Fee estimate received from a developer or owner (including the Developer, as applicable) into a segregated account until such time as (1) the City transfers funds from the segregated account to a capital improvement project fund in conjunction with issuing City debt; and/or (2) the City refunds a portion of the estimated PID Bond Fee consistent with the pro rata formula described above within 10 days of issuing the Bonds. On or before January 15<sup>th</sup> of the following calendar year, the final PID Bond Fee shall be agreed to by the City and the Developer. By January 31<sup>st</sup> of such year, any funds in excess of the final PID Bond Fee that remain in such segregated account on December 31<sup>st</sup> of the preceding calendar year shall be refunded to the developers or owners (including the Developer as applicable), and any deficiencies in the estimated PID Bond Fee paid to the City by any developer or owner (including the Developer, as applicable) shall be remitted to the City by the respective developer or owner (including the Developer, as applicable).

6.4 TIRZ Bonds. The City shall consider issuing bonds secured by and payable solely from the TIRZ revenues (the "TIRZ Bonds") for the purposes of financing the costs of certain TIRZ Improvements and related costs (including administrative expenses) and paying issuance costs and the cost of funding all reserves, accounts, and funds required by the indenture of trust relating to the TIRZ Bonds (including a capitalized interest account, a debt service reserve fund, and the project fund).

**ARTICLE VII**  
**INSPECTION AND PERMITTING/ PLATTING PHASE AGREEMENTS**

In accordance with City Regulations, the City shall inspect or cause to be inspected the construction of all structures, Authorized Improvements, and any infrastructure improvements necessary to support the proposed development within the Property and approved in the final plats of the Property, including water, sanitary sewer, drainage, streets, park facilities, electrical, and street lights and signs. The City's inspections shall not release the Developer from its responsibility to construct, or ensure the construction of, adequate Authorized Improvements and infrastructure in accordance with City approved engineering plans, construction plans, and other approved plans related to development of the Property. The City shall be the beneficiary of the required two-year maintenance bond the Developer shall provide for all Authorized Improvements.

If the City finds that such improvements have been completed in accordance with the final plans and specifications approved by the City (or any modifications thereof approved by the City), and in accordance with all other applicable laws and City Regulations, the City shall accept the same whereupon ownership of such improvements shall be transferred to the City and be operated and maintained by the City at its sole expense. The requirement for acceptance does not apply to recreational facilities and landscaping improvements that will be maintained by the HOA.

**ARTICLE VIII**  
**PAYMENT OF AUTHORIZED IMPROVEMENTS**

8.1 Improvement Account of the Project Fund. On the date of issuance of any Bonds, the City shall establish the Improvement Account of the Project Fund in accordance with the applicable Bond Indenture. Any Improvement Account of the Project Fund shall be maintained as provided in the Bond Indenture and shall not be commingled with any other funds of the City. Any Improvement Account of the Project Fund shall be administered and controlled (including signatory authority) by the City and funds in the Improvement Account of the Project Fund shall be deposited and disbursed in accordance with the terms of the Bond Indenture. In the event of any conflict between the terms of this Agreement and the terms of the Bond Indenture relative to deposit and/or disbursement, the terms of the Bond Indenture shall control.

8.2 Cost Overrun. In advance of letting a contract for the Authorized Improvements, the City may confirm that the cost for construction of such Authorized Improvements is generally consistent with the Budgeted Cost provided on Exhibit C, as amended from time to time in accordance with Section 4.1. If the total cost of the Authorized Improvements in the aggregate exceeds the total amount of monies on deposit in the Improvement Account of the Project Fund (a "Cost Overrun"), the Developer shall be solely responsible for the remainder of the costs of the Authorized Improvements, except as provided for in Section 8.3 below.

8.3 Cost Underrun. Upon the final acceptance by the City of an Authorized Improvement (or each segment or a portion thereof) and payment of all outstanding invoices by the Developer for such Authorized Improvement (or each segment or a portion thereof), if the Actual Cost of such Authorized Improvement is less than the Budgeted Cost (a "Cost Underrun"),

any remaining Budgeted Cost will be available to pay Cost Overruns on any other Authorized Improvement as provided for in a reimbursement agreement or the Bond Indenture.

8.4 Remainder of Funds in the Improvement Account of the Project Fund. If funds remain in the Improvement Account of the Project Fund created under the Bond Indenture after the completion of all Authorized Improvements and the payment of all Authorized Improvement Costs as provided for in a reimbursement agreement or the Bond Indenture, then such funds shall be used to redeem the Bonds as provided for in the Bond Indenture.

## ARTICLE IX TIRZ

9.1 Tax Increment Reinvestment Zone. The City has exercised its powers under the TIF Act and created the TIRZ encompassing the Property, and subject to TIRZ Board and City Council approval intends to adopt, approve, and execute the TIRZ Documents to (i) extend the term of the TIRZ for an additional five (5) years, and (ii) dedicate seventy-five percent (75%) of the maintenance and operations portion of the City's collected ad valorem tax increment based on the City's tax rate in effect on the date of the establishment of the TIRZ and dedicate fifty percent (50%) of the maintenance and operations portion of the County's collected ad valorem tax increment based on the County's tax rate in effect on the date of the establishment of the TIRZ.

9.2 TIRZ Priority. In accordance with the TIRZ Project and Finance Plan, the TIRZ Fund shall pay for the following improvements in the following order of priority: (i) first, to pay administrative expenses, (ii) second, to off-set or pay a portion of any Assessments levied on the Property for the costs of capital improvements that are Authorized Improvements and qualify as projects under the TIF Act for a period of up to thirty-one (31) years or until the amount of TIRZ increment placed into the Kaufman PID No. 1 account (the "Kaufman PID No. 1 Account") of the TIRZ Fund totals an amount per Lot Type (as defined in the SAP) equal to the following:

Lot Type 1 (60 Ft.): \$42,805.96

Lot Type 2 (55 Ft.): \$40,665.67

Lot Type 3 (50 Ft.): \$36,813.13

Lot Type 4 (65 Ft.): \$44,946.26

Up to \$11,230,573 and paid in accordance with the TIRZ Project and Finance Plan and SAP; (iii) third, to pay for the costs of Main Road Improvements for a period of up to thirty-one (31) years or until the amount of TIRZ increment placed into the Main Road account (the "Main Road Account") of the TIRZ Fund totals an amount approximately equal to \$7,100,000.00 accruing at the Per Annum Interest Rate, whichever comes first, paid in accordance with the TIRZ Project and Finance Plan and SAP; (iv) fourth, to pay the Developer for the cost of the purchase of the 4.51 acres of land for the purchase price of \$683,004.25, which equates to \$3.25 per square foot, which amount shall accrue interest beginning January 1, 2020 for any unpaid portions of the purchase price accruing the Per Annum Interest Rate; (v) fifth, to reimburse the Developer for the Park

Improvements Fee (hereinafter defined) for a period of up to thirty-one (31) years or until the amount of TIRZ increment placed into the park improvement account (the “Park Improvement Account”) of the TIRZ Fund totals an amount equal \$1,470,750.00 accruing at the Per Annum Interest Rate, whichever comes first, paid in accordance with the TIRZ Project and Finance Plan and SAP; and vi) sixth to pay for the costs of Lift Station Improvement.

9.3 TIRZ Fund. In accordance with the TIRZ Project and Finance Plan, the tax increment obtained from the Property shall be placed into the TIRZ Fund, a separate fund which has been created by the City. It is anticipated that the monies in the TIRZ Fund shall: (i) pay or reimburse a party for the costs of certain Authorized Improvement projects not reimbursed by Assessment Revenues or Bonds; (ii) be distributed in accordance with the TIRZ Project and Finance Plan to lower the Assessments of Assessed Property owners, on an annual basis; or (iii) be allocated in some combination of (i) and (ii).

## **ARTICLE X** **DEVELOPMENT**

### 10.1 Full Compliance with City Standards.

(a) Development of the Property shall be subject to the City’s Regulations, except to the extent that the Concept Plan, attached as Exhibit D-1 and PD-17 may vary from those terms, then the Concept Plan and PD-17 control.

(b) Any revision to the Concept Plan, if approved by the City, shall be considered an amendment to Exhibit D-1 to this Agreement, and shall replace the attached Concept Plan and become a part of this Agreement.

10.2 Replat. The Parties acknowledge that the Property may be developed in two (2) phases. The Developer may submit a replat for all or any portion of the Property. Any replat shall be in general conformance with the Concept Plan. Approval of the replat shall be governed by the City Regulations and state law.

10.3 Vested Rights. This Agreement shall constitute a “permit” (as defined in Chapter 245 of the Texas Local Government Code) that is deemed filed with the City on the Effective Date.

10.4 Property Acquisition. The Parties acknowledge that the Developer is responsible for the acquisition of certain off-site property rights and interests to allow certain Public Infrastructure to be constructed to serve the Property. Developer shall use commercially reasonable efforts to obtain all third-party rights-of-way, consents, or easements, if any, needed to construct the off-site improvements. If, however, Developer is unable to obtain such third-party rights-of-way, consents, or easements within 90 days of commencing reasonable and continuous efforts to obtain the needed rights-of-way, consents, or easements, then, as a condition to requiring the Developer to construct off-site improvements, upon City Council approval of a request from Developer to exercise its eminent domain authority and if City’s exercise of its eminent domain authority is allowed by law, the City agrees to take reasonable steps to secure same through the use of the City’s power of eminent domain. Developer shall fund all reasonable and necessary legal proceeding/litigation costs, compensation awards by courts or negotiated amounts for the

condemned property interest, attorneys' fees, appraiser and expert witness fees, interest, court costs, mediation fees, deposition costs, copy charges, courier fees, postage and taxable court costs (collectively, "Eminent Domain Fees") paid or incurred by the City in the exercise of its eminent domain powers and shall escrow with a mutually agreed upon escrow agent the City's reasonably estimated Eminent Domain Fees both in advance of the initiations of each eminent domain proceeding and as funds are needed by the City to the extent such funds are not immediately available to pay Eminent Domain Fees from Bonds, or if Bonds are not issued, from Assessments. If the escrow fund remains appropriately funded in accordance with this Agreement, the City will use all reasonable efforts to expedite such condemnation procedures so that the Authorized Improvements can be constructed as soon as reasonably practicable. If the City's Eminent Domain Fees exceed the amount of funds escrowed in accordance with this paragraph, Developer shall deposit additional funds as requested by the City into the escrow account within 10 days after written Notice from the City. City is not required to continue pursuing the eminent domain unless and until the Developer deposits additional Eminent Domain Fees with the City. Any unused escrow funds will be refunded to Developer within 30 days after any condemnation award or settlement becomes final and non-appealable. Nothing in this subsection is intended to constitute a delegation of the police powers or governmental authority of the City, and the City reserves the right, at all times, to control its proceedings in eminent domain. To the extent Eminent Domain Fees are paid by the Developer, Developer may seek reimbursement of any or all of the Eminent Domain Fees from Bonds, or if Bonds are not issued, Assessments. Notwithstanding the foregoing, City's obligation to exercise its eminent domain authority in accordance with this section shall be limited to the limitations of Chapter 2206 of the Texas Government Code as amended, by case law or any other applicable law.

10.5 Zoning of Property. Currently, the Property is zoned PD-17 per Ordinance No. O-34-17 approved by City Council on November 27, 2017.

10.6 Facilities Agreements. Concurrently with this Agreement, the Parties have entered into a Georgetown-Phase 1A Facilities Agreement for Phase 1A of development consisting of approximately 13.47 acres of the Property, as shown on the Phase Plan attached hereto as Exhibit D-2. The Parties will enter into a separate facilities agreement for each phase of development of the Property; such agreements shall be in substantially the same form attached hereto as Exhibit I with detailed terms being based upon the plan for development for the applicable phase. Developer's execution of such Facilities Agreement shall be a condition precedent to City issuing any permit to Developer to commence work on the applicable phase of the Property and the obligation of Developer to execute and comply with the terms of the applicable Facilities Agreement shall not be superseded by this Agreement.

10.7 Conflicts. In the event of any conflict between this Agreement and any City Regulation in effect on the Effective Date of this Agreement, this Agreement, including any exhibit or attachment, shall control.

## **ARTICLE XI**

### **DEVELOPMENT PROCESS AND CHARGES**

11.1 Development, Review and Inspection Fees. Development of any portion of the Property shall be subject to payment to the City of the applicable fees according to the City Regulations including without limitation fees relating to platting, zoning requests, inspections, plan review, and any other charges and fees not expressly exempted or altered by the terms of this Agreement.

11.2 Impact Fees; Credits. The City shall pay into a “Fee Payment Credit Fund” any (i) fees paid by any party for park, recreation, and open space facilities and purposes in connection with the development of the property within the TIRZ and (ii) -fees paid by any party for roadway, water, and wastewater Impact Fees in compliance with Chapter 395 of the Texas Local Government Code in connection with the development of the property within the TIRZ. The City shall pay as an Economic Development Grant, all monies collected in the Fee Payment Credit Fund, to the Developer to reimburse the Developer for the costs of the Main Road Improvements, and such payment shall reduce the reimbursement amount of the TIRZ payment for the Main Road Improvements on a dollar-for-dollar basis.

11.3 Park Improvement Fee. The Developer shall pay a one-time Park Improvement Fee to the City within thirty (30) days of a written request for the Park Improvement Fee by the City Manager; such request will be made no earlier than January 1, 2023.

11.4 Park Dedication. The Developer shall donate by irrevocable deed of dedication for public use, the form and content of which shall be approved by the City, certain tracts of land identified in **Exhibit E** to the City of Kaufman (the “Park Land Site”) on or before the date Developer pays the Park Improvement Fee. Prior to dedication to the City, Developer shall not encumber said tracts or any portions thereof and shall furnish documentation acceptable to the City verifying that said tracts are free of all liens and other encumbrances that could cloud the title being granted to the City. The City agrees that such dedication of the Park Land Site shall satisfy the park land dedication requirements as provided in the City Regulations. Notwithstanding anything to the contrary contained herein: (i) prior to dedication to the City and in accordance with a final plat for Phase 2A, Developer shall have the right to reserve easements on, over and through portions of the Park Land Site to benefit Developer, the HOA, and/or the Property, or one or more portions thereof; and (ii) after dedication to the City, and upon request by Developer, the City shall grant easements on, over and through portions of the Park Land Site to benefit Developer, the HOA, and/or the Property, or one or more portions thereof, from time to time as needed, subject to City approval, which approval shall not be unreasonably withheld, conditioned, or delayed. The Developer shall identify easements under this Section 11.4 in the platting process.

11.5 Infrastructure. All Public Infrastructure shall be designed, constructed and installed in compliance with the City Regulation’s in effect on the Effective Date. Construction and/or installation of Public Infrastructure shall not begin until complete and accurate plans and specifications have been approved by the City. Each of such contracts shall require a performance bond and payment bond designating the City as beneficiary and a two-year maintenance bond following completion, which bond shall run in favor of the Party responsible for maintenance of the completed Public Infrastructure. The Public Infrastructure will be installed within the public right-of-way or in easements granted to the City in accordance with City Regulations or otherwise obtained by Developer.

11.6 INDEMNIFICATION AND HOLD HARMLESS.

THE DEVELOPER AND ITS SUCCESSORS AND ASSIGNS SHALL DEFEND, RELEASE, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICIALS, EMPLOYEES, OFFICERS, REPRESENTATIVES AND AGENTS (EACH AN "INDEMNIFIED PARTY"), FROM AND AGAINST ALL ACTIONS, DAMAGES, CLAIMS, LOSSES OR EXPENSE OF EVERY TYPE AND DESCRIPTION TO WHICH THEY MAY BE SUBJECTED OR PUT: (I) BY REASON OF, OR RESULTING FROM THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY THE DEVELOPER; (II) THE NEGLIGENT DESIGN, ENGINEERING AND/OR CONSTRUCTION BY THE DEVELOPER OR ANY ARCHITECT, ENGINEER OR CONTRACTOR HIRED BY THE DEVELOPER OF ANY OF THE PUBLIC INFRASTRUCTURE ACQUIRED FROM THE DEVELOPER HEREUNDER; (III) THE DEVELOPER'S NONPAYMENT UNDER CONTRACTS BETWEEN THE DEVELOPER AND ITS CONSULTANTS, ENGINEERS, ADVISORS, CONTRACTORS, SUBCONTRACTORS AND SUPPLIERS IN THE PROVISION OF THE PUBLIC INFRASTRUCTURE; (IV) ANY CLAIMS OF PERSONS EMPLOYED BY THE DEVELOPER OR ITS AGENTS TO CONSTRUCT THE PUBLIC INFRASTRUCTURE; AND/OR (V) ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO DEVELOPER'S RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES, AND/OR TRUSTEES, REGARDING OR RELATED TO THE PUBLIC INFRASTRUCTURE OR ANY AGREEMENT OR RESPONSIBILITY REGARDING THE PUBLIC INFRASTRUCTURE, INCLUDING CLAIMS AND CAUSES OF ACTION WHICH MAY ARISE OUT OF THE PARTIAL NEGLIGENCE OF AN INDEMNIFIED PARTY (THE "CLAIMS"). NOTWITHSTANDING THE FOREGOING, NO INDEMNIFICATION IS GIVEN HEREUNDER FOR ANY ACTION, DAMAGE, CLAIM, LOSS OR EXPENSE DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE DIRECTLY ATTRIBUTABLE TO THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF ANY INDEMNIFIED PARTY. DEVELOPER IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS, AND CITY IS REQUIRED TO REASONABLY COOPERATE AND ASSIST DEVELOPER IN PROVIDING SUCH DEFENSE.

IN ITS REASONABLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY DEVELOPER IN FULFILLING ITS OBLIGATIONS HEREUNDER TO DEFEND AND INDEMNIFY THE INDEMNIFIED PARTIES, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. THE INDEMNIFIED PARTIES RESERVE THE RIGHT TO PROVIDE A PORTION OR ALL OF THEIR/ITS OWN DEFENSE, AT THEIR/ITS SOLE COST; HOWEVER, INDEMNIFIED PARTIES ARE UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY AN INDEMNIFIED PARTY IS NOT TO BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO DEFEND INDEMNIFIED PARTIES OR AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY INDEMNIFIED PARTIES PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN BUSINESS DAYS OF WRITTEN NOTICE FROM AN INDEMNIFIED PARTY THAT IT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, INDEMNIFIED PARTIES SHALL

HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON THEIR OWN BEHALF, AND DEVELOPER SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ALL REASONABLE COSTS INCURRED BY INDEMNIFIED PARTIES.

THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

THE PARTIES AGREE AND STIPULATE THAT THIS INDEMNIFICATION COMPLIES WITH THE CONSPICUOUSNESS REQUIREMENT AND THE EXPRESS NEGLIGENCE TEST, AND IS VALID AND ENFORCEABLE AGAINST THE DEVELOPER.

~~11.7. DEVELOPER'S ACKNOWLEDGEMENT OF THE CITY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/DEVELOPERS' WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.~~

~~(a) THE DEVELOPER ACKNOWLEDGES AND AGREES THAT:~~

~~(i) THE PUBLIC INFRASTRUCTURE TO BE CONSTRUCTED UNDER THIS AGREEMENT, AND THE FEES TO BE IMPOSED BY THE CITY PURSUANT TO THIS AGREEMENT, REGARDING THE PROPERTY, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:~~

~~(A) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;~~

~~(B) VIOLATION OF THE TEXAS LOCAL GOVERNMENT CODE, AS IT EXISTS OR MAY BE AMENDED; AND/OR~~

~~(C) NUISANCE.~~

~~(ii) ASSUMING NO DEFAULTS UNDER THIS AGREEMENT, THE AMOUNT OF THE DEVELOPER'S FINANCIAL AND INFRASTRUCTURE CONTRIBUTION FOR THE PUBLIC INFRASTRUCTURE IS ROUGHLY PROPORTIONAL TO THE DEMAND THAT THE DEVELOPER'S ANTICIPATED IMPROVEMENTS AND DEVELOPER'S DEVELOPMENT OF THE PROPERTY PLACES ON THE CITY'S INFRASTRUCTURE.~~

~~(iii) ASSUMING NO DEFAULTS UNDER THIS AGREEMENT, THE DEVELOPER HEREBY AGREES AND ACKNOWLEDGES, WITHOUT WAIVING CLAIMS RELATED SOLELY TO EXACTIONS NOT CONTEMPLATED BY THIS AGREEMENT, THAT: (A) ANY PROPERTY WHICH IT CONVEYS TO THE CITY OR ACQUIRES FOR THE CITY PURSUANT TO THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY THE DEVELOPER FOR SUCH LAND, AND THE DEVELOPER HEREBY WAIVES ANY CLAIM THEREFOR THAT IT MAY HAVE; AND (B) ALL PREREQUISITES TO SUCH DETERMINATION OF ROUGH PROPORTIONALITY HAVE BEEN MET, AND ANY VALUE RECEIVED BY THE CITY~~

~~RELATIVE TO SAID CONVEYANCE IS RELATED BOTH IN NATURE AND EXTENT TO THE IMPACT OF THE DEVELOPMENT OF THE PROPERTY ON THE CITY'S INFRASTRUCTURE. ASSUMING NO DEFAULTS UNDER THIS AGREEMENT, THE DEVELOPER FURTHER AGREES TO WAIVE AND RELEASE ALL CLAIMS IT MAY HAVE AGAINST THE CITY UNDER THIS AGREEMENT RELATED TO ANY AND ALL: (A) CLAIMS OR CAUSES OF ACTION BASED ON ILLEGAL OR EXCESSIVE EXACTIONS; AND (B) 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 PUBLIC INFRASTRUCTURE.~~

~~(b) — THIS SECTION 11.7 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.~~

## **ARTICLE XII**

### **AUTHORIZED IMPROVEMENTS AND PUBLIC INFRASTRUCTURE**

12.1 The Water and Sewer Facilities. The Developer shall have full responsibility for designing and constructing the on-site and off-site water and sewer facilities (together with and including the cost of obtaining any and all easements in or fee simple title to land to provide for and to accommodate such water and sewer facilities) that will serve the Property (“Water and Sewer Facilities”) and the cost thereof. The Developer shall be responsible for the construction, including the acquisition of any necessary easements (the size and extent of each such easements to be approved by the City) for the Water and Sewer Facilities subject to Section 10.4. The Developer must design and construct the Water and Sewer Facilities, including but not limited to the water transmission and distribution system(s) necessary to provide continuous and adequate service to customers in the Property in compliance with all statutory and regulatory requirements, including design and construction criteria and specifications of the City, and in compliance with all applicable City Regulations.

12.2 Roadway Improvements and Related Drainage Facilities and Drainage Improvements not Related to Roadways. The Developer shall have full responsibility for designing and constructing the on-site and off-site Roadway Improvements and related drainage facilities and Drainage Improvements (together with and including the cost of obtaining any and all easements in or fee simple title to land to provide for and to accommodate such Roadway Improvements and related drainage facilities and Drainage Improvements subject to Section 10.4) that will serve the Property (“Roadway and Drainage Facilities”) and the cost thereof. The Developer shall be responsible for the construction, including the acquisition of any necessary easements (the size and extent of each such easements to be approved by the City) for the Roadway and Drainage Facilities. The Developer shall design and construct the Roadway and Drainage Facilities, including but not limited to the water transmission and distribution system(s) necessary to provide continuous and adequate service to customers in the Property in compliance with all statutory and regulatory requirements, including design and construction criteria and specifications of the City, and in compliance with all applicable City Regulations.

12.3 Administration of Construction of Public Infrastructure. The Parties agree that the Developer will be responsible to construct the Public Infrastructure. The Public Infrastructure will be dedicated to the City and upon acceptance of the Public Infrastructure by the City shall become the property of the City.

12.4 Operation of the Water and Sewer Facilities. If the City accepts the Water and Sewer Facilities, the City shall operate and maintain the Water and Sewer Facilities serving the Property and use the Water and Sewer Facilities to provide service to the Property and as otherwise required or allowed by state law and in the same manner that City operates all other Water and Sewer Facilities under the City's control, in City's sole discretion.

12.5 Operation of the Roadway and Drainage Facilities. If the City accepts the Roadway and Drainage Facilities, the City shall operate and maintain the Roadway and Drainage Facilities serving the Property and use the Roadway and Drainage Facilities to provide service to the Property and as otherwise required or allowed by state law and in the same manner that City operates and maintains all other Roadway and Drainage Facilities under the City's control, in the City's sole discretion.

### **ARTICLE XIII** **TERM**

The term of this Agreement shall be for a period of thirty (30) years after the Effective Date (the "Initial Term") and shall automatically be extended one time thereafter for a fifteen (15) year period (the "Renewal Term"), unless either Party makes a written objection to the extension at any time prior to the expiration of the Initial Term. If allowed by law, the Parties may extend the term of this Agreement beyond the term of the automatic extension if they execute an agreement in writing.

### **ARTICLE XIV** **EVENTS OF DEFAULT; REMEDIES**

14.1 Events of Default. No Party shall be in default under this Agreement until Notice of the alleged failure of such Party to perform has been given in writing (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 to be determined based on the nature of the alleged failure, but in no event more than 30 days (or any longer time period to the extent expressly stated in this Agreement as relates to a specific failure to perform) after written notice of the alleged failure has been given except as relates to a type of default for which a different time period is expressly set forth in this Agreement). Notwithstanding the foregoing, 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. Notwithstanding the foregoing, however, a Party shall be in default of its obligation to make any payment required under this Agreement if such payment is not made within 30 days after it is due.

14.2 Remedies. If a Party is in default, the aggrieved Party may, at its option and without prejudice to any other right or remedy under this Agreement, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, or actions for specific performance, mandamus, or injunctive relief. NOTWITHSTANDING THE FOREGOING, HOWEVER, NO DEFAULT UNDER THIS AGREEMENT SHALL ENTITLE THE AGGRIEVED PARTY TO TERMINATE THIS AGREEMENT OR LIMIT THE TERM OF THIS AGREEMENT.

14.3 Cessation of Compliance. As a matter of law, a city by contract cannot bind its current or future city councils in the exercise of the council's legislative discretion or the performance of its legislative functions, which include the zoning of property, the establishment of PIDs and TIRZs, and the levying of assessments. Nonetheless, the Developer has spent a substantial sum to negotiate, implement, and comply with this Agreement and Developer expects and relies on the City to take appropriate actions to create the PID and TIRZ, and levy the Assessments that are described in this Agreement. If the current or a future City Council of the City does not establish or operate the PID or the TIRZ as described in this Agreement, or does not levy the Assessments described in this Agreement, then Developer shall have no further obligation to comply with any of the terms of this Agreement until such time as the City Council takes appropriate actions to have the City resume compliance with its obligations under this Agreement. If the City resumes its compliance with its obligations under this Agreement, the Developer shall have up to 90 days to resume its compliance with this Agreement.

## **ARTICLE XV**

### **ASSIGNMENT AND ENCUMBRANCE**

15.1 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. The Developer and any Assignee have the right (from time to time) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of the Developer under this Agreement to any person or entity (an "Assignee") (a) without City consent, but with Notice to the City, if the Assignee is a lienholder or an affiliate or related entity of the Developer that is controlled by or under common control by the Developer; or (b) with the City Manager's prior written consent (which consent shall not be unreasonably withheld if the Assignee demonstrates financial ability to perform), if to any other person or entity provided that the Developer is not in breach of this Agreement at the time of such assignment. An Assignee is considered the "Developer" and a "Party," and under this Agreement for purposes of the obligations, rights, title, and interest assigned to the Assignee. Any receivables due under this Agreement, any construction funding agreement, any reimbursement agreement (pursuant to Section 372.023(d-1) of the Texas Local Government Code), or any TIRZ agreement may be assigned by the Developer without the consent of, but upon written Notice to the City. The Developer may also collaterally assign the PID and or TIRZ receivables as collateral for any development loan, and the Developer may execute such documents and contracts as necessary to effectuate such loans or financings, without the consent, but with Notice, to the City. An Assignee shall be considered a "Party" for the purposes of this Agreement. From and after such assignment, the City agrees to look solely to the Assignee for the performance of all obligations assigned to the Assignee and agrees that the Developer shall be released from subsequently performing the assigned obligations and from any liability that results from the Assignee's failure to perform the assigned obligations. No assignment by the Developer shall release the Developer from any

liability that resulted from an act or omission by the Developer that occurred prior to the effective date of the assignment unless the City approves the release in writing. The Developer shall maintain written records of all assignments made by the Developer to Assignee, including a copy of each executed assignment and the Assignee's notice information as required by this Agreement, and, upon written request from the City, any Party or Assignee, shall provide a copy of such records to the requesting person or entity.

15.2 Encumbrances by City. The City shall not collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of its rights, title, or interest under this Agreement without the Developer's prior written consent, which consent shall not be unreasonably withheld.

(b) Encumbrance by Developer and Assignees. The Developer and Assignees have the right, from time to time, to collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of their respective rights, title, or interest under this Agreement for the benefit of their respective lenders without the consent of, but with written notice to the City within ten (10) days of the execution of such document. The collateral assignment, pledge, grant of lien or security interest, or other encumbrance shall not, however, obligate any lender to perform any obligations or incur any liability under this Agreement unless the lender agrees in writing to perform such obligations or incur such liability. Provided the City has been given a copy of the documents creating the lender's interest, including notice information for the lender, then that lender shall have the right, but not the obligation, to cure any default under this Agreement and shall be given a reasonable time to do so in accordance with the cure periods otherwise provided to the defaulting Party by this Agreement; and the City agrees to accept a cure offered by the lender as if offered by the defaulting Party. A lender is not a Party to this Agreement unless this Agreement is amended, with the consent of the lender, to add the lender as a Party. Notwithstanding the foregoing, however, this Agreement shall continue to bind the Property and shall survive any transfer, conveyance, or assignment occasioned by the exercise of foreclosure or other rights by a lender, whether judicial or non-judicial unless otherwise agreed to in writing by lender and the City. Any purchaser from or successor owner through a lender of any portion of the Property shall be bound by this Agreement and shall not be entitled to the rights and benefits of this Agreement with respect to the acquired portion of the Property until all defaults under this Agreement with respect to the acquired portion of the Property have been cured.

15.3 Assignees as Parties. An Assignee approved or authorized in accordance with this Agreement and for which Notice of assignment has been provided in accordance with Section 15.5 of this Agreement shall be considered a "Developer" or a "Party" for the purposes of the obligations, rights, title, and interest assigned to the Assignee under this Agreement. With the exception of an End Buyer of a lot within the Property, any person or entity upon becoming an owner of land within the PID or upon obtaining an ownership interest in any part of the Property shall be deemed to be an owner and have all of the obligations of the Developer as set forth in this Agreement and all related documents to the extent of said ownership or ownership interest. This Agreement and the obligations and liabilities arising under this Agreement shall be released automatically as to each End Buyer of a lot; provided, however, that no such conveyance of a lot shall release Developer from its obligations hereunder. Any third party, including without limitation any title company, grantee or lienholder, shall be entitled to rely on the existence or

nonexistence of a recorded affidavit to establish whether such termination has occurred as to a lot.

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

15.5 Notice of Assignment of this Agreement. Written notice of each proposed assignment to an Assignee shall be provided to the City at least fifteen (15) days prior to the effective date of the assignment, which notice shall include a copy of the proposed assignment document together with the name, address, telephone number, and e-mail address (if available) of a contact person representing the Assignee who the City may contact for additional information regarding the experience and background of the Assignee. The Developer shall maintain written records of all assignments made by the Developer to Assignees, including a copy of each executed assignment and the Assignee's Notice information as required by this Agreement, and, upon written request from another Party, shall provide a copy of such records to the requesting person or entity.

#### **ARTICLE XVI** **RECORDATION AND ESTOPPEL CERTIFICATES**

16.1 Binding Obligations. This Agreement and all amendments hereto (including amendments to the Concept Plan as allowed in this Agreement) and assignments hereof shall be recorded in the deed records of Kaufman County. This Agreement binds and constitutes a covenant running with the Property. Upon the Effective Date, this Agreement shall be binding upon the Parties and their successors and assigns permitted by this Agreement and forms a part of any other requirements for development within the Property. This Agreement, when recorded, shall be binding upon the Parties and their successors and assigns as permitted by this Agreement and upon the Property; however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any End-Buyer of a Fully Developed and Improved Lot except for land use and development regulations that apply to such lots.

16.2 Estoppel Certificates. From time to time upon written request of the Developer or any future owner, and upon the payment of a \$100.00 fee to the City, the City Manager, or his/her designee will, in his official capacity and to his reasonable knowledge and belief, execute a written estoppel certificate identifying any obligations of an owner under this Agreement that are in default.

#### **ARTICLE XVII** **ADDITIONAL PROVISIONS**

17.1 Recitals. The recitals contained in this Agreement: (i) are true and correct as of the Effective Date; (ii) form the basis upon which the Parties negotiated and entered into this Agreement; (iii) are legislative findings of the City Council of the City; and (iv) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by

the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

17.2 Notices. Any Notice, payment or instrument required or permitted by this Agreement to be given or delivered to any party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

|                   |                                                                                                                                                |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| To the City:      | Attn: City Manager<br>City of Kaufman<br>209 S. Washington Street<br>Kaufman, TX 75142                                                         |
| With a copy to:   | Attn: Patricia Adams<br>Messer, Rockefeller & Fort, PLLC<br>6371 Preston Road, Suite 200<br>Frisco, Texas 75034                                |
| And to:           | Attn:<br>McCall, Parkhurst & Horton L.L.P<br>5717 N. Harwood Street, Suite 900<br>Dallas, Texas 75201                                          |
| To the Developer: | Attn: Kelly Cannell<br>Georgetown KF, Ltd.<br>P.O. Box 6621<br>McKinney, Texas 75071                                                           |
| With a copy to:   | Attn: Robert Miklos<br>Miklos Cinclair, PLLC<br>1800 Valley View Lane, Suite 360<br>Farmers Branch, Texas 75234<br>E-mail: Robert@M-Clegal.com |

Any party may change its address or addresses for delivery of Notice by delivering written Notice of such change of address to the other party.

17.3 Interpretation. The Parties acknowledge that each has been actively involved in negotiating this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will

be interpreted fairly and reasonably and neither more strongly for nor against any Party, regardless of which Party originally drafted the provision.

17.4 Time. In this Agreement, time is of the essence and compliance with the times for performance herein is required.

17.5 Authority and Enforceability. The City represents and warrants that this Agreement has been approved by official action by the City Council of the City in accordance with all applicable public notice requirements (including, but not limited to, Notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. The Developer represents and warrants that this Agreement has been approved by appropriate action of the Developer, and that the individual executing this Agreement on behalf of the Developer has been duly authorized to do so. Each Party respectively acknowledges and agrees that this Agreement is binding upon such Party and is enforceable against such Party, in accordance with its terms and conditions and to the extent provided by law.

17.6 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by the Parties.

17.7 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (i) such unenforceable provision shall be deleted from this Agreement; (ii) the unenforceable provision shall, to the extent possible and upon mutual agreement of the parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (iii) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

17.8 Applicable Law; Venue. This Agreement is entered into pursuant to, and is to be construed and enforced in accordance with, the laws of the State of Texas, and all obligations of the Parties are performable in Kaufman County. Exclusive venue for any action to enforce or construe this Agreement shall be in the Kaufman County District Court.

17.9 Non-Waiver. Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

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

17.11 Further Documents. The Parties agree that at any time after execution of this Agreement, they will, upon request of another Party, execute and deliver such further documents

and do such further acts and things as the other Party may reasonably request in order to effectuate the terms of this Agreement. This provision shall not be construed as limiting or otherwise hindering the legislative discretion of the City Council seated at the time that this Agreement is executed or any future City Council.

17.12 Exhibits. The following exhibits are attached to this Agreement and are incorporated herein for all purposes:

|             |                                                    |
|-------------|----------------------------------------------------|
| Exhibit A   | Metes and Bounds of the Property                   |
| Exhibit B   | Property Depiction                                 |
| Exhibit C   | Authorized Improvements with their Estimated Costs |
| Exhibit D-1 | Concept Plan                                       |
| Exhibit D-2 | Phase Plan                                         |
| Exhibit E   | Park Land Site                                     |
| Exhibit F   | Home Buyer Disclosure Program                      |
| Exhibit G   | Landowner Agreement                                |
| Exhibit H   | Main Road Improvements                             |
| Exhibit I   | Facilities Agreement                               |

17.13 Home Buyer Disclosures. The Developer shall comply with the Home Buyer Disclosure Program and shall deed restrict the Property in a manner that notifies all owners of Property of the obligations set forth in the Home Buyer Disclosure Program. The Developer shall provide City evidence on a quarterly basis, or upon written request from the City, that the original purchaser of any finished lot within the PID has been provided the Home Buyer Disclosure Program. In addition to compliance with the requirements of this Section, When selling any of the Property, the Developer shall provide notices in a form required by Section 5.014 of the Texas Property Code, as amended, to anyone who purchases property within the PID notifying the purchaser: (a) that the property is located in the PID; (b) that the City has issued or may issue Bonds; (c) that the City has levied or may levy PID assessments; (d) of the unpaid reimbursement amount of the PID assessment against the Property; (e) of the estimated annual installments if PID assessments are not paid in full; and (f) of the estimated duration of the PID assessment and annual installments. Further, the Developer and subsequent owners shall require builders selling homes to continuously post a notice of the PID assessments in a conspicuous location in each model home and provide an explanation of the PID assessments in written brochures and promotional materials given to each prospective purchaser. Notwithstanding Article XVI, this Section shall apply to all owners of all or any portion of the Property.

17.14 Governmental Powers; Waivers of Immunity. By its execution of this Agreement, the City does not waive or surrender any of its respective governmental powers, immunities, or rights except as provided in this section. The Parties acknowledge that the City waives its sovereign immunity as to suit solely for the purpose of adjudicating a claim under this Agreement.

17.15 Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to force majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure

shall be temporarily suspended. Within three business days after the occurrence of a force majeure, the Party claiming the right to temporarily suspend its performance, shall give Notice to all the Parties, including a detailed explanation of the force majeure and a description of the action that will be taken to remedy the force majeure and resume full performance at the earliest possible time. The term “force majeure” shall include events or circumstances that are not within the reasonable control of Party whose performance is suspended and that could not have been avoided by such Party with the good faith exercise of good faith, due diligence and reasonable care.

17.16 Entire Agreement. This Agreement, including its exhibits and documents executed in accordance with this Agreement, constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement.

17.17 Amendments. This Agreement cannot be modified, amended, or otherwise varied, except in writing signed by the City and Developer expressly amending the terms of this Agreement.

17.18 Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is hereby acknowledged.

[signatures on following pages]

EXECUTED by the City and Developer on the respective dates stated below.

Date: \_\_\_\_\_

**CITY OF KAUFMAN**

By: \_\_\_\_\_  
Jeff Jordan, Mayor

ATTEST:

\_\_\_\_\_  
Jessie Hanks, City Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
Patricia Adams, City Attorney

STATE OF TEXAS           §  
                                         §  
COUNTY OF KAUFMAN   §

This instrument was acknowledged before me on the \_\_ day of \_\_\_\_\_, 2022 by Jeff Jordan, Mayor of the City of Kaufman, Texas on behalf of said City.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Name printed or typed

Commission Expires: \_\_\_\_\_

**DEVELOPER**

Georgetown KF, Ltd.,  
a Texas limited partnership

By: Seascope GP, LLC  
a Texas limited liability company  
Its General Partner

By: \_\_\_\_\_  
Name: Kelly Cannell  
Its: President

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2022 by Kelly Cannell, President of Seascope GP, LLC, a Texas limited liability company, as  
General Partner of Georgetown KF, Ltd., a Texas limited partnership, on behalf of said partnership.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT A**  
**Property Metes and Bounds**

**85.500 ACRES**

**BEING** a tract of land in the DIONISION FALCON SURVEY, ABSTRACT NO. 151, City of Kaufman, Kaufman County, Texas and being part of that tract of land described as Tract 1 as conveyed in Deed to JWS Land, LTD, according to the document filed of record in Document Number 2012-0020419, Official Public Records, Kaufman County, Texas, and being more particularly described as follows:

**BEGINNING** at a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in a northerly line of said Tract 1 and the south line of that tract of land conveyed to Kaufman Forty-Five Associates, LTD., according to the document filed of record in Volume 2096, Page 0276, Deed Records, Kaufman County, Texas, same being in the east line of CR 151/Old Kemp Highway, as per EJES Horizontal Control Plan dated 07/05/2016;

**THENCE** N 88° 44' 11" E, with said south line, a distance of 1,131.00 feet to a 3/8 inch iron rod found;

**THENCE** N 88° 28' 55" E, continuing with said south line, passing at a distance of 917.65 feet, a 1/2 inch iron rod found for the southeast corner of said Kaufman Forty-Five Associates, LTD. tract, and continuing over and across said Tract 1, in all for a total distance of 1,079.10 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

**THENCE** S 30° 52' 50" E, continuing over and across said Tract 1, a distance of 1,165.92 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the north line of State Highway 34, a 140' right-of-way, as recorded in Document Number 2014-0001526, Official Public Records, Kaufman County, Texas, same being at the beginning of a non-tangent curve to the right, having a central angle of 56° 58' 29", a radius of 1,590.00 feet and a chord bearing and distance of S 60° 59' 06" W, 1,516.75 feet;

**THENCE** With said north line and said curve to the right, an arc distance of 1,581.09 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

**THENCE** S 89° 28' 21" W, continuing with said north line, a distance of 506.92 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for the southeast corner of that tract of land conveyed in Deed to Resurrection Lutheran Church of Plano, Texas, according to the document filed of record in Document Number 2013-0023091, Official Public Records, Kaufman County, Texas;

**THENCE** N 01° 16' 32" W, with the east line of said Resurrection Lutheran Church of Plano, Texas tract, a distance of 325.89 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

**THENCE** N 02° 35' 20" E, continuing with said east line, a distance of 29.04 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for the northeast corner of said Resurrection Lutheran Church of Plano, Texas tract;

**THENCE** S 89° 28' 55" W, with the north line of said Resurrection Lutheran Church of Plano, Texas tract, a distance of 646.12 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the above mentioned east line of CR 151/Old Kemp Highway, same being at the beginning of a non-tangent curve to the right, having a central angle of 05° 52' 47", a radius of 661.00 feet and a chord bearing and distance of N 15° 03' 14" W, 67.80 feet;

**THENCE** With said east line, the following courses and distances:

With said curve to the right, an arc distance of 67.83 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

N 12° 06' 55" W, a distance of 87.55 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the left, having a central angle of 06° 30' 52", a radius of 761.00 feet and a chord bearing and distance of N 15° 22' 21" W, 86.48 feet;

With said curve to the left, an arc distance of 86.52 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

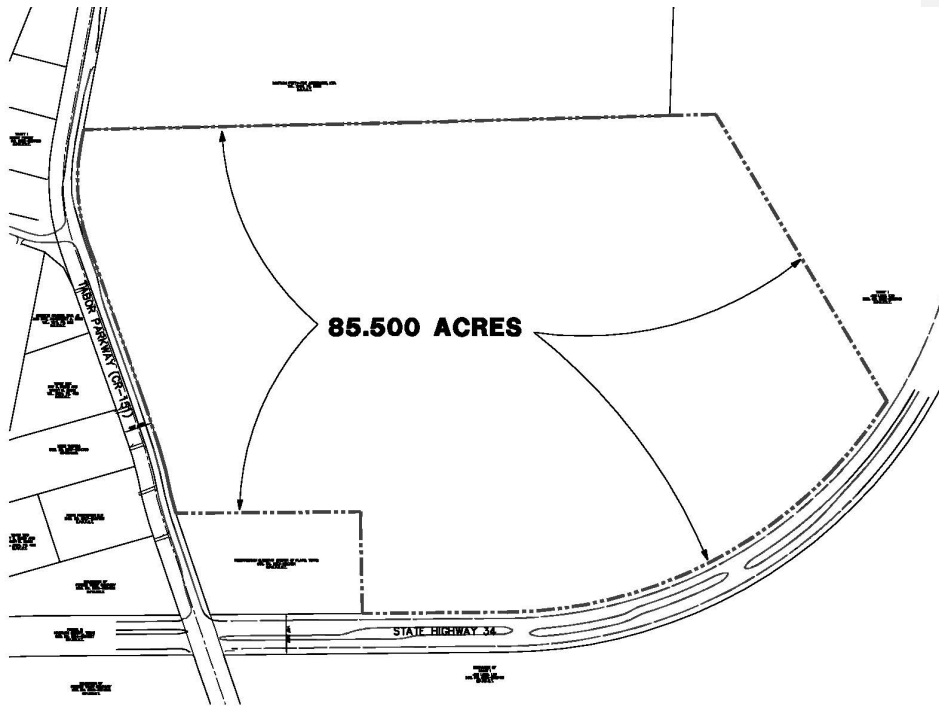
N 18° 37' 47" W, a distance of 169.03 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

N 19° 27' 35" W, a distance of 580.73 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the right, having a central angle of 30° 11' 40", a radius of 661.00 feet and a chord bearing and distance of N 04° 21' 45" W, 344.32 feet;

With said curve to the right, an arc distance of 348.34 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

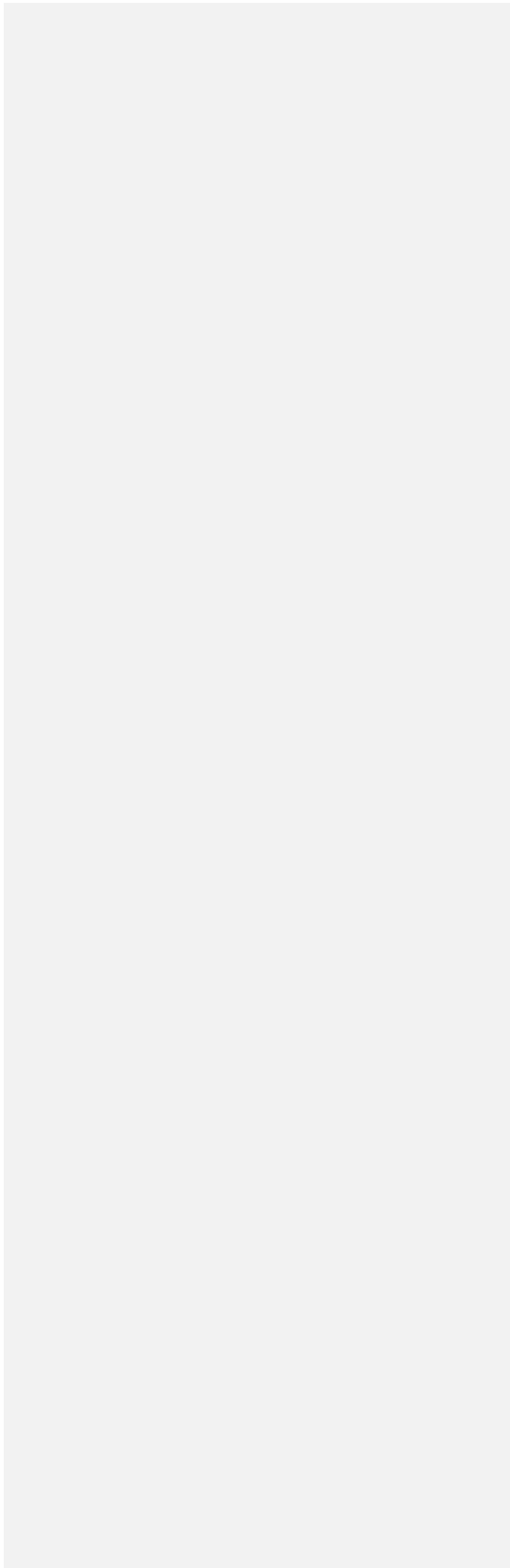
N 10° 44' 02" E, a distance of 53.90 feet to the **POINT OF BEGINNING**, and containing 85.500 acres of land, more or less.

**EXHIBIT B**  
**Property Depiction**

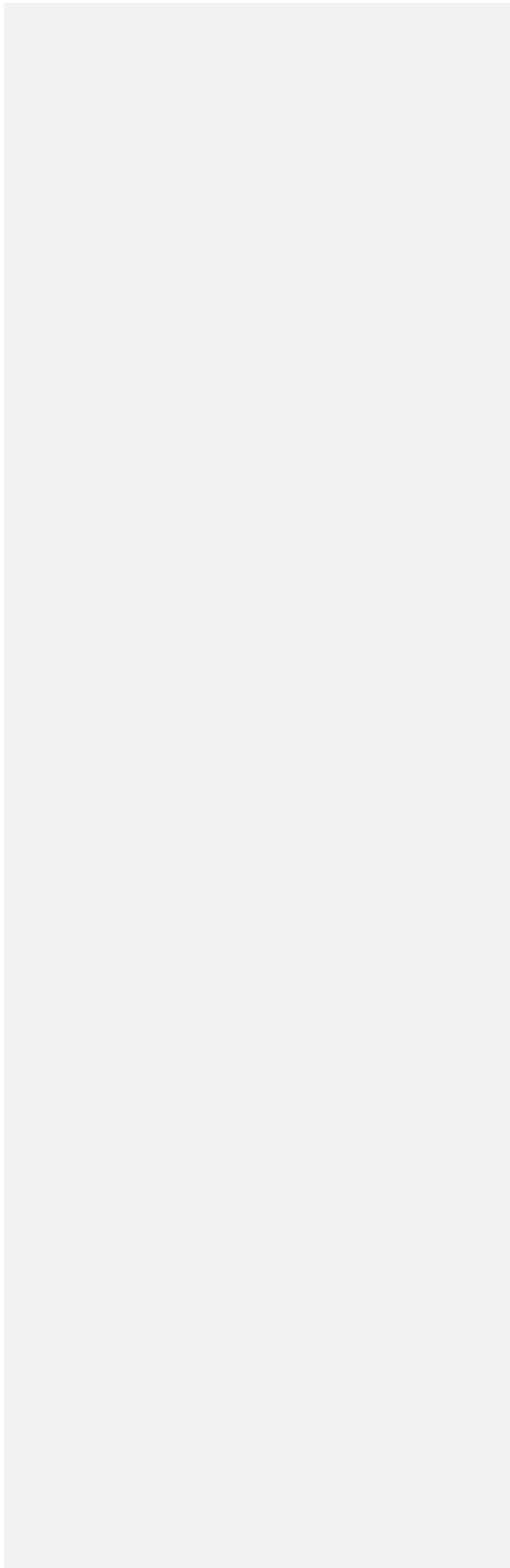


**EXHIBIT C**  
**Authorized Improvements**

**EXHIBIT D-1**  
**Concept Plan**



**EXHIBIT D-2**  
**Phase Plan**



**EXHIBIT E**  
**Park Land Site**  
**Approximately 14.52 acres**

**EXHIBIT F**  
**HOME BUYER DISCLOSURE PROGRAM**

The Administrator (as defined in the Service and Assessment Plan) for the Kaufman Public Improvement District No. 1 (the “PID”) shall facilitate Notice to prospective homebuyers in accordance with the following minimum requirements:

1. Record notice of the PID in the appropriate land records for the Property.
2. Require builders to attach the Recorded Notice of the Authorization and Establishment of the PID and the final Assessment Roll for such Assessed Parcel (or if the Assessment Roll is not available for such Assessed Parcel, then a schedule showing the maximum 40-year payment for such Assessed Parcel) in an addendum to each residential homebuyer’s contract on brightly colored paper.
3. Collect a copy of the addendum signed by each buyer from builders and provide to the City.
4. Require signage indicating that the Property for sale is located in a special assessment district and require that such signage be located in conspicuous places in all model homes.
5. Prepare and provide to builders an overview of the existence and effect of the PID for those builders to include in each sales packet of information that it provides to prospective homebuyers.
6. Notify builders who estimate monthly ownership costs of the requirement that they must include special assessments in estimated Property taxes.
7. Notify Settlement Companies through the builders that they are required to include special taxes on HUD 1 forms and include in total estimated taxes for the purpose of setting up tax escrows.
8. Include notice of the PID in the homeowner association documents in conspicuous bold font.
9. The City will include announcements of the PID on the City’s web site.

The Developer and the Administrator shall regularly monitor the implementation of this disclosure program and shall take appropriate action to require these Notices to be provided when one of them discovers that any requirement is not being complied with.

**EXHIBIT G**  
**Landowner Agreement**

## LANDOWNER AGREEMENT

This **LANDOWNER AGREEMENT** (the “Agreement”), is entered into as of \_\_\_\_\_, among the City of Kaufman, Texas (the “City”), a home-rule municipality of the State of Texas (the “State”), and \_\_\_\_\_, a Texas \_\_\_\_\_ (the “Landowner”).

### **RECITALS:**

**WHEREAS**, Landowner owns the Assessed Parcels described by a metes and bounds description attached as **Exhibit I** to this Agreement and which is incorporated herein for all purposes, comprising all of the non-exempt, privately-owned land described in **Exhibit I** (the “Landowner Parcel”) which is coterminous with the Kaufman Public Improvement District No. 1 (the “District”) in the City; and

**WHEREAS**, the City Council has adopted an assessment ordinance for the Authorized Improvements (including all exhibits and attachments thereto, the “Assessment Ordinance”) and the Service and Assessment Plan included as an **Exhibit B** to the Assessment Ordinance (the “Service and Assessment Plan”) and which is incorporated herein for all purposes, and has levied an assessment on each Assessed Parcel in the District (as identified in the Service and Assessment Plan) that will be pledged for the payment of certain infrastructure improvements and to pay the costs of constructing the Authorized Improvements that will benefit the Assessed Property (as defined in the Service and Assessment Plan); and

**WHEREAS**, the Covenants, Conditions and Restrictions attached to this Agreement as **Exhibit II** and which are incorporated herein for all purposes, include the statutory notification required by Texas Property Code, Section 5.014, as amended, to be provided by the seller of residential property that is located in a public improvement district established under Chapter 372 of the Texas Local Government Code, as amended (the “PID Act”), to the purchaser.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, obligations and benefits hereinafter set forth, the City and the Landowner hereby contract, covenant and agree as follows:

## DEFINITIONS; APPROVAL OF AGREEMENTS

Definitions. Capitalized terms used but not defined herein (including each exhibit hereto) shall have the meanings ascribed to them in the Service and Assessment Plan.

Affirmation of Recitals. The findings set forth in the Recitals of this Agreement are hereby incorporated as the official findings of the City Council.

### I. AGREEMENTS OF LANDOWNER

A. Affirmation and Acceptance of Agreements and Findings of Benefit. Landowner hereby ratifies, confirms, accepts, agrees to, and approves:

(i) the creation and boundaries of the District, and the boundaries of the Landowner's Parcel which are coterminous with the District, all as shown on **Exhibit I**, and the location and development of the Authorized Improvements on the Landowner Parcel and on the property within the District;

(ii) the determinations and findings as to the benefits by the City Council in the Service and Assessment Plan and the Assessment Ordinance; and

(iii) the Assessment Ordinance and the Service and Assessment Plan.

B. Acceptance and Approval of Assessments and Lien on Property. Landowner consents to, agrees to, acknowledges and accepts the following:

(i) each Assessment levied by the PID on the Landowner's Parcel within the District, as shown on the assessment roll attached as Appendix \_\_\_ to the Service and Assessment Plan (the "Assessment Roll");

(ii) the Authorized Improvements specially benefit the District, and the Landowner's Parcel, in an amount in excess of the Assessment levied on the Landowner's Parcel within the District, as such Assessment is shown on the Assessment Roll;

(iii) each Assessment is final, conclusive and binding upon Landowner and any subsequent owner of the Landowner's Parcel, regardless of whether such landowner may be required to prepay a portion of, or the entirety of, such Assessment upon the occurrence of a mandatory prepayment event as provided in the Service and Assessment Plan;

(iv) the obligation to pay the Assessment levied on the Landowner's Parcel owned by it when due and in the amount required by and stated in the Service and Assessment Plan and the Assessment Ordinance;

(v) each Assessment or reassessment, with interest, the expense of collection, and reasonable attorney's fees, if incurred, is a first and prior lien against the Landowner's Parcel, superior to all other liens and monetary claims except liens or monetary claims for state, county, school district, or municipal ad valorem taxes, and is a personal liability of and charge against the owner of the Landowner's Parcel regardless of whether such owner is named;

(vi) the Assessment lien on the Landowner's Parcel is a lien and covenant that runs with the land and is effective from the date of the Assessment Ordinance and continues until the Assessment is paid and may be enforced by the governing body of the City in the same manner that an ad valorem tax lien against real property may be enforced by the City;

(vii) delinquent installments of the Assessment shall incur and accrue interest, penalties, and attorney's fees as provided in the PID Act;

(viii) the owner of a Landowner's Parcel may pay at any time the entire Assessment, with interest that has accrued on the Assessment, on any parcel in the Landowner's Parcel;

(ix) the Annual Installments of the Assessments (as defined in the Service and Assessment Plan and Assessment Roll) may be adjusted, decreased and extended; and, the assessed parties shall be obligated to pay their respective revised amounts of the annual installments, when due, and without the necessity of further action, assessments or reassessments by the City, the same as though they were expressly set forth herein; and

(x) Landowner has received, or hereby waives, all notices required to be provided to it under Texas law, including the PID Act, prior to the Effective Date (defined herein).

C. Mandatory Prepayment of Assessments. Landowner agrees and acknowledges that Landowner or subsequent landowners may have an obligation to prepay an Assessment upon the occurrence of a mandatory prepayment event, at the sole discretion of the City and as provided in the Service and Assessment Plan, as amended or updated or upon sale of property in the PID to a party not subject to Assessments.

D. Notice of Assessments. Landowner further agrees as follows:

(i) the Covenants, Conditions and Restrictions attached hereto as **Exhibit II** shall be terms, conditions and provisions running with the Landowner's Parcel and shall be recorded (the contents of which shall be consistent with the Assessment Ordinance and

the Service and Assessment Plan as reasonably determined by the City), in the records of the County Clerk of Kaufman County, as a lien and encumbrance against such Landowner's Parcel, and Landowner hereby authorizes the City to so record such documents against the Landowner's Parcel owned by Landowner;

(ii) reference to the Covenants, Conditions and Restrictions attached hereto as **Exhibit II** shall be included on all recordable subdivision plats and such plats shall be recorded in the real property records of Kaufman County, Texas;

(iii) in the event of any subdivision, sale, transfer or other conveyance by the Landowner of the right, title or interest of the Landowner in the Landowner's Parcel or any part thereof, the Landowner's Parcel, or any such part thereof, shall continue to be bound by all of the terms, conditions and provisions of such Covenants, Conditions and Restrictions and any purchaser, transferee or other subsequent owner shall take such Landowner's Parcel subject to all of the terms, conditions and provisions of such Covenants, Conditions and Restrictions; and

(iv) Landowner shall comply with, and shall contractually obligate (and promptly provide written evidence of such contractual provisions to the City) any party who purchases any Landowner's Parcel owned by Landowner, or any portion thereof, for the purpose of constructing residential properties that are eligible for "homestead" designations under State law, to comply with, the Homebuyer Education Program described on **Exhibit III** to this Agreement. Such compliance obligation shall terminate as to each Lot (as defined in the Service and Assessment Plan) if, and when, (i) a final certificate of occupancy for a residential unit on such Lot is issued by the City, and (ii) there is a sale of a Lot to an individual homebuyer, it being the intent of the undersigned that the Homebuyer Education Program shall apply only to a commercial builder who is in the business of constructing and/or selling residences to individual home buyers (a "Builder") but not to subsequent sales of such residence and Lot by an individual home buyer after the initial sale by a Builder.

Notwithstanding the provisions of this Section, upon the Landowner's request and the City's consent, in the City's sole and absolute discretion, the Covenants, Conditions and Restrictions may be included with other written restrictions running with the land on property within the District, provided they contain all the material provisions and provide the same material notice to prospective property owners as does the document attached as **Exhibit II**

## **II. OWNERSHIP AND CONSTRUCTION OF AUTHORIZED IMPROVEMENTS**

A. Ownership and Transfer of Authorized Improvements. Landowner acknowledges that all of the Authorized Improvements and the land (or easements, as applicable) needed therefor shall be owned by the City once accepted by and conveyed to the City following construction and Landowner will execute such conveyances and/or dedications of public rights of way and easements as may be reasonably required to evidence such ownership, as generally described on the current plats of the property within the District.

B. Grant of Easement and License, Construction of Authorized Improvements.

(i) Any subsequent owner of the Landowner's Parcel shall, upon the request of the City or Developer, grant and convey to the City or Developer and its contractors, materialmen and workmen a temporary license and/or easement, as appropriate, to construct the Authorized Improvements on the property within the District, to stage on the property within the District construction trailers, building materials and equipment to be used in connection with such construction of the Authorized Improvements and for passage and use over and across parts of the property within the District as shall be reasonably necessary during the construction of the Authorized Improvements. Any subsequent owner of the Landowner's Parcel may require that each contractor constructing the Authorized Improvements cause such owner of the Landowner's Parcel to be indemnified and/or named as an additional insured under liability insurance reasonably acceptable to such owner of the Landowner's Parcel. The right to use and enjoy any easement and license provided above shall continue until the construction of the Authorized Improvements is complete; provided, however, any such license or easement shall automatically terminate upon the recording of the final plat for the Landowner's Parcel in the real property records of Kaufman County, Texas.

(ii) Landowner hereby agrees that any right or condition imposed by the Development Agreement, or other agreement, with respect to the Assessment has been satisfied, and that Landowner shall not have any rights or remedies against the City under the Development Agreement, or under any law or principles of equity concerning the Assessments, with respect to the formation of the District, approval of the Service and Assessment Plan and the City's levy and collection of the Assessments.

### **III.**

#### **COVENANTS AND WARRANTIES; MISCELLANEOUS**

A. Special Covenants and Warranties of Landowner.

Landowner represents and warrants to the City as follows:

(i) Landowner is duly organized, validly existing and, as applicable, in good standing under the laws of the state of its organization and has the full right, power and

authority to enter into this Agreement, and to perform all the obligations required to be performed by Landowner hereunder.

(ii) This Agreement has been duly and validly executed and delivered by, and on behalf of, Landowner and, assuming the due authorization, execution and delivery thereof by and on behalf of the City and the Landowner, constitutes a valid, binding and enforceable obligation of such party enforceable in accordance with its terms. This representation and warranty is qualified to the extent the enforceability of this Agreement may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws of general application affecting the rights of creditors in general.

(iii) Neither the execution and delivery hereof, nor the taking of any actions contemplated hereby, will conflict with or result in a breach of any of the provisions of, or constitute a default, event of default or event creating a right of acceleration, termination or cancellation of any obligation under, any instrument, note, mortgage, contract, judgment, order, award, decree or other agreement or restriction to which Landowner is a party, or by which Landowner or Landowner's Parcel is otherwise bound.

(iv) Landowner is, subject to all matters of record in the Kaufman County, Texas Real Property Records, the sole owner of the Landowner's Parcel.

(v) The Landowner's Parcel owned by Landowner is not subject to, or encumbered by, any covenant, lien, encumbrance or agreement which would prohibit (i) the creation of the District, (ii) the levy of the Assessments, or (iii) the construction of the Authorized Improvements on those portions of the property within the District which are to be owned by the City, as generally described on the current plats of the property within the District (or, if subject to any such prohibition, the approval or consent of all necessary parties thereto has been obtained).

(vi) Landowner covenants and agrees to execute any and all documents necessary, appropriate or incidental to the purposes of this Agreement, as long as such documents are consistent with this Agreement and do not create additional liability of any type to, or reduce the rights of, such Landowner by virtue of execution thereof.

B. Waiver of Claims Concerning Authorized Improvements. The Landowner, with full knowledge of the provisions, and the rights thereof pursuant to such provisions, of applicable law, waives any claims against the City and its successors, assigns and agents, pertaining to the installation of the Authorized Improvements.

C. Notices.

Any notice or other communication to be given to the City or Landowner under this Agreement shall be given by delivering the same in writing to:

|                   |                                                                                                                                                |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| To the City:      | Attn: Attn: City Manager<br>City of Kaufman<br>209 S. Washington Street<br>Kaufman, TX 75142                                                   |
| With a copy to:   | Attn: Patricia Adams<br>Messer, Rockefeller & Fort, PLLC<br>6371 Preston Road, Suite 200<br>Frisco, Texas 75034                                |
| And to:           | Attn:<br>McCall, Parkhurst & Horton L.L.P<br>5717 N. Harwood Street, Suite 900<br>Dallas, Texas 75201                                          |
| To the Developer: | Attn: Kelly Cannell<br>Georgetown KF, Ltd.<br>5900 S. Lake Forest, Suite 295<br>McKinney, Texas 75070                                          |
| With a copy to:   | Attn: Robert Miklos<br>Miklos Cinclair, PLLC<br>1800 Valley View Lane, Suite 360<br>Farmers Branch, Texas 75234<br>E-mail: Robert@M-Clegal.com |

Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the recipient as the address set forth herein.

Each recipient may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this provision shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for, or actually received by, the addressee.

D. Parties in Interest.

This Agreement is made solely for the benefit of the City and the Landowner and is not assignable, except, in the case of Landowner, in connection with the sale or disposition of all or substantially all of the parcels which constitute the Landowner's Parcel. However, the parties expressly agree and acknowledge that the City, the Landowner, each current owner of any parcel which constitutes the Landowner's Parcel, and the holders of or trustee for any bonds secured by

PID Assessment revenues of the City or any part thereof to finance the costs of the Authorized Improvements, are express beneficiaries of this Agreement and shall be entitled to pursue any and all remedies at law or in equity to enforce the obligations of the parties hereto. This Agreement shall be recorded in the real property records of Kaufman County, Texas.

E. Amendments.

This Agreement may be amended only by written instrument executed by the City and the Landowner. No termination or amendment shall be effective until a written instrument setting forth the terms thereof has been executed by the then-current owners of the property within the District and recorded in the Real Property Records of Kaufman County, Texas.

F. Effective Date.

This Agreement shall become and be effective (the "Effective Date") upon the date of final execution by the latter of the City and the Landowner and shall be valid and enforceable on said date and thereafter.

G. Estoppels.

Within 10 business days after written request from a party hereto, the other party shall provide a written certification, indicating whether this Agreement remains in effect as to the Landowner's Parcel.

H. Termination.

This Agreement shall terminate and be of no further force and effect as to the Landowner's Parcel upon payment in full of the Assessment(s) against such Landowner's Parcel.

[Signature pages to follow]

EXECUTED by the City and Landowner on the respective dates stated below.

Date: \_\_\_\_\_

**CITY OF KAUFMAN, TEXAS**

By: \_\_\_\_\_  
Mayor

[Signature Page Landowner Agreement]

**LANDOWNER**

\_\_\_\_\_  
a Texas \_\_\_\_\_,

By: \_\_\_\_\_  
\_\_\_\_\_,  
its manager

**STATE OF TEXAS**        )

)

**COUNTY OF** \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_ day of \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_ in his capacity as Manager of \_\_\_\_\_,  
known to be the person whose name is subscribed to the foregoing instrument, and that he executed  
the same on behalf of and as the act of Manager of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:

\_\_\_\_\_

[Signature Page Landowner Agreement]

**LANDOWNER AGREEMENT - EXHIBIT I**  
**METES AND BOUNDS DESCRIPTION OF LANDOWNER'S PARCEL**

## LANDOWNER AGREEMENT - EXHIBIT II

### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (as it may be amended from time to time, this "Declaration") is made as of \_\_\_\_\_ by \_\_\_\_\_ a Texas \_\_\_\_\_ (the "Landowner").

#### RECITALS:

- A. The Landowner holds record title to that portion of the real property located in Kaufman County, Texas, which is described in the attached **Exhibit I** (the "Landowner's Parcel").
- B. The City Council of the City of Kaufman (the "City Council") upon a petition requesting the establishment of a public improvement district covering the property within the District to be known as the Kaufman Public Improvement District No. 1 (the "District") by the then current owners of 100% of the appraised value of the taxable real property and 100% of the area of all taxable real property within the area requested to be included in the District created such District, in accordance with the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code, as amended (the "PID Act").
- C. The City Council has adopted an assessment ordinance to levy assessments for certain public infrastructure (including all exhibits and attachments thereto, the "Assessment Ordinance") and the Service and Assessment Plan included as an exhibit to the Assessment Ordinance (as amended from time to time, the "Service and Assessment Plan"), and has levied the assessments (as amended from time to time, the "Assessments") on property in the District.
- D. The statutory notification required by Texas Property Code, Section 5.014, as amended, to be provided by the seller of residential property that is located in a public improvement district established under Chapter 372 of the Texas Local Government Code, as amended, to the purchaser, is incorporated into these Covenants, Conditions and Restrictions.

#### DECLARATIONS:

NOW, THEREFORE, the Landowner hereby declares that the Landowner's Parcel is and shall be subject to, and hereby imposes on the Landowner's Parcel, the following covenants, conditions and restrictions:

#### 1. Acceptance and Approval of Assessments and Lien on Property:

- (a) Landowner accepts each Assessment levied on the Landowner's Parcel owned by such Landowner.

- (b) The Assessment (including any reassessment, the expense of collection, and reasonable attorney's fees, if incurred) is (a) a first and prior lien (the "Assessment Lien") against the property assessed, superior to all other liens or claims except for liens or claims for state, county, school district or municipality ad valorem property taxes whether now or hereafter payable, and (b) a personal liability of and charge against the owners of the property to the extent of their ownership regardless of whether the owners are named. The Assessment Lien is effective from the date of the Assessment Ordinance until the Assessments are paid and may be enforced by the City in the same manner as an ad valorem property tax levied against real property that may be enforced by the City. The owner of any assessed property may pay, at any time, the entire Assessment levied against any such property. Foreclosure of an ad valorem property tax lien on property within the District will not extinguish the Assessment or any unpaid but not yet due annual installments of the Assessment, and will not accelerate the due date for any unpaid and not yet due annual installments of the Assessment.

It is the clear intention of all parties to these Declarations of Covenants, Conditions and Restrictions, that the Assessments, including any annual installments of the Assessments (as such annual installments may be adjusted, decreased or extended), are covenants that run with the Landowner's Parcel and specifically binds the Landowner, its successors and assigns.

In the event of delinquency in the payment of any annual installment of the Assessment, the City is empowered to order institution of an action in district court to foreclose the related Assessment Lien, to enforce personal liability against the owner of the real property for the Assessment, or both. In such action the real property subject to the delinquent Assessment may be sold at judicial foreclosure sale for the amount of such delinquent property taxes and Assessment, plus penalties, interest and costs of collection.

**2. Landowner or any subsequent owner of the Landowner's Parcel waives:**

- (a) any and all defects, irregularities, illegalities or deficiencies in the proceedings establishing the District and levying and collecting the Assessments or the annual installments of the Assessments;
- (b) any and all notices and time periods provided by the PID Act including, but not limited to, notice of the establishment of the District and notice of public hearings regarding the levy of Assessments by the City Council concerning the Assessments;
- (c) any and all defects, irregularities, illegalities or deficiencies in, or in the adoption of, the Assessment Ordinance by the City Council;
- (d) any and all actions and defenses against the adoption or amendment of the Service and Assessment Plan, the City's finding of a 'special benefit' pursuant to the PID Act and the Service and Assessment Plan, and the levy of the Assessments; and

(e) any right to object to the legality of any of the Assessments or the Service and Assessment Plan or to any of the previous proceedings connected therewith which occurred prior to, or upon, the City Council's levy of the Assessments.

3. **Amendments:** This Declaration may be terminated or amended only by a document duly executed and acknowledged by the then-current owner(s) of the Landowner's Parcel and the City. No such termination or amendment shall be effective until a written instrument setting forth the terms thereof has been executed by the parties by whom approval is required as set forth above and recorded in the real Property Records of Kaufman County, Texas.
4. **Third Party Beneficiary:** The City is a third party beneficiary to this Declaration and may enforce the terms hereof.
5. **Notice to Subsequent Purchasers:** Upon the sale of a dwelling unit within the District, the purchaser of such property shall be provided a written notice that reads substantially similar to the following:

**TEXAS PROPERTY CODE SECTION 5.014**

**NOTICE OF OBLIGATION TO PAY PUBLIC IMPROVEMENT DISTRICT ASSESSMENT TO THE CITY OF KAUFMAN, KAUFMAN COUNTY, TEXAS CONCERNING THE PROPERTY AT [Street Address]**

As the purchaser of this parcel of real property, you are obligated to pay an assessment to the City of Kaufman, Texas, for improvement projects undertaken by a public improvement district under Chapter 372 of the Texas Local Government Code, as amended. The assessment may be due in periodic installments.

The amount of the assessment against your property may be paid in full at any time together with interest to the date of payment. If you do not pay the assessment in full, it will be due and payable in annual installments (including interest and collection costs). More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the City of Kaufman, 209 S. Washington Street, Kaufman, TX 75142.

Your failure to pay the assessment or the annual installments could result in a lien and in the foreclosure of your property.

Signature of Purchaser(s) \_\_\_\_\_ Date: \_\_\_\_\_

The seller shall deliver this notice to the purchaser before the effective date of an executory contract binding the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser. If the notice is included as part of the executory contract or another notice, the title of the notice prescribed by this section, the references to the street address and date in the notice, and the purchaser's signature on the notice may be omitted.

EXECUTED by the undersigned on the date set forth below to be effective as of the date first above written.

**LANDOWNER**

\_\_\_\_\_  
a Texas \_\_\_\_\_,

By: \_\_\_\_\_  
\_\_\_\_\_,  
its manager

**STATE OF TEXAS**        )

)

**COUNTY OF** \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ in his capacity as Manager of \_\_\_\_\_, known to be the person whose name is subscribed to the foregoing instrument, and that he executed the same on behalf of and as the act of Manager of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:

\_\_\_\_\_

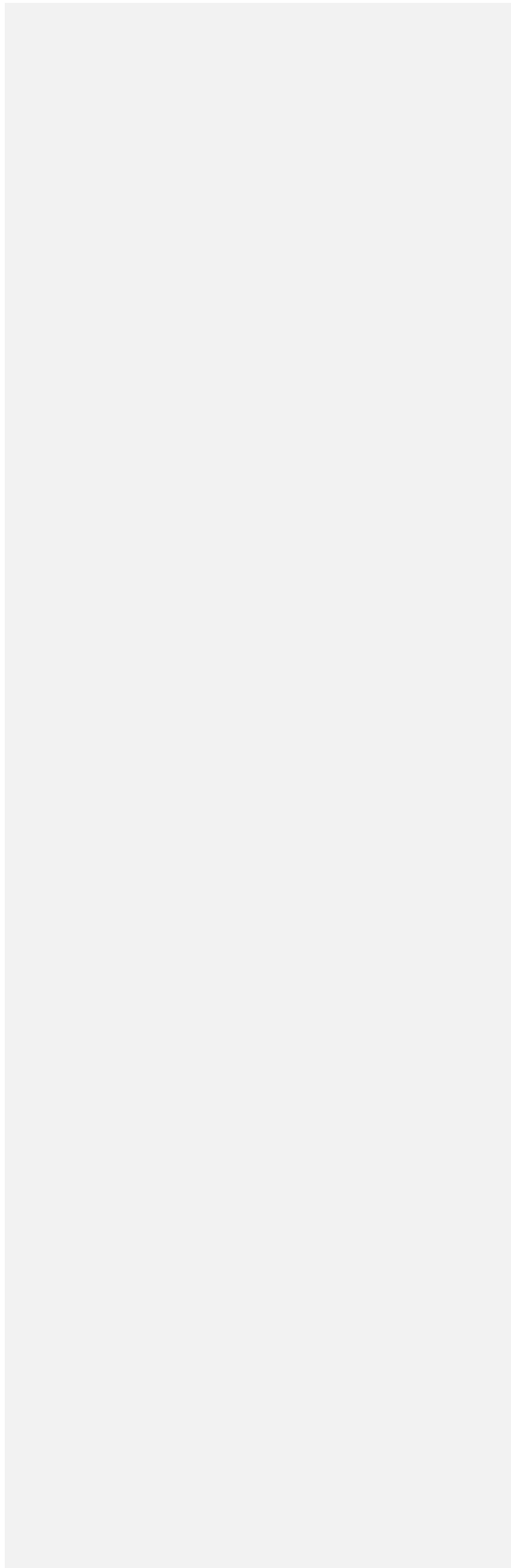
## LANDOWNER AGREEMENT - EXHIBIT III

### HOMEBUYER EDUCATION PROGRAM

As used in this **Exhibit III**, the recorded Notice of the Authorization and Establishment of the Kaufman Public Improvement District No. 1 and the Covenants, Conditions and Restrictions in **Exhibit II** of this Agreement are referred to as the "Recorded Notices."

1. Any Landowner who is a Builder shall attach the Recorded Notices and the final Assessment Roll for such Assessed Parcel (or if the Assessment Roll is not available for such Assessed Parcel, then a schedule showing the maximum 30 year payment for such Assessed Parcel) as an addendum to any residential homebuyer's contract.
2. Any Landowner who is a Builder shall provide evidence of compliance with 1 above, signed by such residential homebuyer, to the City.
3. Any Landowner who is a Builder shall comply with the requirements of the Homebuyer Disclosure Program established by that certain Agreement of record entered into by and between **Georgetown KF, Ltd.**, a Texas limited partnership and the **City of Kaufman** and shall cooperate with the Administrator in administration thereof.
4. Any Landowner who is a Builder shall prominently display signage in its model homes, if any, substantially in the form of the Recorded Notices.
5. If prepared and provided by the City, any Landowner who is a Builder shall distribute informational brochures about the existence and effect of the District in prospective homebuyer sales packets.
6. Any Landowner who is a Builder shall include Assessments in estimated property taxes, if such Builder estimates monthly ownership costs for prospective homebuyers.

**EXHIBIT H**  
**Main Road Improvements**



**EXHIBIT I**  
**Facilities Agreement**

**GEORGETOWN-PHASE 1A**  
**FACILITIES AGREEMENT**

An AGREEMENT between the City of Kaufman, Texas (hereinafter referred to as the "CITY") and GEORGETOWN KF, Ltd. acting by and through its duly authorized representative (hereinafter referred to as the "DEVELOPER"), for the installation of public improvements and facilities within the City limits of Kaufman, Texas, for Georgetown-Phase 1A, more particularly described as a tract of land consisting of approximately 13.47 acres of land, hereinafter being referred to collectively as the "PROJECT," and such public improvements being more particularly described in Section II of this AGREEMENT. It is understood by and between the parties that this AGREEMENT is applicable to the lot(s) contained within the Final Plat as presented to and approved by Planning & Zoning Commission on \_\_\_\_\_, 201\_ and the City Council on \_\_\_\_\_, 201\_ and to the offsite improvements necessary to support the PROJECT, more particularly described in Section II of this AGREEMENT. It is further agreed that this AGREEMENT, when properly signed and executed, shall satisfy the requirements of the City's Subdivision Regulations.

**I. GENERAL REQUIREMENTS**

- A. It is agreed and understood by the parties hereto that the DEVELOPER has employed a registered public surveyor licensed to practice in the State of Texas to prepare a final plat of the PROJECT.

The Project is planned to be platted for Right of Way Dedication together with infrastructure improvements which allowed incidental and accessory uses.

- B. It is agreed and understood by the parties hereto that the DEVELOPER has employed a civil engineer licensed to practice in the State of Texas for the design and preparation of the plans and specifications for the construction of all public improvements and facilities described in Section II and covered by this AGREEMENT. Unless otherwise specified herein, such plans and specifications shall be in accordance with the City's "Design Standards for Paving, Drainage and Utility Improvements" and the North Central Texas Council of Governments' (NCTCOG) Standard Specifications for Public Works Construction, as presently adopted.
- C. The DEVELOPER shall award its own construction contract for the construction of all streets, water, sanitary sewer, and drainage public improvements and facilities for the completion of the Project. The DEVELOPER agrees to employ a construction contractor(s), said contractor(s)

to meet CITY and statutory requirements for being insured, licensed and bonded to perform work in public rights-of-way and to be qualified in all respects to bid on public streets and public projects of a similar nature. The DEVELOPER agrees to submit contract documents to the CITY and participate in a pre-construction meeting with the CITY and all Developer contractors.

- D. Prior to the execution of this Agreement, the commencement of construction, the filing of the Final Plat, or the issuance of any building permits, the DEVELOPER shall present to the CITY a performance bond(s), payment bond(s) and maintenance bond(s), meeting the requirements of Chapter 2253 of the Texas Government Code. Each bond shall individually guarantee and agree to pay an amount equal to one hundred percent (100%) of the value of the construction costs (as determined by the City Engineer) for all public improvements and facilities to be constructed by or on behalf of the DEVELOPER for the Project. Any surety company through which a bond is written shall be a surety company duly authorized to do business in the State of Texas, provided that the CITY, through the City Attorney, shall retain the right to reject any surety company as a surety for any work under this or any other DEVELOPER'S AGREEMENT regardless of such Company's authorization to do business in Texas. Approvals by the CITY shall not be unreasonably withheld or delayed.
- 1) As an alternative to providing a surety bond for performance and a surety bond for maintenance as specified hereinabove, DEVELOPER may provide financial assurances for performance and maintenance in the form of a cash deposit, a certificate of deposit, or irrevocable letter of credit. Provided however, that such alternative financial assurances shall only be allowed if each meets all requirements specified in Section 7.2 of the City of Kaufman Subdivision Regulations. All such alternative financial assurances must be on forms approved by the City Attorney.
  - 2) As an alternative to the DEVELOPER providing a performance bond, payment bond, and maintenance bond, as specified above, DEVELOPER may provide financial assurances for performance, payment and maintenance from a single general contractor for the Project, provided that such assurances meet all other requirements specified hereinabove and the City is named as a dual obligee on each such bond. Additionally, such alternative financial assurances shall only be allowed if each meets all requirements specified in Section 7.2 of the City of Kaufman Subdivision Regulations. All such alternative financial assurances must be on forms approved by the City Attorney.
- E. The performance bond(s) shall be submitted in statutory form guaranteeing the full and faithful completion of the facilities and improvements required under this Agreement for completion of the PROJECT to the CITY and provide

for payment to the CITY of such amounts up to the total remaining amounts required for the completion of the PROJECT if the work is not completed as required hereunder.

- F. The payment bond(s) shall be submitted in statutory form guaranteeing payment of all labor and material costs of the Project and shall be furnished solely for the protection of all claimants supplying labor and material in the performance of the work provided for under this AGREEMENT. The maintenance bond(s) shall guarantee the payment of any and all necessary maintenance of the Project for a period of two (2) years following acceptance of the public improvements and facilities by the CITY, in an amount equal to one hundred (100%) percent of the value of the construction costs of all the public improvements and facilities to be constructed under this Agreement in respect to the Project.
- G. Any guarantee of performance, maintenance, or payment instrument (e.g., performance bond, payment bond, maintenance bond, letters of credit, and/or cash deposit or the like) (individually a "Guarantee" or collectively the "Guarantees") submitted by or through the DEVELOPER on a form other than the one which has been previously approved by the CITY as "acceptable" shall be submitted to the City Attorney at the DEVELOPER'S expense, and construction of the Project shall not commence until the City Attorney has approved such Guarantees. Approval by the CITY (and the City Attorney) shall not be unreasonably withheld or delayed. All such Guarantees shall be maintained in full force and effect until such time as the DEVELOPER has fully complied with the terms and conditions of this AGREEMENT as agreed to in writing by the CITY, and failure to keep same in force and effect shall constitute a breach of this AGREEMENT. Failure to maintain performance and payment Guarantees meeting the requirements of this AGREEMENT shall result in a stop work order being issued by the CITY. Additionally, all Guarantees furnished hereunder which expire prior to the completion of construction or applicable warranty periods shall be renewed in amounts designated by the CITY and shall be delivered to the CITY and approved by the CITY on or before the tenth (10th) banking day before the date of expiration of any then existing Guarantee. If the DEVELOPER fails to deliver any Guarantee to the CITY within the time prescribed herein, such failure shall constitute a breach of this AGREEMENT and shall be a basis for the CITY to draw on all or any portion of any existing Guarantee in addition to any or all other remedies available to the CITY. The DEVELOPER further agrees to release and forever hold the CITY harmless from any losses, damages and/or expenses incurred by the DEVELOPER for any delays due to the City's review of any Guarantee which is in a form other than one which has been previously approved by the CITY. The CITY requires the DEVELOPER to have all Guarantee forms approved prior to the commencement of work and construction of improvements.

- H. It is further agreed and understood by the parties hereto that upon acceptance thereof by the CITY of all public improvements and facilities as described in Section II of this Agreement, title to all such improvements and facilities shall be vested in the CITY, and the DEVELOPER hereby relinquishes any right, title, or interest in and to such improvements and facilities or any part thereof. It is further understood and agreed that until the CITY accepts such improvements and facilities, the CITY shall have no liability or responsibility with respect thereto. Acceptance of the improvements and facilities shall occur at such time as the CITY, through its City Engineer provides the DEVELOPER with a written acknowledgment that all improvements and facilities are complete, have been inspected and approved and are being accepted by the CITY.
- I. The DEVELOPER'S Engineer has prepared detailed estimates of \$2,907,577.00 for the cost of public and private improvements and facilities for this Project. The detailed cost estimates are a part of this AGREEMENT and are attached hereto as "Attachment A" and incorporated herein. The CITY shall not accept any construction improvements outside of the Project and the two (2) year warranty for such improvements shall not commence until all construction activities are completed and accepted by the CITY. The Payment, Performance and Maintenance Bonds provided by the DEVELOPER shall cover only the public improvements and facilities for this Project at a cost of One Million Nine Hundred Ninety Six Thousand, Fifty One Dollars and Zero Cents (\$1,996,051.00). The detailed cost estimates for the public improvements only are a part of this AGREEMENT and are attached hereto as "Attachment B" and incorporated herein.
- J. Upon CITY'S approval and acceptance of the final plat and the engineering plans, the final plat shall be recorded with the County Clerk of Kaufman County. Except as specifically provided herein, no building permits shall be issued for any lots in the Project until the final plat is filed and the public improvements and facilities specified herein are completed and accepted by the CITY. Upon substantial completion of the public and private improvements, the CITY in its discretion, may grant an early release on the residential development for the first twelve (12) lots.
- K. The DEVELOPER, DEVELOPER'S contractors (prime, general and major subcontractors) and CITY, as well as any other third party deemed necessary by the CITY, shall participate in a pre-construction conference prior to the initiation of any work. At or prior to the pre-construction meeting, DEVELOPER shall provide the CITY with the following documents: 1) One (1) copy of all executed construction contracts; 2) List of all contractors/subcontractors and their project assignments; 3) Five (5) sets (and additional sets as necessary for any contractors) of approved construction plans and specifications. The list of contractors/subcontractors shall be updated within seven days of any changes. The DEVELOPER agrees to give the CITY at least twenty-four (24)

hours prior written notice of his/her intent to commence construction of all public improvements and facilities, so that the CITY, if it so desires, may have its representatives available to inspect the beginning and continuing progress of all work. DEVELOPER shall submit all documentation evidencing that each of the Guarantees required under this Agreement have been provided and all required insurance has been obtained prior to the pre-construction meeting.

- L. The DEVELOPER agrees to notify all contractors and subcontractors working on the PROJECT that all their work is subject to inspection by a CITY Inspector at any time, and that such inspection may require a certification by the contractors and subcontractors of the type, kind, and quality of materials used on the PROJECT.
- M. Should any work or construction of improvements or facilities on the PROJECT which has not been contemplated in the current construction documents (plans and specifications), the plat, or this AGREEMENT, become necessary due to site conditions, then the DEVELOPER shall be required to contact in writing (with a copy to the City of Kaufman), with the City Engineer to determine how such work or construction should progress. The DEVELOPER further agrees to follow all reasonable recommendations and requirements imposed by the City Engineer in such instance. (Addresses for points of contact are as follows:)

|                             |                                 |
|-----------------------------|---------------------------------|
| City of Kaufman             |                                 |
| Mike Slye, City Manager     | Tom Rutledge, City Engineer     |
| 3003 S. Washington          | 1100 Macon Street               |
| Kaufman, Texas 76262        | Fort Worth, Texas 76102         |
| Phone: 972-932-2216         | Phone: 817-336-5773             |
| Fax: 972-932-0636           | Fax: 817-336-2813               |
| Email: mslsye@kaufmantx.org | Email: trutledge@tnp-online.com |

- N. The DEVELOPER agrees to cause all work and construction of improvements and facilities to be stopped upon twenty-four (24) hour notification from the City Engineer of nonconforming improvements, including the materials used and the methods of installation. The DEVELOPER further agrees to correct all nonconformities in accordance with the City Engineer's instructions.
- O. The DEVELOPER is encouraged not to convey title of any lots adjacent to the PROJECT area, until all construction in respect to the PROJECT required in Section II is complete and the CITY has approved and accepted the work and improvements in respect thereof. The DEVELOPER understands that, except as specifically provided herein, the CITY shall issue no building permits for improvements on any lot adjacent to the Project until all public improvements and facilities in respect to the Project are completed in accordance with this

Agreement. Further, DEVELOPER agrees to inform all persons or entities purchasing the lots or any interest in the lots that, except as specifically provided herein, CITY shall not issue any building permits until all public improvements and facilities are completed in accordance with this Agreement.

- P. After completion and prior to acceptance of all work, the DEVELOPER shall furnish to the CITY an affidavit of all bills paid.

## **II. PUBLIC AND PRIVATE IMPROVEMENTS AND FACILITIES TO BE CONSTRUCTED**

- A. The following public improvements and facilities are to be constructed and completed in accordance with the approved plans and specifications as described in Attachment "C". Except as expressly provided otherwise, DEVELOPER shall be responsible for the construction and maintenance of all improvements and facilities for the Project until such improvements and facilities are approved and accepted by the City to be maintained by the City:

- 1) Water Distribution System.
- 2) Sanitary Sewer System.
- 3) Drainage and Storm Sewer System.
- 4) Street Paving – Streets shall be built to City standards.
- 5) Landscaping
- 6) Fences/Walls/Retaining Walls.
- 7) Signs – Shall match with the existing street sign along existing Kings Fort Parkway and Walton Drive.
- 8) Driveways and Walkways – The DEVELOPER shall be responsible for the construction of sidewalks, handicap ramps and pathways as required in the City Ordinance.
- 9) Lights – Street lights shall be as designated on street light layout plan approved by City and submitted to TVEC. Street lights shall match with the existing street lights on existing Kings Fort Parkway and Walton Drive.
- 10) Common Areas and Open Space Lots – All common areas and open space lots outside PROJECT AREA will be maintained by the DEVELOPERS.

- B. Other.

1. Bench marks to be located as shown on the approved plans.
2. Upon completion, three (3) sets of as-builts/record drawings, Electronic copies in both PDF and DWG format (in a CD or Removable Drive) shall

be submitted to the CITY before the acceptance of the public improvements and facilities.

3. Testing

The DEVELOPER shall provide all geotechnical and materials tests required by the City Engineer and City Inspector at the DEVELOPER'S cost. Such tests shall be conducted by an independent laboratory acceptable to the CITY. All test results must be submitted and approved by the City Engineer prior the acceptance of the Public Improvements and facilities.

4. Permits

The DEVELOPER shall pay a Community Facilities inspection fee in the amount of \$59,881.53.00 (3% of \$1,996,051.00) to cover the cost of City inspection fees as related to the construction of the Project. As applicable, DEVELOPER shall be obligated to pay other CITY fees as set forth in the City's Schedule of Fees, as may be amended from time to time. The DEVELOPER shall be responsible for obtaining any other permits which may be required by other federal, state or local authorities.

### III. GENERAL PROVISIONS

- A. The DEVELOPER agrees to furnish and maintain at all times prior to the City's final acceptance of the public improvements and community facilities for the Project, an owners protective liability insurance policy naming the CITY as insured for property damage and bodily injury in the following amounts: Coverage shall be on an "occurrence" basis and shall be issued with a combined bodily injury and property damage minimum limit of \$600,000 per occurrence and \$1,000,000 aggregate.
- B. Exclusive venue of any action brought hereunder shall be in Kaufman, Kaufman County, Texas.
- C. Approval by the City Engineer of any plans, designs or specifications submitted by the DEVELOPER pursuant to this AGREEMENT shall not constitute or be deemed to be a release of the responsibility and liability of the DEVELOPER, his engineer, employees, officers or agents with respect to the construction of any of the PROJECT'S improvements or facilities, or for the accuracy and competency of the PROJECT'S improvements and facilities design and specifications prepared by the DEVELOPER'S consulting engineer, his officers, agents, servants or employees, it being the intent of the parties that the approval by the City Engineer signifies the City's approval on only the

general design concept of the improvements and facilities to be constructed. The DEVELOPER shall release, indemnify, defend and hold harmless the CITY , its officers, agents, servants and employees, from any demands, actions, causes of action, obligations, loss, damage, liability or expense, including attorneys fees and expenses, on account of or with respect to damage to property and injuries, including death, to any and all persons which may arise out of or result from any defect, deficiency or negligence in the construction of the PROJECT'S public improvements and facilities or with respect to the DEVELOPER'S Engineer's designs and specifications incorporated into any improvements and facilities constructed in accordance therewith, and the DEVELOPER shall defend at his own expense any suits or other proceedings brought against the CITY , its officers, agents, servants or employees, or any of them, on account thereof, and pay all expenses and satisfy all judgments which may be incurred or rendered against them or any of them in connection herewith. All responsibility and liability for drainage to adjacent and downstream properties from development of this PROJECT shall accrue to the DEVELOPER.

- D. Liability for construction. The DEVELOPER, its successors, permittees, permitted assigns, vendors, grantees and/or trustees do hereby fully release and agree to indemnify, hold harmless and defend the CITY , its officers, agents, servants and employees from all losses, damage liabilities, claims, obligations, penalties, charges, costs or expenses of any nature whatsoever, for property damage, personal injury or death, resulting from or in any way connected with this contract or the construction of the improvements or facilities or the failure to safeguard construction work, or any other act or omission of the DEVELOPER or its contractors or subcontractors, their officers, agents, servants or employees related thereto.
- E. Final Acceptance of Infrastructure. The CITY will not issue a Letter of Acceptance until all public facilities and improvements are completely constructed (Final Completion) to the satisfaction of the City Engineer or his agent. However, upon Substantial Completion, a "punch list" of outstanding items shall be presented to the Developer's contractor(s) indicating those outstanding items and their deficiencies that need to be addressed for Final Completion of the Improvements.
- F. Neither this Agreement nor any part hereof or any interests, rights, or obligations herein, shall be assigned by the DEVELOPER without the express written consent of the City Council of the City of Kaufman.
- G. All work performed under this AGREEMENT shall be completed within 12 months from the date hereof. In the event the work is not completed within the twelve (12) month period, the CITY may, at its sole election, draw down or otherwise exercise its rights under or with respect to any Guarantee provided by the DEVELOPER and complete such work at DEVELOPER'S expense;

provided, however, that if the construction under this AGREEMENT shall have started within the twelve (12) month period, the CITY may agree to renew the AGREEMENT with such renewed AGREEMENT to be in writing and in compliance with the CITY policies in effect at that time. Notwithstanding the foregoing, in the event that the performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, or sovereign conduct, then upon written notice of such occurrence, such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

- H. This Subdivider's AGREEMENT shall be construed in accordance with the City of Kaufman, Texas Subdivision Regulations and all other applicable ordinances. Any conflicts between the provisions of this DEVELOPER'S AGREEMENT, the City's Subdivision Regulations, City Ordinances, and State and Federal law, shall be construed in favor of the City's ordinance(s) as allowed by law, subject to Chapter 245 of the Local Government Code. To the extent that any such conflict exists, only that portion of the Subdivider's AGREEMENT which is in conflict shall be severable from the other provisions of the AGREEMENT, and such conflict shall in no manner affect the validity or enforceability of the remaining provisions.
- I. All rights, remedies and privileges permitted or available to the CITY under this AGREEMENT or at law or equity shall be cumulative and not alternative, and election of any such right, remedy or privilege shall not constitute a waiver or exclusive election of rights, remedies or privileges with respect to any other permitted or available right, remedy or privilege. Additionally, one instance of forbearance by the CITY in the enforcement of any such right, remedy or privilege, shall not constitute a waiver of such right, remedy or privilege by the CITY. A default under this Agreement by the CITY shall not result in a forfeiture of any rights, remedies, or privileges under this Agreement by the CITY.

**SIGNED AND EFFECTIVE on the date last set forth below.**

**DEVELOPER:**  
**Georgetown KF, Ltd.,**  
**a Texas limited partnership**  
By: Seascope GP, LLC,  
a Texas limited liability company  
Its: General Partner

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF KAUFMAN, TEXAS**

Date: \_\_\_\_\_

\_\_\_\_\_  
Jeff Jordan, Mayor  
City of Kaufman, Texas

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Wendi Tanskley, Interim City  
Secretary  
City of Kaufman, Texas

\_\_\_\_\_  
Patricia Adams, City Attorney  
City of Kaufman, Texas



**Meeting**  
**Date: 11/21/2022**

**Date: 11/09/2022**

**Item #: 14.**

**Dept.: Administration**

**Action Item**

**SUBJECT:**

Consider and take appropriate action on the Facilities Agreement between the City of Kaufman, Texas and Georgetown KF, Ltd., for the installation of public improvements and facilities for the Georgetown Development-Phase 2A and Phase 2B; and authorizing the Mayor or his designee to execute necessary documents.

**BACKGROUND:**

This agreement outlines the Developer responsibilities to construct all required Public Improvements for Georgetown Phases 2A & 2B that the PID bonds will be used to purchase/reimburse the developer. It includes

Author:  
Mike Slye, City Manager

Reviewed:  
Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation: Staff recommends approval of the Georgetown Phase #2A and Phase #2B Facility Agreement between the City and Georgetown KF, Ltd.**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|--------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input checked="" type="checkbox"/>       | <input type="checkbox"/>                    | <input type="checkbox"/>       |

## **GEORGETOWN-PHASE 2A AND 2B FACILITIES AGREEMENT**

An AGREEMENT between the City of Kaufman, Texas (hereinafter referred to as the "CITY") and GEORGETOWN KF, Ltd. acting by and through its duly authorized representative (hereinafter referred to as the "DEVELOPER"), for the installation of public improvements and facilities within the City limits of Kaufman, Texas, for Georgetown-Phase 2A and Phase 2B, more particularly described as a tract of land consisting of approximately 47.537 acres of land, hereinafter being referred to collectively as the "PROJECT," and such public improvements being more particularly described in Section II of this AGREEMENT. It is understood by and between the parties that this AGREEMENT is applicable to the lot(s) contained within the Final Plat as presented to and approved by Planning & Zoning Commission on April 5, 2022 for Phase 2A and May 3, 2022 for Phase 2B, and the City Council on May 3, 2022 for Phase 2A and May 23, 2022 for Phase 2B, and to the offsite improvements necessary to support the PROJECT, more particularly described in Section II of this AGREEMENT. It is further agreed that this AGREEMENT, when properly signed and executed, shall satisfy the requirements of the City's Subdivision Regulations.

### **I. GENERAL REQUIREMENTS**

- A. It is agreed and understood by the parties hereto that the DEVELOPER has employed a registered public surveyor licensed to practice in the State of Texas to prepare a final plat of the PROJECT.

The Project is planned to be platted for Right of Way Dedication together with infrastructure improvements which allowed incidental and accessory uses.

- B. It is agreed and understood by the parties hereto that the DEVELOPER has employed a civil engineer licensed to practice in the State of Texas for the design and preparation of the plans and specifications for the construction of all public improvements and facilities described in Section II and covered by this AGREEMENT. Unless otherwise specified herein, such plans and specifications shall be in accordance with the City's "Design Standards for Paving, Drainage and Utility Improvements" and the North Central Texas Council of Governments' (NCTCOG) Standard Specifications for Public Works Construction, as presently adopted.
- C. The DEVELOPER shall award its own construction contract for the construction of all streets, water, sanitary sewer, and drainage public improvements and facilities for the completion of the Project. The DEVELOPER agrees to employ a construction contractor(s), said contractor(s) to meet CITY and statutory requirements for being insured, licensed, and

bonded to perform work in public rights-of-way and to be qualified in all respects to bid on public streets and public projects of a similar nature. The DEVELOPER agrees to submit contract documents to the CITY and participate in a pre-construction meeting with the CITY and all Developer contractors.

- D. Prior to the execution of this Agreement, the commencement of construction, the filing of the Final Plat, or the issuance of any building permits, the DEVELOPER shall present to the CITY a performance bond(s), payment bond(s) and maintenance bond(s), meeting the requirements of Chapter 2253 of the Texas Government Code, and on a form acceptable to the City Attorney. Each bond shall individually guarantee and agree to pay an amount equal to one hundred percent (100%) of the value of the construction costs (as determined by the City Engineer) for all public improvements and facilities to be constructed by or on behalf of the DEVELOPER for the Project. Any surety company through which a bond is written shall be a surety company duly authorized to do business in the State of Texas, provided that the CITY, through the City Attorney, shall retain the right to reject any surety company as a surety for any work under this or any other DEVELOPER'S AGREEMENT regardless of such Company's authorization to do business in Texas. Approvals by the CITY shall not be unreasonably withheld or delayed.
- 1) As an alternative to providing a surety bond for performance and a surety bond for maintenance as specified hereinabove, DEVELOPER may provide financial assurances for performance and maintenance in the form of a cash deposit, a certificate of deposit, or irrevocable letter of credit. Provided however, that such alternative financial assurances shall only be allowed if each meets all requirements specified in Section 6.2 of the City of Kaufman Subdivision Regulations. All such alternative financial assurances must be on forms approved by the City Attorney.
  - 2) As an alternative to the DEVELOPER providing a performance bond, payment bond, and maintenance bond, as specified above, DEVELOPER may provide financial assurances for performance, payment, and maintenance from a single general contractor for the Project, provided that such assurances meet all other requirements specified hereinabove and the City is named as a dual obligee on each such bond. Additionally, such alternative financial assurances shall only be allowed if each meets all requirements specified in Section 6.2 of the City of Kaufman Subdivision Regulations. All such alternative financial assurances must be on forms approved by the City Attorney.
- E. The performance bond(s) shall be submitted on a form acceptable to the City Attorney guaranteeing the full and faithful completion of the facilities and improvements required under this Agreement for completion of the PROJECT

to the CITY and provide for payment to the CITY of such amounts up to the total remaining amounts required for the completion of the PROJECT if the work is not completed as required hereunder.

- F. The payment bond(s) shall be submitted on a form acceptable to the City Attorney guaranteeing payment of all labor and material costs of the Project and shall be furnished solely for the protection of all claimants supplying labor and material in the performance of the work provided for under this AGREEMENT. The maintenance bond(s) shall be submitted on a form acceptable to the City Attorney and guarantee the payment of any and all necessary maintenance of the Project for a period of two (2) years following acceptance of the public improvements and facilities by the CITY, in an amount equal to one hundred (100%) percent of the value of the construction costs of all the public improvements and facilities to be constructed under this Agreement in respect to the Project.
- G. Any guarantee of performance, maintenance, or payment instrument (e.g., performance bond, payment bond, maintenance bond, letters of credit, and/or cash deposit or the like) (individually a "Guarantee" or collectively the "Guarantees") submitted by or through the DEVELOPER on a form other than the one which has been previously approved by the CITY as "acceptable" shall be submitted to the City Attorney at the DEVELOPER'S expense, and construction of the Project shall not commence until the City Attorney has approved such Guarantees. Approval by the CITY (and the City Attorney) shall not be unreasonably withheld or delayed. All such Guarantees shall be maintained in full force and effect until such time as the DEVELOPER has fully complied with the terms and conditions of this AGREEMENT as agreed to in writing by the CITY, and failure to keep same in force and effect shall constitute a breach of this AGREEMENT. Failure to maintain performance and payment Guarantees meeting the requirements of this AGREEMENT shall result in a stop work order being issued by the CITY. Additionally, all Guarantees furnished hereunder which expire prior to the completion of construction or applicable warranty periods shall be renewed in amounts designated by the CITY and shall be delivered to the CITY and approved by the CITY on or before the tenth (10th) banking day before the date of expiration of any then existing Guarantee. If the DEVELOPER fails to deliver any Guarantee to the CITY within the time prescribed herein, such failure shall constitute a breach of this AGREEMENT and shall be a basis for the CITY to draw on all or any portion of any existing Guarantee in addition to any or all other remedies available to the CITY. The DEVELOPER further agrees to release and forever hold the CITY harmless from any losses, damages and/or expenses incurred by the DEVELOPER for any delays due to the City's review of any Guarantee which is in a form other than one which has been previously approved by the CITY. The CITY requires the DEVELOPER to have all Guarantee forms approved prior to the commencement of work and construction of

improvements.

- H. It is further agreed and understood by the parties hereto that upon acceptance thereof by the CITY of all public improvements and facilities as described in Section II of this Agreement, title to all such improvements and facilities shall be vested in the CITY, and the DEVELOPER hereby relinquishes any right, title, or interest in and to such improvements and facilities or any part thereof. It is further understood and agreed that until the CITY accepts such improvements and facilities, the CITY shall have no liability or responsibility with respect thereto. Acceptance of the improvements and facilities shall occur at such time as the CITY, through its Director of Development Services provides the DEVELOPER with a written acknowledgment that all improvements and facilities are complete, have been inspected and approved and are being accepted by the CITY.
- I. The DEVELOPER'S Engineer has prepared detailed estimates of **FIVE MILLION FIVE HUNDRED FIFTY-THREE THOUSAND EIGHT HUNDRED NINETY AND NO/100 DOLLARS (\$5,553,890.00)** for the cost of public and private improvements and facilities for this Project. The detailed cost estimates are a part of this AGREEMENT and are attached hereto as "Attachment A" and incorporated herein. The CITY shall not accept any construction improvements outside of the Project and the two (2) year warranty for such improvements shall not commence until all construction activities are completed and accepted by the CITY. The Payment, Performance and Maintenance Bonds provided by the DEVELOPER shall cover only the public improvements and facilities for this Project at a cost of **THREE MILLION ONE HUNDRED FOURTEEN THOUSAND THREE HUNDRED FORTY-SEVEN AND NO/100 DOLLARS (\$3,114,347.00)**. The detailed cost estimates for the public improvements only are a part of this AGREEMENT and are attached hereto as "Attachment A" and incorporated herein.
- J. Upon CITY'S approval and acceptance of the final plat and the engineering plans, the final plat shall be recorded with the County Clerk of Kaufman County. Except as specifically provided herein, no building permits shall be issued for any lots in the Project until the final plat is filed, and the public improvements and facilities specified herein are completed and accepted by the CITY.
- K. The DEVELOPER, DEVELOPER'S contractors (prime, general, and major subcontractors) and CITY, as well as any other third party deemed necessary by the CITY, shall participate in a pre-construction conference prior to the initiation of any work. At or prior to the pre-construction meeting, DEVELOPER shall provide the CITY with the following documents: 1) One (1) copy of all executed construction contracts; 2) List of all contractors/subcontractors and their project assignments; 3) Five (5) sets (and additional sets as necessary

for any contractors) of approved construction plans and specifications. The list of contractors/subcontractors shall be updated within seven days of any changes. The DEVELOPER agrees to give the CITY at least twenty-four (24) hours prior written notice of his/her intent to commence construction of all public improvements and facilities, so that the CITY, if it so desires, may have its representatives available to inspect the beginning and continuing progress of all work. DEVELOPER shall submit all documentation evidencing that each of the Guarantees required under this Agreement have been provided and all required insurance has been obtained prior to the pre-construction meeting.

- L. The DEVELOPER agrees to notify all contractors and subcontractors working on the PROJECT that all their work is subject to inspection by a CITY Inspector at any time, and that such inspection may require a certification by the contractors and subcontractors of the type, kind, and quality of materials used on the PROJECT.
- M. Should any work or construction of improvements or facilities on the PROJECT which has not been contemplated in the current construction documents (plans and specifications), the plat, or this AGREEMENT, become necessary due to site conditions, then the DEVELOPER shall be required to contact in writing (with a copy to the City of Kaufman), with the City Engineer to determine how such work or construction should progress. The DEVELOPER further agrees to follow all reasonable recommendations and requirements imposed by the City Engineer in such instance. (Addresses for points of contact are as follows:)

|                                                                     |                                                                         |
|---------------------------------------------------------------------|-------------------------------------------------------------------------|
| City of Kaufman                                                     | Teague Nall & Perkins (TNP)–City Engineer                               |
| Mike Slye, City Manager                                             | Philip C. Varughese, P.E.                                               |
| 3003 S. Washington                                                  | 5237 N. Riverside Drive, Suite 100                                      |
| Kaufman, Texas 76262                                                | Fort Worth, Texas 76137                                                 |
| Phone: 972-932-2216                                                 | Phone: 817-336-5773                                                     |
| Fax: 972-932-0636                                                   | Fax: 817-336-2813                                                       |
| Email: <a href="mailto:mslye@kaufmantx.org">mslye@kaufmantx.org</a> | Email: <a href="mailto:pvarughese@tnpinc.com">pvarughese@tnpinc.com</a> |

- N. The DEVELOPER agrees to cause all work and construction of improvements and facilities to be stopped upon twenty-four (24) hour notification from the City Engineer of nonconforming improvements, including the materials used and the methods of installation. The DEVELOPER further agrees to correct all nonconformities in accordance with the City Engineer's instructions.
- O. The DEVELOPER is encouraged not to convey title of any lots adjacent to the

PROJECT area, until all construction in respect to the PROJECT required in Section II is complete and the CITY has approved and accepted the work and improvements in respect thereof. The DEVELOPER understands that, except as specifically provided herein, the CITY shall issue no building permits for improvements on any lot adjacent to the Project until all public improvements and facilities in respect to the Project are completed in accordance with this Agreement. Further, DEVELOPER agrees to inform all persons or entities purchasing the lots or any interest in the lots that, except as specifically provided herein, CITY shall not issue any building permits until all public improvements and facilities are completed in accordance with this Agreement.

- P. After completion and prior to acceptance of all work, the DEVELOPER shall furnish to the CITY an affidavit of all bills paid.

## **II. PUBLIC AND PRIVATE IMPROVEMENTS AND FACILITIES TO BE CONSTRUCTED**

- A. The following public improvements and facilities are to be constructed and completed in accordance with the approved plans and specifications as described in Attachment "A." Except as expressly provided otherwise, DEVELOPER shall be responsible for the construction and maintenance of all improvements and facilities for the Project until such improvements and facilities are approved and accepted by the City to be maintained by the City:

- 1) Water Distribution System.
- 2) Sanitary Sewer System.
- 3) Drainage and Storm Sewer System.
- 4) Street Paving – Streets shall be built to City standards.
- 5) Landscaping.
- 6) Fences/Walls/Retaining Walls.
- 7) Signs – Shall match with the existing street sign along existing Kings Fort Parkway and Walton Drive.
- 8) Driveways and Walkways – The DEVELOPER shall be responsible for the construction of sidewalks, handicap ramps and pathways as required in the City Ordinance.
- 9) Lights – Street lights shall be as designated on street light layout plan approved by City and submitted to TVEC. Street lights shall match with the existing street lights on existing Kings Fort Parkway and Walton Drive.
- 10) Common Areas and Open Space Lots – All common areas and open space lots outside PROJECT AREA will be maintained by the

DEVELOPERS, and/or subsequent property or homeowner's association, as applicable.

B. Other.

1. Bench marks to be located as shown on the approved plans.
2. Upon completion, three (3) sets of as-builts/record drawings, Electronic copies in both PDF and DWG format (in a CD or Removable Drive) shall be submitted to the CITY before the acceptance of the public improvements and facilities.
3. Testing

The DEVELOPER shall provide all geotechnical and materials tests required by the City Engineer and City Inspector at the DEVELOPER'S cost. Such tests shall be conducted by an independent laboratory acceptable to the CITY. All test results must be submitted and approved by the City Engineer prior the acceptance of the Public Improvements and facilities.

4. Permits

The DEVELOPER shall pay a Community Facilities inspection fee in the amount of **NINETY-THREE THOUSAND FOUR HUNDRED THIRTY AND NO/100 DOLLARS (\$93,430.00)** (3% of \$3,114,347.00) to cover the cost of City inspection fees as related to the construction of the Project. As applicable, DEVELOPER shall be obligated to pay other CITY fees as set forth in the City's Schedule of Fees, as may be amended from time to time. The DEVELOPER shall be responsible for obtaining any other permits which may be required by other federal, state, or local authorities.

### III. GENERAL PROVISIONS

- A. The DEVELOPER agrees to furnish and maintain at all times prior to the City's final acceptance of the public improvements and community facilities for the Project, an owners protective liability insurance policy naming the CITY as insured for property damage and bodily injury in the following amounts: Coverage shall be on an "occurrence" basis and shall be issued with a combined bodily injury and property damage minimum limit of \$600,000 per occurrence and \$1,000,000 aggregate.
- B. Exclusive venue of any action brought hereunder shall be in Kaufman,

Kaufman County, Texas.

- C. Approval by the City Engineer of any plans, designs or specifications submitted by the DEVELOPER pursuant to this AGREEMENT shall not constitute or be deemed to be a release of the responsibility and liability of the DEVELOPER, his engineer, employees, officers or agents with respect to the construction of any of the PROJECT'S improvements or facilities, or for the accuracy and competency of the PROJECT'S improvements and facilities design and specifications prepared by the DEVELOPER'S consulting engineer, his officers, agents, servants or employees, it being the intent of the parties that the approval by the City Engineer signifies the City's approval on only the general design concept of the improvements and facilities to be constructed. The DEVELOPER shall release, indemnify, defend and hold harmless the CITY, its officers, agents, servants and employees, from any demands, actions, causes of action, obligations, loss, damage, liability or expense, including attorneys fees and expenses, on account of or with respect to damage to property and injuries, including death, to any and all persons which may arise out of or result from any defect, deficiency or negligence in the construction of the PROJECT'S public improvements and facilities or with respect to the DEVELOPER'S Engineer's designs and specifications incorporated into any improvements and facilities constructed in accordance therewith, and the DEVELOPER shall defend at his own expense any suits or other proceedings brought against the CITY , its officers, agents, servants or employees, or any of them, on account thereof, and pay all expenses and satisfy all judgments which may be incurred or rendered against them or any of them in connection herewith. All responsibility and liability for drainage to adjacent and downstream properties from development of this PROJECT shall accrue to the DEVELOPER.
- D. Liability for construction. The DEVELOPER, its successors, permittees, permitted assigns, vendors, grantees and/or trustees do hereby fully release and agree to indemnify, hold harmless and defend the CITY , its officers, agents, servants and employees from all losses, damage liabilities, claims, obligations, penalties, charges, costs or expenses of any nature whatsoever, for property damage, personal injury or death, resulting from or in any way connected with this contract or the construction of the improvements or facilities or the failure to safeguard construction work, or any other act or omission of the DEVELOPER or its contractors or subcontractors, their officers, agents, servants or employees related thereto.
- E. Final Acceptance of Infrastructure. The CITY will not issue a Letter of Acceptance until all public facilities and improvements are completely constructed (Final Completion) to the satisfaction of the City Engineer or his agent. However, upon Substantial Completion, a "punch list" of outstanding items shall be presented to the Developer's contractor(s) indicating those

outstanding items and their deficiencies that need to be addressed for Final Completion of the Improvements.

- F. Neither this Agreement nor any part hereof or any interests, rights, or obligations herein, shall be assigned by the DEVELOPER without the express written consent of the City Council of the City of Kaufman.
- G. All work performed under this AGREEMENT shall be completed within 18 months from the date hereof. In the event the work is not completed within the eighteen (18) month period, the CITY may, at its sole election, draw down or otherwise exercise its rights under or with respect to any Guarantee provided by the DEVELOPER and complete such work at DEVELOPER'S expense; provided, however, that if the construction under this AGREEMENT shall have started within the eighteen (18) month period, the CITY may agree to renew the AGREEMENT with such renewed AGREEMENT to be in writing and in compliance with the CITY policies in effect at that time. Notwithstanding the foregoing, in the event that the performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, or sovereign conduct, then upon written notice of such occurrence, such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.
- H. This Subdivider's AGREEMENT shall be construed in accordance with the City of Kaufman, Texas Subdivision Regulations, and all other applicable ordinances. Any conflicts between the provisions of this DEVELOPER'S AGREEMENT, the City's Subdivision Regulations, City Ordinances, and State and Federal law, shall be construed in favor of the City's ordinance(s) as allowed by law, subject to Chapter 245 of the Local Government Code. To the extent that any such conflict exists, only that portion of the Subdivider's AGREEMENT which is in conflict shall be severable from the other provisions of the AGREEMENT, and such conflict shall in no manner affect the validity or enforceability of the remaining provisions.
- I. All rights, remedies and privileges permitted or available to the CITY under this AGREEMENT or at law or equity shall be cumulative and not alternative, and election of any such right, remedy or privilege shall not constitute a waiver or exclusive election of rights, remedies, or privileges with respect to any other permitted or available right, remedy, or privilege. Additionally, one instance of forbearance by the CITY in the enforcement of any such right, remedy or privilege, shall not constitute a waiver of such right, remedy or privilege by the

DRAFT - JUNE, 2022

CITY. A default under this Agreement by the CITY shall not result in a forfeiture of any rights, remedies, or privileges under this Agreement by the CITY.

**SIGNED AND EFFECTIVE on the date last set forth below.**

**DEVELOPER:**  
**Georgetown KF, Ltd.,**  
**a Texas limited partnership**  
By: Seascope GP, LLC,  
a Texas limited liability company  
Its: General Partner

Date: \_\_\_\_\_

\_\_\_\_\_  
Kelly Cannell  
President, Seascope GP, LLC

**CITY OF KAUFMAN, TEXAS**

Date: \_\_\_\_\_

\_\_\_\_\_  
Jeff Jordan, Mayor  
City of Kaufman, Texas

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Jessie Hanks, City Secretary  
City of Kaufman, Texas

\_\_\_\_\_  
Patricia A. Adams, City Attorney  
City of Kaufman, Texas

# “Attachment A”

## Detailed Cost Estimates of Public and Private Improvements and Facilities

GEORGETOWN AT KINGS FORT - Phase 2A & 2B

PUBLIC IMPROVEMENT DISTRICT COST BREAKDOWN

05.17.2021 166 Lots

### SUMMARY

#### DIRECT PUBLIC COSTS

|    |                                                 | 2A - 94 Lots        | 2B - 72 Lots        | Total 166 Lots      |
|----|-------------------------------------------------|---------------------|---------------------|---------------------|
| 1  | Clearing / Excavation                           | \$ 226,948          | \$ 137,909          | \$ 364,856          |
| 2  | Water                                           | \$ 386,601          | \$ 292,121          | \$ 678,722          |
| 3  | Sanitary Sewer                                  | \$ 361,501          | \$ 249,576          | \$ 611,077          |
| 4  | Storm Sewer                                     | \$ 529,034          | \$ 212,701          | \$ 741,736          |
| 5  | Pavement                                        | \$ 610,965          | \$ 471,847          | \$ 1,082,812        |
| 6  | Retaining Walls                                 |                     |                     | \$ -                |
| 7  | Erosion Control                                 | \$ 31,112           | \$ 20,872           | \$ 51,984           |
| 8  | Amenities/Landscaping/Screening                 | \$ -                | \$ -                | \$ -                |
| 9  | Franchise Utilities                             |                     |                     | \$ -                |
| 10 | Miscellaneous                                   | \$ 3,787            | \$ -                | \$ 3,787            |
| 11 | Phase 1A Dirtwork for the Benefit of 2A         | \$ 3,400            | \$ -                | \$ 3,400            |
| 12 | Phase 1B Storm Sewer for the Benefit of 2A & 2B | \$ 10,000           | \$ 20,000           | \$ 30,000           |
| 13 | Phase 1B Paving for the Benefit of 2A & 2B      | \$ 19,375           | \$ 38,750           | \$ 58,125           |
| 14 | Phase 1B Water for the Benefit of 2A & 2B       | \$ 3,063            | \$ 6,125            | \$ 9,188            |
|    | <b>Hard Cost Subtotal</b>                       | <b>\$ 2,185,787</b> | <b>\$ 1,449,901</b> | <b>\$ 3,635,687</b> |
| 15 | Engineering/Surveying/Professional Services     | 10% \$ 237,877      | \$ 161,597          | \$ 399,474          |
| 16 | Construction Management                         | 1% \$ 21,858        | \$ 14,499           | \$ 36,357           |
| 17 | District Formation Costs                        | \$ -                | \$ -                | \$ -                |
| 18 | Contingency                                     | 5% \$ 122,276       | \$ 81,300           | \$ 203,576          |
| 19 | <b>Soft Cost Subtotal</b>                       | <b>\$ 382,010</b>   | <b>\$ 257,396</b>   | <b>\$ 639,406</b>   |
|    | <b>TOTAL DIRECT COSTS</b>                       | <b>\$ 2,567,797</b> | <b>\$ 1,707,297</b> | <b>\$ 4,275,094</b> |

#### MAJOR IMPROVEMENTS (CTAL BENEFIT)

|     |                                                 | 2A - 94 Lots | 2B - 72 Lots | Total       |
|-----|-------------------------------------------------|--------------|--------------|-------------|
| 1   | Clearing / Excavation                           |              |              | \$ -        |
| 2   | Water                                           |              |              | \$ -        |
| 3   | Sanitary Sewer                                  |              |              | \$ -        |
| 4   | Storm Sewer                                     |              |              | \$ -        |
| 5   | Pavement                                        |              |              | \$ -        |
| 6   | Retaining Walls                                 |              |              | \$ -        |
| 7   | Erosion Control                                 |              |              | \$ -        |
| 8   | Amenities/Landscaping/Screening                 |              |              | \$ -        |
| 9   | Franchise Utilities                             |              |              | \$ -        |
| 10  | Miscellaneous                                   |              |              | \$ -        |
| 10A | Phase 1A Water for the Benefit of 1B, 2A AND 2B |              |              | \$ -        |
|     | <b>Hard Cost Subtotal</b>                       |              |              | <b>\$ -</b> |
| 11  | Engineering/Surveying                           | 10%          |              | \$ -        |
| 12  | Construction Management                         | 1%           |              | \$ -        |
| 13  | Contingency                                     |              |              | \$ -        |
| 14  | <b>Soft Cost Subtotal</b>                       | <b>\$ -</b>  | <b>\$ -</b>  | <b>\$ -</b> |
|     | <b>TOTAL MAJOR IMPROVEMENT COSTS</b>            | <b>\$ -</b>  | <b>\$ -</b>  | <b>\$ -</b> |

#### PRIVATE COSTS

|    |                                             | 2A - 94 Lots        | 2B - 72 Lots        | Total               |
|----|---------------------------------------------|---------------------|---------------------|---------------------|
| 1  | Clearing / Excavation                       | \$ 518,180          | \$ 410,806          | \$ 928,985          |
| 2  | Water                                       |                     |                     | \$ -                |
| 3  | Sanitary Sewer                              |                     |                     | \$ -                |
| 4  | Storm Sewer                                 |                     |                     | \$ -                |
| 5  | Pavement                                    |                     |                     | \$ -                |
| 6  | Retaining Walls                             |                     |                     | \$ -                |
| 7  | Erosion Control                             |                     |                     | \$ -                |
| 8  | Amenities/Landscaping/Screening             | \$ 20,000           | \$ 16,000           | \$ 36,000           |
| 9  | Franchise Utilities                         | \$ -                | \$ 60,000           | \$ 60,000           |
| 10 | Miscellaneous                               |                     |                     | \$ -                |
|    | <b>Hard Cost Subtotal</b>                   | <b>\$ 538,180</b>   | <b>\$ 486,806</b>   | <b>\$ 1,024,985</b> |
| 11 | Engineering/Surveying/Professional Services | 10% \$ 106,041      | \$ 86,270           | \$ 192,311          |
| 12 | Construction Management                     | 1% \$ 5,382         | \$ 4,868            | \$ 10,250           |
| 13 | Contingency                                 | 5% \$ 26,909        | \$ 24,340           | \$ 51,249           |
| 14 | <b>Soft Cost Subtotal</b>                   | <b>\$ 138,332</b>   | <b>\$ 115,478</b>   | <b>\$ 253,811</b>   |
|    | <b>TOTAL PRIVATE COSTS</b>                  | <b>\$ 676,512</b>   | <b>\$ 602,284</b>   | <b>\$ 1,278,796</b> |
|    | <b>GRAND TOTAL COSTS</b>                    | <b>\$ 3,244,309</b> | <b>\$ 2,309,581</b> | <b>\$ 5,553,890</b> |



**Meeting**  
**Date: 11/21/2022**

**Date: 11/18/2022**

**Item #: 15.**

**Dept.: Administration**

**Action Item**

**SUBJECT:**

Consider and take appropriate action on the Kaufman Public Improvement District No. 1, Phases 2A-2B Construction, Funding, and Acquisition Agreement; and authorizing the Mayor or his designee to execute necessary documents.

**BACKGROUND:**

Construction, Funding and Acquisition (CFA) Agreement is a necessary document outlining the the authorized uses of PID bond proceeds.

**Author:**  
Mike Slye, City Manager

**Reviewed:**  
Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation: Staff recommends approval of the Kaufman Public Improvement District No. 1, Phases 2A-2B Construction, Funding, and Acquisition Agreement**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship      |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input checked="" type="checkbox"/>       | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |

**KAUFMAN PUBLIC IMPROVEMENT DISTRICT NO. 1 PHASES #2A-2B  
CONSTRUCTION, FUNDING, AND ACQUISITION AGREEMENT**

**THIS KAUFMAN PUBLIC IMPROVEMENT DISTRICT NO. 1 PHASES #2A-2B CONSTRUCTION, FUNDING, AND ACQUISITION AGREEMENT** (this “Agreement”), dated as of \_\_\_\_\_, 2022, is by and among the **CITY OF KAUFMAN, TEXAS**, a home-rule municipality of the State of Texas (the “City”), and **GEORGETOWN KF, LTD**, a Texas limited partnership (the “Developer”).

**ARTICLE I  
DEFINITIONS**

The following terms shall have the meanings ascribed to them in this Article I for purposes of this Agreement. Unless otherwise indicated, any other terms, capitalized or not, when used herein shall have the meanings ascribed to them in the Service and Assessment Plan (as hereinafter defined).

“**Act**” means the Public Improvement District Assessment Act, Texas Local Government Code, Chapter 372, as amended.

“**Actual Costs**” means the costs of the Phases #2A-2B Improvements actually paid or incurred for the design, construction and installation of the Phases #2A-2B Improvements.

“**Administrator**” means, initially, MuniCap, Inc, or any other individual or entity designated by the City to administer the District.

“**Annual Service Plan Update**” means the annual update to the Service and Assessment Plan conducted by the Administrator pursuant to the Service and Assessment Plan.

“**Bond Ordinance**” means the ordinance adopted by the City Council on \_\_\_\_\_, 2022 authorizing the issuance of the Bonds pursuant to the Indenture.

“**Bonds**” means the City’s bonds designated "City of Kaufman, Texas, Special Assessment Revenue Bonds, Series 2022 (Kaufman Public Improvement District No. 1 Phases #2A-2B Project)".

“**Budgeted Costs**” means the anticipated, agreed upon costs of the Phases #2A-2B Improvements as shown in Exhibit B of the Service and Assessment Plan.

“**Certification for Payment**” means a certificate, substantially in the form of **Exhibit B** hereto or otherwise agreed to by the Developer, the Administrator, and the City Representative, executed by an engineer, construction manager or other person or entity acceptable to the City, as evidenced by the signature of a City Representative, provided no more frequently than once per each month to the City Representative and the Trustee, specifying the amount of work performed

and the amount charged for that work, including materials and labor costs, presented to the Trustee to request payment for Actual Costs of the Phases #2A-2B Improvements.

**“City Inspector”** means an individual employed by or an agent of the City whose job is, in part or in whole, to inspect infrastructure to be owned by the City for compliance with all rules and regulations applicable to the development and the infrastructure inspected.

**“City Manager”** means the City Manager of the City, or its designee.

**“City Representative”** means the City Manager, or any other official or agent of the City later authorized by the City to undertake the action referenced herein.

**“Closing Disbursement Request”** means the certificate, substantially in the form of **Exhibit A** hereto or otherwise mutually agreed to by the Developer, Administrator, and City Representative, executed by an engineer, construction manager or other person or entity acceptable to the City, as evidenced by the signature of a City Representative, specifying the amounts to be disbursed for the costs related to the operation of the District and the costs of issuance of the Bonds.

**“Construction Contracts”** means the contracts for the construction of an Phases #2A-2B Improvement. “Construction Contract” means any one of the Construction Contracts.

**“Cost”** means the Budgeted Costs or the cost of a Phases #2A-2B Improvement as reflected in a Construction Contract, if greater than the Budgeted Costs.

**“Cost of Issuance Account”** means the account of such name in the Project Fund created under Section 6.1 of the Indenture.

**“Cost Overrun”** means, with respect to each Phases #2A-2B Improvement, the Actual Cost, as appropriate, of such Phases #2A-2B Improvement in excess of the Budgeted Cost.

**“Development Agreement”** means that certain Georgetown at Kings Fort Development Agreement executed by and between the Developer and the City effective November 13, 2018, as the same may be amended from time to time.

**“District”** shall mean the Kaufman Public Improvement District No. 1 created by the City on November 13, 2018.

**“Final Completion”** means completion of a Phases #2A-2B Improvement in compliance with existing City standards for dedication under the City’s ordinances and the Development Agreement.

**“Indenture”** means that certain Indenture of Trust between Wilmington Trust, National Association, as trustee, dated as of [REDACTED], 2022 relating to the Bonds.

**“Phases #2A-2B”** shall have the meaning set forth in the Service and Assessment Plan.

**“Phases #2A-2B Improvements”** shall have the meaning set forth in the Service and Assessment Plan.

**“Phases #2A-2B Improvements Account”** means the account of such name in the Project Fund created under Section 6.1 of the Indenture.

**“Phases #2A-2B Improvements Account”** means the account of such name in the Project Fund created under Section 6.1 of the Indenture.

**“Plans”** means the plans, specifications, schedules and related construction contracts for the Phases #2A-2B Improvements, respectively, approved pursuant to the applicable standards, ordinances, procedures, policies and directives of the City, as applicable, the Development Agreement, and any other applicable governmental entity.

**“Project Fund”** means the fund, including the accounts created and established under such fund, where monies from the proceeds of the sale of the Bonds, excluding those deposited in other funds in accordance with the Indenture, shall be deposited, and the fund by such name created under the Indenture.

**“Service and Assessment Plan”** means the Kaufman Public Improvement District No. 1 Amended and Restated Service and Assessment Plan, adopted by the City Council on \_\_\_\_\_, 2022, as the same may be updated, amended, or supplemented, for the purpose of assessing allocated cost(s) against the property located within the boundaries of the District having terms, provisions and findings approved and agreed to by the Developer and the City, as required by this Agreement and in accordance with the PID Act.

**“Substantial Completion”** means the time at which the construction of a Phases #2A-2B Improvement (or specified segment, section or part thereof) has progressed to the point where such Phases #2A-2B Improvement (or a specified segment, section or part thereof) is sufficiently complete in accordance with the Construction Contracts related thereto so that such Phases #2A-2B Improvement (or a specified segment, section or part thereof) can be utilized for the purposes for which it is intended.

Commented [SD1]: Term is not used herein

## ARTICLE II RECITALS

### Section 2.01. The District and the Phases #2A-2B Improvements.

(a) The City has created the District under the Act for the financing of, among other things, the acquisition, construction and installation of the Phases #2A-2B Improvements.

(b) The City has authorized the issuance of the Bonds in accordance with the provisions of the Act, the Bond Ordinance and the Indenture, the proceeds of which Bonds shall be used, in

part, to finance all or a portion of the Phases #2A-2B Improvements in accordance with the terms and limitations of the Development Agreement, this Agreement, and the Service and Assessment Plan.

(c) All Phases #2A-2B Improvements are eligible to be financed with proceeds of the Bonds to the extent specified herein.

(d) The proceeds from the issuance and sale of the Bonds and funds received from the Developer at the time of the issuance of the Bonds shall be deposited in accordance with the Indenture.

(e) The Developer will undertake, oversee, or ensure the construction and development of the Phases #2A-2B Improvements for acquisition and acceptance by the City, in accordance with the terms and conditions contained in the Development Agreement and this Agreement.

Section 2.02. Agreements. In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth herein.

### **ARTICLE III FUNDING**

#### **Section 3.01. Bonds.**

(a) The City, in connection with this Agreement, is proceeding with the issuance and delivery of the Bonds.

(b) The projects to be financed with a portion of the proceeds of the Bonds are the Phases #2A-2B Improvements. The payment of costs from the proceeds of the Bonds for the Phases #2A-2B Improvements shall be made from the Phases #2A-2B Improvements Account of the Project Fund established under the Indenture. Money on deposit in the Phases #2A-2B Account of the Project Fund shall only be used to pay Actual Costs of Phases #2A-2B Improvements, except as provided in the Indenture.

Commented [SD2]: Duplicative.

(c) The City's obligation with respect to the payment of the Phases #2A-2B Improvements shall be limited to the lesser of the Actual Costs or Budgeted Costs, and shall be payable solely from amounts on deposit for the payment of such costs as provided herein and in the Indenture. The Developer agrees and acknowledges that it is responsible for all Cost Overruns and all expenses related to the Phases #2A-2B Improvements, qualified, however, by the distribution of Cost Underrun (as defined in Section 4.04 hereof) monies, as detailed in Section 4.04.

(d) The City shall have no responsibility whatsoever to the Developer with respect to the investment of any funds held in the Project Fund by the Trustee under the provisions of the

Indenture, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. The obligation of the Developer to pay Assessments is not in any way dependent on the availability of amounts in the Project Fund to pay for all or any portion of the Actual Costs of the Phases #2A-2B Improvements.

(e) The Developer acknowledges that, in accordance with Section 3.01 of this Agreement, some funds in the Phases #2A-2B Improvements Account may not be available for the reimbursement of the Actual Costs of the Phases #2A-2B Improvements that the Developer has submitted and would otherwise be approved and that any lack of availability of amounts in the funds or accounts established in the Indenture to pay the Actual Costs of the Phases #2A-2B Improvements shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for the Phases #2A-2B Improvements required by this Agreement, the Development Agreement, or any other agreement to which the Developer is a party or any governmental approval to which the Developer or any land within the District is subject.

Section 3.02 Accounts. All disbursements from the Phases #2A-2B Improvements Account of the Project Fund shall be made by the City in accordance with provisions, including provisions governing the timing and sequencing of withdrawals from the respective accounts of the Project Fund, of the Development Agreement, the Service and Assessment Plan, this Agreement, and the Indenture.

#### **ARTICLE IV CONSTRUCTION OF PHASES #2A-2B IMPROVEMENTS**

##### **Section 4.01. Duty of Developer to Construct.**

(a) All Phases #2A-2B Improvements shall be constructed by or at the direction of the Developer in accordance with the Plans and in accordance with this Agreement and the Development Agreement. The Developer shall perform, or cause to be performed, all of its obligations and shall conduct, or cause to be conducted, all operations with respect to the construction of Phases #2A-2B Improvements in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of all Phases #2A-2B Improvements to be acquired and accepted by the City, from the Developer as provided in this Agreement.

(b) The Developer shall not be relieved of its obligation to construct or cause to be constructed each Phases #2A-2B Improvement and, upon completion, inspection, and acceptance, shall convey each such Phases #2A-2B Improvement to the City, where applicable, in accordance with the terms hereof, even if there are insufficient funds in the Project Fund to pay the Actual

Costs thereof. In any event, this Agreement shall not affect any obligation of the Developer under any other agreement to which the Developer is a party or any governmental approval to which the Developer or any land within the District is subject, with respect to the Phases #2A-2B Improvements required in connection with the development of the land within the District.

Section 4.02. No Competitive Bidding. The Phases #2A-2B Improvements shall not require competitive bidding pursuant to Section 252.022(a)(9) of the Texas Local Government Code, as amended.

Section 4.03. Independent Contractor. In performing this Agreement, the Developer is an independent contractor and not the agent or employee of the City with respect to the Phases #2A-2B Improvements.

Section 4.04. Remaining Funds After Completion of a Phases #2A-2B Improvement. Upon the Final Completion of a Phases #2A-2B Improvement and payment of all outstanding invoices for such Phases #2A-2B Improvement, if the Actual Cost of such Phases #2A-2B Improvement is less than the Budgeted Cost (a “Cost Underrun”), any remaining Budgeted Cost may be made available to pay Cost Overruns on any other Phases #2A-2B Improvement with the approval of the Administrator. The elimination of a category of Phases #2A-2B Improvements from the Service and Assessment Plan will require an amendment to the Service and Assessment Plan. The City shall promptly confirm to the Administrator that such remaining amounts are available to pay such Cost Overruns, and the Developer, the Administrator and the City Representative will agree how to use such monies to secure the payment and performance of the work for other Phases #2A-2B Improvements. Any Cost Underrun for any Phases #2A-2B Improvement is available to pay Cost Overruns on any other Phases #2A-2B Improvement.

Section 4.05. Contracts and Change Orders. The Developer shall be responsible for entering into all contracts and any supplemental agreements (herein referred to as “change orders”) required for the construction of the Phases #2A-2B Improvements. The Developer or its contractors may approve and implement any change orders, even if such change order would increase the Cost of a Phases #2A-2B Improvement, but the Developer shall be solely responsible for payment of any Cost Overruns resulting from such change orders except to the extent amounts are available pursuant to Section 4.04. If any change order is for work that requires changes to be made by an engineer to the construction and design documents and plans previously approved under Section 4.01, then such revisions made by an engineer must be submitted to the City for approval by the City’s engineer prior to execution of the change order.

## **ARTICLE V ACQUISITION, CONSTRUCTION, AND PAYMENT**

Section 5.01. Payment Requests for Disbursements at Closing. In order to receive the disbursement from the Cost of Issuance Account of the Project Fund and/or from the Phases

#2A-2B Improvements Account of the Project Fund at closing of the Bonds related to costs of issuance of the Bonds or costs incurred in the creation of the District, the Developer shall execute a Closing Disbursement Request, substantially in the form of **Exhibit A** hereto or otherwise acceptable and agreed to by the City, to be delivered to the City and the Administrator no less than five (5) business days prior to the scheduled Closing Date for the Bonds for payment in accordance with the provisions of the Indenture. In order to receive the disbursement for a Phases #2A-2B Improvement from the Phases #2A-2B Improvements Account of the Project Fund, the Developer shall execute a Certification for Payment, substantially in the form of **Exhibit B** hereto or otherwise agreed to by the City, to be delivered to the City no later than five (5) business days prior to the scheduled Closing Date for the Bonds for payment in accordance with the provisions of the Indenture. Upon approval by the City, the City shall submit a Closing Disbursement Request or a Certification for Payment, as applicable, to the Trustee for disbursement to be made from the Cost of Issuance Account of the Project Fund or the Phases #2A-2B Improvements Account of the Project Fund, as applicable, and in accordance with the provisions hereof and in the provisions of the Indenture.

Commented [SD3]: duplicative

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Section 5.02. Certification for Payment for a Phases #2A-2B Improvement.

(a) No payment hereunder shall be made from the Project Fund to the Developer for work on a Phases #2A-2B Improvement until a Certification for Payment is received from the Developer. Upon receipt of a Certification for Payment substantially in the form of **Exhibit B** hereto (and all accompanying documentation required by the City) from the Developer, the City Inspector (for a City owned Phases #2A-2B Improvement) shall conduct a review in order to confirm that such request is complete, that the work with respect to such Phases #2A-2B Improvement identified therein for which payment is requested was completed in accordance with all applicable governmental laws, rules and regulations and applicable Plans therefor and with the terms of this Agreement, the Development Agreement, and to verify and approve the Actual Cost of such work specified in such Certification for Payment (collectively, the "Developer Compliance Requirements"). The City Inspector and/or the City Representative shall also conduct such review as is required in his discretion to confirm the matters certified in the Certification for Payment. The Developer agrees to cooperate with the City Inspector and/or City Representative in conducting each such review and to provide the City Inspector and/or City Representative with such additional information and documentation as is reasonably necessary for the City Inspector and/or City Representative to conduct each such review.

(b) Within fifteen (15) business days of receipt of any Certification for Payment, the City Representative shall either (i) approve and execute the Certification for Payment and forward the same to the Administrator for approval and delivery to the Trustee for payment to the Developer in accordance with Section 5.03(a) hereof or (ii) in the event the City Representative disapproves the Certification for Payment, give written notification to the Developer of the City Representative's disapproval, in whole or in part, of such Certification for Payment, specifying the

reasons for such disapproval and the additional requirements to be satisfied for approval of such Certification for Payment. If a Certification for Payment seeking reimbursement is approved only in part, the City Representative shall specify the extent to which the Certification for Payment is approved and shall deliver such partially approved Certification for Payment to the Administrator for approval in accordance with Section 5.03 hereof and delivery to the Developer in accordance with Section 5.02(c) hereof, and any such partial work shall be processed for payment under Section 5.03 notwithstanding such partial denial.

(c) If the City Representative denies the Certification for Payment, the denial must be in writing, stating the reason(s) for denial. The denial may be appealed to the City Council by the Developer in writing within thirty (30) days of being denied by the City Representative. Denial of the Certification for Payment by the City Council shall be attempted to be resolved by half-day mediation between the parties in the event an agreement is not otherwise reached by the parties, with the mediator's fee being paid by Developer. The Certification for Payment shall not be forwarded to the Trustee for payment until the dispute is resolved by the City and the Developer.

(d) The Developer shall deliver the approved or partially approved Certification for Payment to the Trustee for payment and the Trustee shall make such payment from the Project Fund in accordance with Section 5.03 below.

Section 5.03. Payment for the Phases #2A-2B Improvements.

(a) Upon receipt of a reviewed and approved Certification for Payment, the Trustee shall make payment from the Phases #2A-2B Improvements Account of the Project Fund as designated in the Certification for Payment pursuant to the terms of the Certification for Payment and the Indenture in an amount not to exceed the Budgeted Cost for the particular Phases #2A-2B Improvement (or its completed segment), unless a Cost Overrun amount has been approved for a particular Phases #2A-2B Improvement. If a Cost Overrun amount has been approved, then the amount reimbursed shall not exceed the Budgeted Amount plus the approved Cost Overrun amount.

(b) Approved Certifications for Payment that await reimbursement shall not accrue interest.

(c) Notwithstanding any other provisions of this Agreement, when payment is made, the Trustee shall make payment directly to the general contractor or supplier of materials or services or jointly to Developer (or any permitted assignee of such Developer) and the general contractor or supplier of materials or services, as indicated in an approved Certification for Payment, out of available funds in the Project Fund. If the request for payment results in ninety percent (90%) or more of the Budgeted Costs for such Phases #2A-2B Improvement identified in such request for payment being paid, then Trustee shall hold the payment until work with respect to that Phases #2A-2B Improvement has been completed and accepted by the City. If an

unconditional lien release related to the items referenced in the Certification for Payment is attached to such Certification for Payment, the Trustee shall make such payment to the Developer or any permitted assignee of the Developer. In the event the Developer provides a general contractor's or supplier of materials' unconditional lien release for a portion of the work covered by a Certification for Payment, the Trustee will make such payment directly to the Developer or any permitted assignee of the Developer to the extent of such lien release.

(d) Withholding Payments.

Nothing in this Agreement shall be deemed to prohibit the Developer or the City from contesting in good faith the validity or amount of any mechanics or materialman's lien and/or judgment nor limit the remedies available to the Developer or the City with respect thereto, including the withholding of any payment that may be associated with the exercise of such remedy, so long as such delay in performance shall not subject the Phases #2A-2B Improvements to foreclosure, forfeiture, or sale. In the event that any such mechanics or materialman's lien and/or judgment with respect to any Phases #2A-2B Improvements is contested, the Developer shall post or cause delivery of a surety bond in the amount determined by the City or the City may decline to accept the Phases #2A-2B Improvements until such mechanics or materialman's lien and/or judgment is satisfied.

**ARTICLE VI  
OWNERSHIP AND TRANSFER OF THE PHASES #2A-2B IMPROVEMENTS**

Section 6.01. Phases #2A-2B Improvements to be Owned by the City – Title Evidence. If required by the City, the Developer shall furnish to the City, a preliminary title report for land with respect to a Phases #2A-2B Improvement to be acquired and accepted by the City from the Developer and not previously dedicated or otherwise conveyed to the City, for review and approval at least thirty (30) calendar days prior to the transfer of title of a Phases #2A-2B Improvement to the City. The City shall approve the preliminary title report unless it reveals a matter which, in the reasonable judgment of the City, could materially affect the City's clean title or use and enjoyment of any part of the property or easement covered by the preliminary title report. In the event the City does not approve the preliminary title report, the City shall not be obligated to accept title to the Phases #2A-2B Improvement until the Developer has cured such objections to title to the satisfaction of the City.

Section 6.02. Phases #2A-2B Improvements Constructed on City Land or Developer Land. If the Phases #2A-2B Improvement is on land owned by the City, the City hereby grants to the Developer a license to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance) of the Phases #2A-2B Improvement. If the Phases #2A-2B Improvement is on land owned by the Developer, the Developer hereby grants to the City an easement to enter upon such land for purposes related to inspection and maintenance (pending acquisition and acceptance) of the Phases #2A-2B Improvement. The grant of the permanent

easement shall not relieve the Developer of any obligation to grant the City title to property and/or easements related to the Phases #2A-2B Improvement as required by the Development Agreement or as should in the City's reasonable judgment be granted to provide for convenient access to and routine and emergency maintenance of such Phases #2A-2B Improvement. The provisions for inspection and acceptance of such Phases #2A-2B Improvement otherwise provided herein shall apply.

## **ARTICLE VII REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 7.01. Representations, Covenants and Warranties of the Developer. The Developer represents and warrants for the benefit of the City as follows:

(a) Organization. The Developer consists of limited liability companies duly formed, organized and validly existing under the laws of the State of Texas, is in compliance with the laws of the State of Texas, and has the power and authority to own its properties and assets and to fulfill its obligations in this Agreement and the Development Agreement and to carry on its business in the State of Texas as now being conducted as hereby contemplated.

(b) Authority. The Developer has the power and authority to enter into this Agreement and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the Developer.

(c) Binding Obligation. This Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to bankruptcy and other equitable principles.

(d) Compliance with Law. The Developer shall not commit, suffer or permit any act to be done in, upon or to the lands in the District or the Phases #2A-2B Improvements in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the District or the Phases #2A-2B Improvements.

(e) Requests for Payment. The Developer represents and warrants that (i) it will not request payment from the Project Fund for the acquisition construction or installation of any improvements that are not part of the costs associated with the Phases #2A-2B Improvements, and (ii) it will diligently follow all procedures set forth in this Agreement with respect to the Certification for Payments.

(f) Financial Records. For a period of two years after completion of the Phases #2A-2B Improvements, the Developer covenants to maintain proper books of record and account for the construction of the Phases #2A-2B Improvements and all Costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles,

and shall be available for inspection by the City or its agents at any reasonable time during regular business hours on reasonable notice.

(g) Plans. The Developer represents that it has obtained or will obtain approval of the Plans from all appropriate departments of the City and from any other public entity or public utility from which such approval must be obtained. The Developer further agrees that, subject to the terms hereof, the Phases #2A-2B Improvements have been or will be constructed in full compliance with such Plans and any change orders thereto consistent with the Act, this Agreement and the Development Agreement. Developer shall provide as-built plans for all Phases #2A-2B Improvements to the City.

(h) Additional Information. The Developer agrees to cooperate with all reasonable written requests for nonproprietary information by the initial purchaser of the Bonds, the City Manager and the City Representative related to the status of construction of Phases #2A-2B Improvements within the District, the anticipated completion dates for future improvements and any other matter that the initial purchaser of the Bonds or City Representative deems material to the investment quality of the Bonds.

(i) Continuing Disclosure Agreement. The Developer agrees to provide the information required pursuant to the Continuing Disclosure Agreement executed by the Developer in connection with the Bonds.

(j) Tax Certificate. The City will deliver a certificate relating to the Bonds (such certificate, as it may be amended and supplemented from time to time, being referred to herein as the "Tax Certificate") containing covenants and agreements designed to satisfy the requirements of 26 U.S. Code Sections 103 and 141 through 150, inclusive, and the federal income tax regulations issued thereunder relating to the use of the proceeds of the Bonds or of any monies, securities or other obligations on deposit to the credit of any of the funds and accounts created by the Indenture or this Agreement or otherwise that may be deemed to be proceeds of the Bonds within the meaning of 26 U.S. Code Section 148 (collectively, "Bond Proceeds").

The Developer covenants to provide, or cause to be provided, such facts and estimates as the City reasonably considers necessary to enable it to execute and deliver its Tax Certificate. The Developer further covenants that (i) such facts and estimates will be based on its reasonable expectations on the date of issuance of the Bonds and will be, to the best of the knowledge of the officers of the Developer providing such facts and estimates, true, correct and complete as of that date, and (ii) the Developer will make reasonable inquiries to ensure such truth, correctness and completeness. The Developer covenants that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use or investment of the Bond Proceeds (including, but not limited to, the use of the Phases #2A-2B Improvements) that would cause any of the covenants or agreements of the City contained in the Tax Certificate to be violated or that would

otherwise have an adverse effect on the tax-exempt status of the interest payable on the Bonds for federal income tax purposes.

(k) Financial Resources. The Developer represents and warrants that it has the financial resources, or the ability to obtain sufficient financial resources, to meet its obligations under this Agreement, the Service and Assessment Plan and the Development Agreement.

Section 7.02. Indemnification and Hold Harmless. THE DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY INSPECTOR, THE CITY, ITS OFFICIALS, EMPLOYEES, OFFICERS, REPRESENTATIVES AND AGENTS (EACH AN "INDEMNIFIED PARTY"), FROM AND AGAINST ALL ACTIONS, DAMAGES, CLAIMS, LOSSES OR EXPENSE OF EVERY TYPE AND DESCRIPTION TO WHICH THEY MAY BE SUBJECTED OR PUT: (I) BY REASON OF, OR RESULTING FROM THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY THE DEVELOPER; (II) THE NEGLIGENT DESIGN, ENGINEERING, AND/OR CONSTRUCTION BY THE DEVELOPER OR ANY ARCHITECT, ENGINEER OR CONTRACTOR HIRED BY THE DEVELOPER OF ANY OF THE PHASES #2A-2B IMPROVEMENTS ACQUIRED FROM THE DEVELOPER HEREUNDER; (III) THE DEVELOPER'S NONPAYMENT UNDER CONTRACTS BETWEEN THE DEVELOPER AND ITS CONSULTANTS, ENGINEERS, ADVISORS, CONTRACTORS, SUBCONTRACTORS AND SUPPLIERS IN THE PROVISION OF THE PHASES #2A-2B IMPROVEMENTS; (IV) ANY CLAIMS OF PERSONS EMPLOYED BY THE DEVELOPER OR ITS AGENTS TO CONSTRUCT THE PHASES #2A-2B IMPROVEMENTS; OR (V) ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO DEVELOPER'S RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES AND/OR TRUSTEES, REGARDING OR RELATED TO THE PHASES #2A-2B IMPROVEMENTS OR ANY AGREEMENT OR RESPONSIBILITY REGARDING THE PHASES #2A-2B IMPROVEMENTS, INCLUDING CLAIMS AND CAUSES OF ACTION WHICH MAY ARISE OUT OF THE SOLE OR PARTIAL NEGLIGENCE OF AN INDEMNIFIED PARTY (THE "CLAIMS"). NOTWITHSTANDING THE FOREGOING, NO INDEMNIFICATION IS GIVEN HEREUNDER FOR ANY ACTION, DAMAGE, CLAIM, LOSS OR EXPENSE DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE DIRECTLY ATTRIBUTABLE TO THE WILLFUL MISCONDUCT OF ANY INDEMNIFIED PARTY, DEVELOPER IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS, AND CITY IS REQUIRED TO REASONABLY COOPERATE AND ASSIST DEVELOPER IN PROVIDING SUCH DEFENSE.

IN ITS REASONABLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY DEVELOPER IN FULFILLING ITS OBLIGATIONS HEREUNDER TO DEFEND AND INDEMNIFY THE INDEMNIFIED PARTIES, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. THE INDEMNIFIED PARTIES RESERVE THE RIGHT TO PROVIDE A

PORTION OR ALL OF THEIR/ITS OWN DEFENSE, AT THEIR/ITS SOLE COST; HOWEVER, INDEMNIFIED PARTIES ARE UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY AN INDEMNIFIED PARTY IS NOT TO BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO DEFEND INDEMNIFIED PARTIES OR AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY INDEMNIFIED PARTIES, PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF WRITTEN NOTICE FROM AN INDEMNIFIED PARTY THAT IT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND DEVELOPER SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ALL REASONABLE COSTS INCURRED BY INDEMNIFIED PARTIES.

THIS SECTION 7.02 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

THE PARTIES AGREE AND STIPULATE THAT THIS INDEMNIFICATION COMPLIES WITH THE CONSPICUOUSNESS REQUIREMENT AND THE EXPRESS NEGLIGENCE TEST, AND IS VALID AND ENFORCEABLE AGAINST THE DEVELOPER.

Section 7.03. Use of Monies by City; Changes to Indenture. The City agrees not to take any action or direct the Trustee to take any action to expend, disburse or encumber the monies held in the Project Fund, except as set forth in the Indenture, and any monies to be transferred thereto for any purpose other than the purposes permitted by the Indenture. Prior to the acceptance of all the Phases #2A-2B Improvements, the City agrees not to modify or supplement the Indenture without the approval of the Developer if as a result or as a consequence of such modification or supplement: (a) the amount of monies that would otherwise have been available under the Indenture for disbursement for the Costs of the Phases #2A-2B Improvements is reduced, delayed or deferred, (b) the obligations or liabilities of the Developer is or may be substantially increased or otherwise adversely affected in any manner, or (c) the rights of the Developer is or may be modified, limited, restricted or otherwise substantially adversely affected in any manner.

Section 7.04. No Reduction of Assessments. The Developer agrees not to take any action or actions to reduce the total amount of such Assessments to be levied as of the effective date of this Agreement.

## **ARTICLE VIII TERMINATION**

Section 8.01. Mutual Consent. This Agreement may be terminated by the mutual, written consent of the City and the Developer, in which event the City may either execute contracts for or perform any remaining work related to the Phases #2A-2B Improvements not accepted by the City or other appropriate entity and use all or any portion of funds on deposit in the Project Fund or other amounts transferred to the Project Fund under the terms of the Indenture to pay for same, and the Developer shall have no claim or right to any further payments for the Costs of a Phases #2A-2B Improvement hereunder, except as otherwise may be provided in such written consent.

Section 8.02. City's Election for Cause.

(a) The City, upon notice to Developer and the passage of the cure period identified in subsection (b) below, may terminate this Agreement, without the consent of the Developer if the Developer shall breach any material covenant or default in the performance of any material obligation hereunder.

(b) If any such event described in Section 8.02(a) occurs, the City shall give written notice of its knowledge of such event to the Developer, and the Developer agrees to promptly meet and confer with the City Inspector and other appropriate City staff and consultants as to options available to assure timely completion, subject to the terms of this Agreement, of the Phases #2A-2B Improvements. Such options may include, but not be limited to, the termination of this Agreement by the City. If the City elects to terminate this Agreement, the City shall first notify the Developer (and any mortgagee or trust deed beneficiary specified in writing by the Developer to the City to receive such notice) of the grounds for such termination and allow the Developer a minimum of 45 days to eliminate or to mitigate to the satisfaction of the City the grounds for such termination. Such period may be extended, at the sole discretion of the City, if the Developer, to the reasonable satisfaction of the City, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined reasonably by the City, the Developer has not eliminated or completely mitigated such grounds to the satisfaction of the City, the City may then terminate this Agreement. In the event of the termination of this Agreement, the Developer is entitled to payment for work accepted by the City related to a Phases #2A-2B Improvement only as provided for under the terms of the Indenture and this Agreement prior to the termination date of this Agreement. Notwithstanding the foregoing, so long as the Developer has breached any material covenant or defaulted in the performance of any material obligation hereunder, notice of which has been given by the City to the Developer, and such event has not been cured or otherwise eliminated by the Developer, the City may in its discretion cause the Trustee to cease making payments for the Actual Costs of Phases #2A-2B Improvements, provided that the Developer shall receive payment of the Actual Costs of any Phases #2A-2B Improvements that were accepted by the City at the time of the occurrence of such breach or default by the Developer upon submission of the documents and compliance with the other applicable requirements of this Agreement.

(c) If this Agreement is terminated by the City for cause, the City may either execute contracts for or perform any remaining work related to the Phases #2A-2B Improvements not accepted by the City and use all or any portion of the funds on deposit in the Project Fund or other amounts transferred to the Project Fund and the Developer shall have no claim or right to any further payments for the Phases #2A-2B Improvements hereunder, except as otherwise may be provided upon the mutual written consent of the City and the Developer. The City shall have no obligation to perform any work related to a Phases #2A-2B Improvement or to incur any expense or cost in excess of the remaining balance of the Project Fund.

Section 8.03. Termination Upon Redemption or Defeasance of Bonds. This Agreement will terminate automatically and with no further action by the City or the Developer upon the redemption or defeasance of all outstanding Bonds (including any refunding bonds issued to fund the Bonds) issued under the Indenture.

Section 8.04. Construction of the Phases #2A-2B Improvements Upon Termination of this Agreement. Notwithstanding anything to the contrary contained herein, upon the termination of this Agreement pursuant to this Article VIII, the Developer shall perform its obligations with respect to the Phases #2A-2B Improvements in accordance with this Agreement and the Development Agreement.

Section 8.05. Force Majeure. Whenever performance is required of a party hereunder, that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes or other acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, damage to work in progress by casualty or by other cause beyond the reasonable control of the party (financial inability excepted) ("Force Majeure"), then the specified time for performance shall be extended by the amount of the delay actually so caused. The extension of time to perform allowed by this Section 8.05 shall not apply unless, upon the occurrence of an event of Force Majeure, the party needing additional time to perform notifies the other party of the event of Force Majeure and the amount of additional time reasonably required within ten (10) business days of the occurrence of the event of Force Majeure.

## **ARTICLE IX MISCELLANEOUS**

Section 9.01. Limited Liability of City. The Developer agrees that any and all obligations of the City arising out of or related to this Agreement are special obligations of the City, and the City's obligations to make any payments hereunder are restricted entirely to the monies, if any, in the Project Fund and from no other source. Neither the City, the City Inspector, City Representative nor any other City employee, officer, official or agent shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

Section 9.02. Audit. The City Inspector, City Representative or a finance officer of the City shall have the right, during normal business hours and upon the giving of three business days' prior written notice to a Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer with respect to any of the Phases #2A-2B Improvements and any bids taken or received for the construction thereof or materials therefor.

Section 9.03. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to any party shall be deemed to have been received when personally delivered or transmitted by email or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

|                   |                                                                                                              |
|-------------------|--------------------------------------------------------------------------------------------------------------|
| To the City:      | Attn: City Manager<br>City of Kaufman<br>209 S. Washington Street<br>Kaufman, TX 75142                       |
| With a copy to:   | Attn: Patricia Adams<br>Messer, Fort & McDonald PLLC<br>6371 Preston Road, Suite 200<br>Frisco, Texas 75034  |
| And to:           | Attn: Julie Partain<br>Bracewell LLP<br>1445 Ross Avenue Suite 3800<br>Dallas, Texas 75202                   |
| To the Developer: | Attn: Kelly Cannell<br>Georgetown KF, Ltd<br>PO Box 6621<br>McKinney, Texas 75071                            |
| With a copy to:   | Attn: Robert Miklos<br>Miklos Cinclair, PLLC<br>1755 Wittington Pl, Suite 305<br>Farmers Branch, Texas 75234 |

Any party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

The City shall advise the Developer of the name and address of any person who is to receive any notice or other communication pursuant to this Agreement.

Section 9.04. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

Section 9.05. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Any receivables due under this Agreement may be assigned by the Developer without the consent of, but upon written notice to the City pursuant to Section 9.03 of this Agreement. The obligations, requirements, or covenants of this Agreement shall be able to be assigned to an affiliate or related entity of the Developer, or any lien holder on the Property, without prior written consent of the City. The obligations, requirements, or covenants of this Agreement shall not be assigned by the Developer to a non-affiliate or non-related entity of the Developer without prior written consent of the City Manager, except pursuant to a collateral assignment to any person or entity providing construction financing to the Developer for the Developer for a Phases #2A-2B Improvement, provided such person or entity expressly agrees to assume all obligations of the Developer hereunder if there is a default under such financing and such Person elects to complete the Phases #2A-2B Improvement. No such assignment shall be made by the Developer or any successor or assignee of the Developer that results in the City being an “obligated person” within the meaning of Rule 15c2-12 of the United States Securities and Exchange Commission without the express written consent of the City. In connection with any consent of the City, the City may condition its consent upon the acceptability of the financial condition of the proposed assignee, upon the assignee’s express assumption of all obligations of the Developer hereunder and/or upon any other reasonable factor which the City deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned. The City may assign by a separate writing certain rights as described in this Agreement and in the Indenture, to the Trustee and the Developer hereby consents to such assignment.

Section 9.06. Other Agreements. The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of property in the District. Nothing herein shall be construed as affecting the City’s or the Developer’s rights or duties to perform their respective obligations under other agreements, use regulations, ordinances or subdivision requirements relating to the development of the lands in the District, including the applicable Construction Contracts and the Development Agreement. To the extent there is a conflict between this Agreement and the Development Agreement, the Development Agreement shall control. To the extent there is a conflict between this Agreement and the Indenture, the Indenture shall control.

Section 9.07. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by any other party, or the failure by a party to exercise its rights upon the default of any other party, shall not constitute a waiver of such party’s right to insist and demand strict compliance by such other party with the terms of this Agreement thereafter.

Section 9.08. Merger. No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Agreement shall be binding.

Section 9.09. Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and the Developer any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions or stipulations hereof, and all covenants, conditions, promises and agreements in this Agreement contained by or on behalf of the City or the Developer shall be for the sole and exclusive benefit of the City and the Developer.

Section 9.10. Amendment. Except as otherwise provided in Section 9.05, upon agreement by the parties, this Agreement may be amended, from time to time in a manner consistent with the Act, the Indenture, and the Bond Ordinance by written supplement hereto and executed in counterparts, each of which shall be deemed an original.

Section 9.11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 9.12. Effective Date. This Agreement has been dated as of the date first above written solely for the purpose of convenience of reference and shall become effective upon its execution and delivery, on the Closing Date of the Bonds, by the parties hereto. All representations and warranties set forth therein shall be deemed to have been made on the Closing Date of the Bonds.

Section 9.13. Term. The term of this Agreement, other than the provisions contained in Section 7.02, which shall survive the termination of this Agreement, shall be thirty (30) years or upon redemption or defeasance of the Bonds (including any refunding bonds issued to refund the Bonds) issued under the Indenture. If the Developer defaults under this Agreement or the Development Agreement, this Agreement and the Development Agreement shall not terminate with respect to the costs of the Phases #2A-2B Improvements that have been approved by the City pursuant to a Certification for Payment prior to the date of default.

Section 9.14 No Waiver of Powers or Immunity. The City does not waive or surrender any of its governmental powers, immunities, or rights except as necessary to allow Developer to enforce its remedies under this Agreement.

Section 9.15. No Boycott Israel. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2271.002, Texas Government Code, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to enable the

City to comply with such Section and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel,' a term defined in Section 2271.001, Texas Government Code, by reference to Section 808.001(1), Texas Government Code, means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

Section 9.16. Not a Listed Company. The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to enable the City to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Developer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. As used in this Section, the Developer understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 133(f), 17 C.F.R. § 230.133(f), and exists to make a profit.

Section 9.17. Verification Regarding Energy Company Boycotts. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies," a term defined in Section 2274.001(1), Texas Government Code (as enacted by such Senate Bill) by reference to Section 809.001, Texas Government Code (also as enacted by such Senate Bill), shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization,

transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above. As used in this Section, the Developer understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 133(f), 17 C.F.R. § 230.133(f), and exists to make a profit.

Section 9.18. Verification Regarding Discrimination Against Firearm Entity or Trade Association. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification and the following definitions:

(i) 'discriminate against a firearm entity or firearm trade association,' a term defined in Section 2274.001(3), Texas Government Code (as enacted by such Senate Bill), (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association;

(ii) 'firearm entity,' a term defined in Section 2274.001(6), Texas Government Code (as enacted by such Senate Bill), means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (defined in Section 2274.001(4), Texas Government Code, as enacted by such Senate Bill, as weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (defined in Section 2274.001(5), Texas

Government Code, as enacted by such Senate Bill, as devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (defined in Section 2274.001(1), Texas Government Code, as enacted by such Senate Bill, as a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (defined in Section 250.001, Texas Local Government Code, as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting); and

(iii) 'firearm trade association,' a term defined in Section 2274.001(7), Texas Government Code (as enacted by such Senate Bill), means any person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

As used in this Section, the Developer understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 133(f), 17 C.F.R. § 230.133(f), and exists to make a profit.

*[Execution pages follow.]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of \_\_\_\_\_, 2022.

**CITY OF KAUFMAN, TEXAS**

By: \_\_\_\_\_  
Name: Jeff Jordan, Mayor

ATTEST:

\_\_\_\_\_  
Jessie Hanks, City Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
Patricia A. Adams, City Attorney

**DEVELOPER:**

**GEORGETOWN KF, LTD,**  
a Texas limited partnership

By: Seascope GP, LLC,  
a Texas limited liability company  
Its General Partner

By: \_\_\_\_\_  
Printed Name: Kelly Cannell  
Title: President

**Exhibit A**

**FORM OF CLOSING DISBURSEMENT REQUEST**

The undersigned is an agent for Georgetown KF, Ltd (the “Developer”) and requests payment from:

[the Cost of Issuance Account of the Project Fund][the Phases #2A-2B Improvements Account of the Project Fund] (as defined in the Kaufman Public Improvement District No. 1 Phases #2A-2B Construction, Funding, and Acquisition Agreement) from Wilmington Trust, National Association, (the “Trustee”) in the amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) for costs incurred in the establishment, administration, and operation of the Kaufman Public Improvement District No. 1 (the “District”), as follows:

| Closing Costs Description | Cost | PID Allocated Cost |
|---------------------------|------|--------------------|
|                           |      |                    |
|                           |      |                    |
| <b>TOTAL</b>              |      |                    |

In connection to the above referenced payments, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Closing Disbursement Request on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the above referenced establishment, administration, and operation of the District at the time of the delivery of the Bonds has not been the subject of any prior payment request submitted to the City.
3. The amount listed for the above itemized costs is a true and accurate representation of the Actual Costs incurred by Developer with the establishment of the District at the time of the delivery of the Bonds, and such costs are in compliance with the Service and Assessment Plan.
4. The Developer is in compliance with the terms and provisions of the Kaufman Public Improvement District No. 1 Phases #2A-2B Construction, Funding, and Acquisition Agreement, the Indenture, and the Service and Assessment Plan.
5. All conditions set forth in the Indenture (as defined in the Kaufman Public Improvement District No. 1 Phases #2A-2B Construction, Funding, and Acquisition Agreement) for the payment hereby requested have been satisfied.

6. The Developer agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

**Payments requested hereunder shall be made as directed below:**

- a. X amount to Person or Account Y for Z goods or services.
- b. Etc.

I hereby declare that the above representations and warranties are true and correct.

**GEORGETOWN KF, LTD**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVAL OF REQUEST BY CITY**

The City is in receipt of the attached Closing Disbursement Request. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request and shall include said payments in the City Certificate submitted to the Trustee directing payments to be made from the Cost of Issuance Account of the Project Fund and/or the Phases #2A-2B Improvements Account of the Project Fund, as applicable, upon delivery of the Bonds. The City's approval of the Closing Disbursement Request shall not have the effect of estopping or preventing the City from asserting claims under the Kaufman Public Improvement District No. 1 Phases #2A-2B Construction, Funding and Acquisition Agreement, the Indenture, the Service and Assessment Plan, any other agreement between the parties or that there is a defect in an Phases #2A-2B Improvement.

**CITY OF KAUFMAN, TEXAS**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit B**

**CERTIFICATION FOR PAYMENT FORM –PHASES #2A-2B IMPROVEMENTS**

The undersigned is a lawfully authorized representative for Georgetown KF, Ltd (the “Developer”) and requests payment from the [Phases #2A-2B Improvements Account of the Project Fund] from Wilmington Trust, National Association (the “Trustee”) in the amount of \_\_\_\_\_ for labor, materials, fees, and/or other general costs related to the construction and installation of the following Phases #2A-2B Improvements related to the Kaufman Public Improvement District No. 1:

*[insert specific Phases #2A-2B Improvements this request is for here]*

Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the Indenture of Trust by and between the City of Kaufman and the Trustee dated as of \_\_\_\_\_ relating to the "CITY OF KAUFMAN, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2022 (KAUFMAN PUBLIC IMPROVEMENT DISTRICT NO. 1 PHASES #2A-2B PROJECT)" (the “Indenture”).

In connection to the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Certification for Payment Form on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the below referenced Phases #2A-2B Improvements has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.
3. The itemized amounts listed for the Phases #2A-2B Improvements below is a true and accurate representation of the Actual Costs incurred by Developer with the construction and installation of said Phases #2A-2B Improvements identified below, and such costs (i) are in compliance with the Kaufman Public Improvement District No. 1 Phases #2A-2B Construction, Funding and Acquisition Agreement, and (ii) are consistent with the Service and Assessment Plan.
4. The Developer is in compliance with the terms and provisions of the Kaufman Public Improvement District No. 1 Phases #2A-2B Construction, Funding and Acquisition Agreement, the Indenture, and the Service and Assessment Plan.
5. All conditions set forth in the Indenture for the payment hereby requested have been satisfied.

6. The work with respect to the Phases #2A-2B Improvements identified below (or its completed segment, portion or segment) has been completed and the City has inspected the Phases #2A-2B Improvements. If this request for payment results in ninety percent (90%) or more of the Budgeted Costs for the Authorize Improvement(s) identified above being paid, then the work with respect to the Phases #2A-2B Improvement(s) have been completed and the City has inspected AND accepted the Phases #2A-2B Improvement(s)

7. The Developer agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

**Payments requested are as follows:**

| Payee / Description of Phases #2A-2B Improvements | Total Cost of Phases #2A-2B Improvements | Budgeted Cost of Phases #2A-2B Improvements | Amount to be paid from the Phases #2A-2B Improvements Account of the Project Fund |
|---------------------------------------------------|------------------------------------------|---------------------------------------------|-----------------------------------------------------------------------------------|
|                                                   |                                          |                                             |                                                                                   |
|                                                   |                                          |                                             |                                                                                   |

Attached hereto, are receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments.

Pursuant to the Kaufman Public Improvement District No. 1 Phases #2A-2B Construction, Funding and Acquisition Agreement, after receiving this Payment Request, the City is authorized to inspect the Phases #2A-2B Improvements (or completed segment, portion or segment) and confirm that said work has been completed in accordance with all applicable governmental laws, rules, and Plans.

I hereby declare that the above representations and warranties are true and correct.

**GEORGETOWN KF, LTD**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVAL OF REQUEST BY CITY**

The City is in receipt of the attached Certification for Payment. After reviewing the Certification for Payment, the City approves the Certification for Payment and shall include said payments in the City Certificate submitted to the Trustee directing payments to be made from the [Phases #2A-2B Improvements Account of the Project Fund]. The City's approval of the Certification for Payment shall not have the effect of estopping or preventing the City from asserting claims under the Kaufman Public Improvement District No. 1 Phases #2A-2B Construction, Funding and Acquisition Agreement, the Indenture, the Service and Assessment Plan, any other agreement between the parties or that there is a defect in the Phases #2A-2B Improvements or Phases #2A-2B Improvements.

**CITY OF KAUFMAN, TEXAS**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**Meeting**  
**Date: 11/21/2022**

**Date: 11/17/2022**

**Item #: 17.**

**Dept.: Administration**

**Presentation**

**SUBJECT:**

Presentation and discussion regarding an overview of Section 3 in relation to the TxCDBG Grant No. CPC-21-0058.

**BACKGROUND:**

Federal statutory requirement for CDBG Grant execution (this is a planning grant)

**Author:**  
Mike Slye, City Manager

**Reviewed:**  
Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation: N/A**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|--------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input checked="" type="checkbox"/>       | <input checked="" type="checkbox"/>         | <input type="checkbox"/>       |

# A1024 Section 3 Presentation to City of Kaufman



The City recently received the following grant award:

- Grant Contract No. CPC-21-0058
- Award Amount: \$55,000
- Project: Planning Study



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The grant is funded through the  
Community Development Block Grant, via:

- U.S. Department of Housing and Urban  
Development

and

- Texas Department of Agriculture



## Section 3 Concepts

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- As a condition of funding, the City must comply with Section 3 of the Housing and Urban Development Act of 1968.
- To the greatest extent feasible, Grant Recipients must direct economic opportunities generated by CDBG funds to low- and very low-income persons.



## Section 3 Concepts

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In part, this means ensuring that:

- Section 3 Businesses have the information to submit a bid or proposal for the project; and
- Section 3 Workers have information about any available job opportunities related to the project.

For precise definitions, see TxCDBG Policy Issuance 20-01



## Section 3 Business

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A company may qualify as a Section 3 Business if:

- it is owned by low-income persons;
- it is owned by Section 8-Assisted housing residents; or
- 75% of all labor hours for the business in a 3 month period are performed by Section 3 Workers

Register at:

- HUD's Section 3 website:  
<https://portalapps.hud.gov/Sec3BusReg/BRegistry/RegisterBusiness>



## Section 3 Business

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This project is expected to include the following contracting opportunities:

- Grant Administration services
- Engineering Service/Planning Services



## Section 3 Worker

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You may qualify as a Section 3 Worker if:

- Your annual income is below the county threshold for your family size:
- You are a current or recent Youthbuild participant

Register your information and search for opportunities at:

- WorkInTexas.gov
- HUD's Section 3 Opportunity Portal  
<https://hudapps.hud.gov/OpportunityPortal/>



## Targeted Section 3 Worker

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Section 3 Workers that reside near the project location may also qualify as Targeted Section 3 Workers.

For this project, that service area is defined by this map:



## Recordkeeping

The City will track all hours worked on the project based on the three categories of workers.

This will require collection of certain income information.





## For More Information

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TxCDBG Policy Issuance 20-01

[REVISED Policy Issuance 20-01 Section 3 v1.pdf](#)  
[texasagriculture.gov](http://texasagriculture.gov)

24 CFR Part 75

[Electronic Code of Federal Regulations \(eCFR\)](#)

[Jessie Hanks, City Secretary can provide more  
information upon request ]



**Meeting**  
**Date: 11/21/2022**

**Date: 11/17/2022**

**Item #: 18.**

**Dept.: Administration**

**Resolution**

**SUBJECT:**

Consider and take appropriate action on Resolution R-41-22, a resolution of the City Council of the City of Kaufman, Texas, regarding Civil Rights and adopting the following policies:

- a. Citizens Participation Plan and Grievance Procedures
- b. Excessive Force Policy
- c. Fair Housing Policy Form
- d. Section 504 Policy and Grievance Procedures
- e. Code of Conduct Policy

**BACKGROUND:**

This Resolution is now required when accepting Federal Grants, i.e., CDBG programs. Nothing in this resolution and attached policies conflict w/current city policies and/or procedures.

Author:  
Mike Slye, City Manager

Reviewed:  
Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation: Recommend approval of Resolution R-41-22**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship      |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input checked="" type="checkbox"/>       | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |

**RESOLUTION No. \_\_\_\_\_ Regarding Civil Rights****The City of Kaufman, Texas**

Whereas, the City of Kaufman, Texas, (hereinafter referred to as “City of Kaufman”) has been awarded TxCDBG funding through a TxCDBG grant from the Texas Department of Agriculture (hereinafter referred to as “TDA”);

Whereas, the City of Kaufman, in accordance with Section 109 of the Title I of the Housing and Community Development Act. (24 CFR 6); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and for construction contracts greater than \$10,000, must take actions to ensure that no person or group is denied benefits such as employment, training, housing, and contracts generated by the CDBG activity, on the basis of race, color, religion, sex, national origin, age, or disability;

Whereas, the City of Kaufman, in consideration for the receipt and acceptance of federal funding, agrees to comply with all federal rules and regulations including those rules and regulations governing citizen participation and civil rights protections;

Whereas, the City of Kaufman, in accordance with Section 3 of the Housing and Urban Development Act of 1968, as amended, and 24 CFR Part 75, is required, to the greatest extent feasible, to provide training and employment opportunities to lower income residents and contract opportunities to businesses in the Section 3 Service Area;

Whereas, the City of Kaufman, in accordance with Section 104(1) of the Housing and Community Development Act, as amended, and State’s certification requirements at 24 CFR 91.325(b)(6), must adopt an excessive force policy that prohibits the use of excessive force against non-violent civil rights demonstrations;

Whereas, the City of Kaufman, in accordance with Executive Order 13166, must take reasonable steps to ensure meaningful access to services in federally assisted programs and activities by persons with limited English proficiency (LEP) and must have an LEP plan in place specific to the locality and beneficiaries for each TxCDBG project;

Whereas, the City of Kaufman, in accordance with Section 504 of the Rehabilitation Act of 1973, does not discriminate on the basis of disability and agrees to ensure that qualified individuals with disabilities have access to programs and activities that receive federal funds; and

Whereas, the City of Kaufman, in accordance with Section 808(e)(5) of the Fair Housing Act (42 USC 3608(e)(5)) that requires HUD programs and activities be administered in a manner affirmatively to

further the policies of the Fair Housing Act, agrees to conduct at least one activity during the contract period of the TxCDBG contract, to affirmatively further fair housing;

Whereas, the City of Kaufman, agrees to maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KAUFMAN, TEXAS, that:

The CITY of KAUFMAN, ADOPTS/REAFFIRMS The following policies:

1. Citizen Participation Plan and Grievance Procedures (Form A1013);
2. Excessive Force Policy (Form A1003);
3. Fair Housing Policy (Form A1015).
4. [If Grant Recipient employs 15 or more employees], Section 504 Policy and Grievance Procedures (Form A1004); and
5. Code of Conduct Policy (Form A1002).

The CITY OF KAUFMAN affirms its commitment to conduct a project-specific analysis and take all appropriate action necessary to comply with program requirements for the following:

6. Section 3 economic opportunity;
7. Limited English Proficiency; and
8. Activity to affirmatively Furth Fair Housing choice.

**Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.**

\_\_\_\_\_  
Signature of Elected Official

\_\_\_\_\_  
Printed Name of Elected Official

City of Kaufman

Date \_\_\_\_\_

## **CODE OF CONDUCT POLICY**

These procedures are intended to serve as guidelines for the procurement of supplies, equipment, construction services and professional services for the Texas Community Development Block Grant (TxCDBG) Program. The regulations related to conflict of interest and nepotism may be found at the Texas Government Code Chapter 573, Texas Local Government Code Chapter 171, Uniform Grant Management Standards by Texas Comptroller, 24 CFR 570.489(g) & (h), and 2 CFR 200.318.

### **CODE OF CONDUCT**

As a Grant Recipient of a TxCDBG contract, the City of Kaufman shall avoid, neutralize, or mitigate actual or potential conflicts of interest to prevent an unfair competitive advantage or the existence of conflicting roles that might impair the performance of the TxCDBG contract or impact the integrity of the procurement process.

For procurement of goods and services, no employee, officer, or agent of the City of Kaufman shall participate in the selection, award, or administration of a contract supported by TxCDBG funds if he or she has a real or apparent conflict of interest. Such a conflict could arise if the employee, officer, or agent; any member of his/her immediate family; his/her partner; or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

No officer, employee, or agent of the City of Kaufman shall solicit or accept gratuities, favors or anything of monetary value from contractors or firms, potential contractors or firms, or parties to sub-agreements, except where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value.

Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

For all other cases, no employee, agent, consultant, officer, or elected or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving TxCDBG funds, that has any CDBG function/responsibility, or can participate in a decision-making process or gain inside information, may obtain a financial interest or benefit from the TxCDBG activity.

The conflict-of-interest restrictions and procurement requirements identified herein shall apply to a benefitting business, utility provider, or other third-party entity that is receiving assistance, directly or indirectly, under a TxCDBG contract or award, or that is required to complete some or all work under the TxCDBG contract to meet the National Program Objective.

Any person or entity including any benefitting business, utility provider, or other third party entity that is receiving assistance, directly or indirectly, under a TxCDBG contract or award, or that is required to complete some or all work under the TxCDBG contract in order to meet a National Program Objective, that might potentially receive benefits from TxCDBG awards may not participate in the selection, award, or administration of a contract supported by CDBG funding.

Any alleged violations of these standards of conduct shall be referred to the City of Kaufman's Attorney. Where violations appear to have occurred, the offending employee, officer or agent shall be subject to disciplinary action, including but not limited to dismissal or transfer; where violations or infractions appear to be substantial in nature, the matter may be referred to the appropriate officials for criminal investigation and possible prosecution.

**Passed and approved this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.**

---

Jeff Jordan, Mayor  
City of Kaufman

## **Excessive Force Policy**

In accordance with 24 CFR 91.325(b)(6), the *City of Kaufman hereby* adopts and will enforce the following policy with respect to the use of excessive force:

1. It is the policy of the City of Kaufman to prohibit the use of excessive force by the law enforcement agencies within its jurisdiction against any individual engaged in non-violent civil rights demonstrations.
2. It is also the policy of the City of Kaufman to enforce applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.
3. The City of Kaufman will introduce and pass a resolution adopting this policy.

As officers and representatives of the City of Kaufman, we the undersigned have read and fully agree to this plan and become a party to the full implementation of this program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

09/01/2020

## **Section 504 Policy Against Discrimination based on Handicap and Grievance Procedures**

In accordance with 24 CFR Section 8, Nondiscrimination based on Handicap in federally assisted programs and activities of the Department of Housing and Urban Development, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309), the City of Kaufman hereby adopts the following policy and grievance procedures:

1. Discrimination prohibited. No otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development (HUD).
2. The City of Kaufman does not discriminate on the basis of handicap in admission or access to, or treatment or employment in, its federally assisted programs and activities.
3. The City of Kaufman's recruitment materials or publications shall include a statement of this policy in 1. above.
4. The City of Kaufman shall take continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipients that it does not discriminate on the basis of handicap in violation of 24 CFR Part 8.
5. For hearing and visually impaired individuals eligible to be served or likely to be affected by the TxCDBG program, the *City of Kaufman* shall ensure that they are provided with the information necessary to understand and participate in the TxCDBG program.
6. Grievances and Complaints
  - a. Any person who believes she or he has been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for *the City of Kaufman* to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.
  - b. Complaints should be addressed to: **Jessie Hanks, City Secretary, 209 S Washington St, Kaufman TX, 75142**, who has been designated to coordinate Section 504 compliance efforts.

- c. A complaint should be filed in writing or verbally, contain the name and address of the person filing it, and briefly describe the alleged violation of the regulations.
- d. A complaint should be filed within thirty (30) working days after the complainant becomes aware of the alleged violation.
- e. An investigation, as may be appropriate, shall follow a filing of a complaint. The investigation will be conducted by **Jessie Hanks, City Secretary**. Informal but thorough investigations will afford all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.
- f. A written determination as to the validity of the complaint and description of resolution, if any, shall be issued by **Jessie Hanks, City Secretary**, and a copy forwarded to the complainant with fifteen (15) working days after the filing of the complaint where practicable.
- g. The Section 504 coordinator shall maintain the files and records of the City of Kaufman relating to the complaint's files.
- h. The complainant can request a reconsideration of the case in instances where he or she is dissatisfied with the determination/resolution as described in f. above. The request for reconsideration should be made to the City of Kaufman within ten working days after the receipt of the written determination/resolution.
- i. The right of a person to a prompt and equitable resolution of the complaint filed hereunder shall not be impaired by the person's pursuit of other remedies such as the filing of a Section 504 complaint with the U.S. Department of Housing and Urban Development. Utilization of this grievance procedure is not a prerequisite to the pursuit of other remedies.
- j. These procedures shall be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and assure that the City of Kaufman complies with Section 504 and HUD regulations.

---

Signature/Title

---

Date

## **Civil Rights**

### **City of Kaufman**

#### **Notice 1:**

#### **Policy of Nondiscrimination on the Basis of Disability**

**(Required if City employs 15 or more individuals)**

The City of Kaufman does not discriminate on the basis of disability in the admission or access to, or employment in, its federally assisted programs or activities. Jessie Hanks, City Secretary, has been designated to coordinate compliance with the nondiscrimination requirements contained in the Department of Housing and Urban Development's (HUD) regulations implementing Section 504 (24 CFR Part 8).

#### **Notice 2:**

#### **Citizen Participation & Grievance Procedures Notice (required)**

The City of Kaufman has adopted complaint and grievance procedures regarding its Texas Community Development Block Grant Programs (TxCDBG). Citizens may obtain a copy of these written procedures at 209 S Washington St, Kaufman TX, 75142, the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday. Citizens may also request the procedures be mailed to them by calling Jessie Hanks, City Secretary at (972) 932-2216. These procedures outline the steps for a citizen to follow if he/she wishes to file a complaint or grievance about TxCDBG activities.

A person who has a complaint or grievance about any services or activities with respect to the TxCDBG project, may during regular business hours submit such complaint or grievance, in writing to the Jessie Hanks, City Secretary, at 209 S Washington St, Kaufman TX, 75142, or may call (972) 932-2216. The City of Kaufman will make every effort to respond fully to such complaints within fifteen (15) working days where practicable.

### **For Contractors**

#### **Notice 1:**

**Required of Contractors with Contracts Greater than \$10,000, Post in conspicuous places and in advertisements or solicitations for employment**

### **Equal Employment Opportunity Statement**

The City of Kaufman does not discriminate on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin.

## **Derechos Civiles**

### **Para Ciudad de Kaufman**

#### **Aviso Numero 1:**

#### **Política de no discriminación por motivo de la discapacidad (requerido si la Ciudad/Condado emplea a 15 o más personas)**

La Ciudad de Kaufman no discrimina por motivos de discapacidad en la admisión o acceso a, o empleo, en sus programas o actividades que reciben ayuda federal. Jessie Hanks, secretaria de la ciudad, ha sido designado para coordinar el cumplimiento de los requisitos de no discriminación contenidos en el Departamento de Vivienda (HUD) y reglamentos de Desarrollo Urbano de aplicación de la Sección 504 (24 CFR Parte 8).

#### **Aviso Numero 2:**

#### **Participación Ciudadana y Procedimientos de Quejas Aviso (requerido)**

La Ciudad de Kaufman ha adoptado procedimientos para quejas y denuncias con respecto al programa de Texas Community Development Block Grant Programs (TxCDBG). Los ciudadanos pueden obtener una copia de estos procedimientos escritos en 209 S Washington St, Kaufman TX, 75142 entre las horas de 8:00 am y 5:00 pm de lunes a viernes. Los ciudadanos también pueden solicitar los procedimientos por correo al llamar a Jessie Hanks, secretaria de la ciudad en (972) 932-2216. Estos procedimientos describen los pasos que se deben seguir para que un ciudadano pueda, si desea, presentar una queja o reclamo acerca de las actividades del programa TxCDBG.

Una persona que tiene una queja o reclamación sobre cualquiera de los servicios o actividades en relación con el programa TxCDBG, lo pueden hacer durante las horas regulares por escrito a la Jessie Hanks, secretaria de la ciudad, a 209 S Washington St, Kaufman, TX 75142 o pueden llamar a (972) 932-2216. La ciudad de Kaufman hará todo lo posible para responder con plenitud las quejas dentro de los quince (15) días hábiles cuando sea posible.

### **Para los contratistas**

#### **Aviso Numero 1:**

#### **Para Contratistas con contratos de \$ 10,000 o más es requerido que; Publique en lugares visibles y en los anuncios o solicitudes de empleo**

#### **Declaración de Igualdad de Oportunidades de Empleo**

La Ciudad de Kaufman no discrimina por motivos de raza, color, religión, sexo, orientación sexual, identidad de género u origen nacional.

**Section 504 Self-Evaluation Form****Grant Recipient:** City of Kaufman**TxCDBG Contract No:** CPC21-0558**Brief Description of Project:** Development of a comprehensive plan in the City of Kaufman, Texas.

1. Identify individual(s) responsible for collecting information for the Section 504 Self-Evaluation Review. City Secretary
2. Identify the individual(s) with disabilities and/or organizations (representing persons with disabilities) that were consulted for the self-evaluation review. Describe how they participated in the self-evaluation review. No individuals or organizations were consulted. All public notices and hearings regarding TDA programs and compliance solicit participation from disabled individuals.
3. Describe Section 504 nondiscrimination notification procedures (example: newspaper advertisements, utility inserts, flyers, postings at public facilities). The city adopted grievance procedures regarding Section 504 and published a notice regarding these procedures.
4. List policies that may limit participation of individuals with disabilities in Contractor programs, projects, and activities. None
5. Identify and list public facilities that limit accessibility. None
6. Describe contractor in-house procedures for circulating information on Section 504 and procedures for staff training on Section 504. Information is provided at workshops, conferences, and other sources of distribution for review and implementation.
7. Identify Section 504 contractor complaint procedures. City has adopted grievance procedures as passed by City Council through resolution.
8. Describe Contractor's efforts to ensure compliance of Section 504 by third party contractors (Construction Contractors, Engineers, Administrators etc.). All third-party contracts under TDA program include language of non-discrimination on the basis of disability.
9. Describe Contractor's efforts to make documents and publications available to individuals with special needs (examples: large print, audio tape, Braille, computer disks). The City will provide as needed.
10. List special information services that are available (examples: telephone listening devices, information sheet on TDD Relay Texas Service Center for the deaf, interpreters, readers, listening devices, audio visual presentations, automated electronic devices, assistive listening devices, documents in Braille etc.). The City will provide as needed upon request.
11. List emergency evacuation procedures. The city does not currently have any disabled employees that may require assistance evacuating the building during an emergency. However, evacuation of employees is accomplished through appropriate exits that are clearly marked for this purpose.
12. How many people does the City of Kaufman employ?

**Fair Housing Month Proclamation  
Proclamation of April as Fair Housing Month**

WHEREAS Title VIII of the Civil Rights Act of 1968, as amended, prohibits discrimination in housing and declares it a national policy to provide, within constitutional limits, for fair housing in the United States; and

WHEREAS The principle of Fair Housing is not only national law and national policy, but a fundamental human concept and entitlement for all Americans; and

WHEREAS The National Fair Housing Law, during the month of April, provides an opportunity for all Americans to recognize that complete success in the goal of equal housing opportunity can only be accomplished with the help and cooperation of all Americans.

NOW, THEREFORE, WE, the *City of Kaufman*, do proclaim April as Fair Housing Month in the City of Kaufman and do hereby urge all the citizens of this locality to become aware of and support the Fair Housing law.

IN WITNESS WHEREOF we have affixed our signatures and seal on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness:

\_\_\_\_\_

Title: \_\_\_\_\_

Witness:

\_\_\_\_\_

Title: \_\_\_\_\_

**Fair Housing Public Service Announcement**  
**Public Service Announcement:**  
**Fair Housing, It's the Law**

To promote fair housing practices, the City of Kaufman encourages potential homeowners and renters to be aware of their rights under the National Fair Housing Law.

Title VIII of the Civil Rights Act of 1968, as amended, prohibits discrimination against any person based on race, color, religion, sex, disability, familial status or national origin in the sale or rental of units in the housing market.

For more information on fair housing or to report possible fair housing discrimination, call the Texas Workforce Commission at (888) 452-4778 or (512) 463-2642 TTY: 512-371-7473.

THE CITY OF KAUFMAN  
CITIZEN PARTICIPATION PLAN  
TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Note to Grant Recipients regarding Limited English Proficiency (LEP) requirements:

In accordance with federal law, if there is a significant number of the population who are non-English speaking residents and are affected by the TxCDBG project, such citizens should have ‘meaningful access’ to all aspects of the TxCDBG project. To provide ‘meaningful access’, Grant Recipients may need to provide interpreter services at public hearings or provide non-English written materials that are routinely provided in English. Examples of such vital documents may include Citizen Participation notices (e.g., complaint procedures, hearings notices), civil rights notices, and any other published notice that may allow an eligible person with limited English proficiency to participate in discussing proposed CDBG activities.

For more information, see [LEP.gov](http://LEP.gov)

#### COMPLAINT PROCEDURES

These complaint procedures comply with the requirements of the Texas Department of Agriculture’s Texas Community Development Block Grant (TxCDBG) Program and Local Government Requirements found in 24 CFR §570.486 (Code of Federal Regulations). Citizens can obtain a copy of these procedures at the City of Kaufman, 209 S Washington St, Kaufman TX, 75142, (972) -932-2216, during regular business hours.

Below are the formal complaint and grievance procedures regarding the services provided under the TxCDBG project.

1. A person who has a complaint or grievance about any services or activities with respect to the TxCDBG project, whether it is a proposed, ongoing, or completed TxCDBG project, may during regular business hours submit such complaint or grievance, in writing to the City, at 209 S Washington St, Kaufman TX, 75142, or may call (972) -932-2216.
2. A copy of the complaint or grievance shall be transmitted by the City Manager to the entity that is the subject of the complaint or grievance and to the City/County Attorney within five (5) working days after the date of the complaint or grievance was received.
3. The City of Kaufman shall complete an investigation of the complaint or grievance, if practicable, and provide a timely written answer to the person who made the complaint or grievance within ten (10) days.
4. If the investigation cannot be completed within ten (10) working days per 3 above, the person who made the grievance or complaint shall be notified, in writing, within fifteen (15) days where practicable after receipt of the original complaint or grievance and shall detail when the investigation should be completed.

5. If necessary, the grievance and a written copy of the subsequent investigation shall be forwarded to the TxCDBG for their further review and comment.
6. If appropriate, provide copies of grievance procedures and responses to grievances in both English and Spanish, or other appropriate language.

## TECHNICAL ASSISTANCE

When requested, the City shall provide technical assistance to groups that are representative of people of low- and moderate-income in developing proposals for the use of TxCDBG funds. The City, based upon the specific needs of the community's residents at the time of the request, shall determine the level and type of assistance.

## PUBLIC HEARING PROVISIONS

For each public hearing scheduled and conducted by the City, the following public hearing provisions shall be observed:

1. Public notice of all hearings must be published at least seventy-two (72) hours prior to the scheduled hearing. The public notice must be published in a local newspaper. Each public notice must include the date, time, location, and topics to be considered at the public hearing. A published newspaper article can also be used to meet this requirement so long as it meets all content and timing requirements. Notices should also be prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.
2. When a significant number of non-English speaking residents are a part of the potential service area of the TxCDBG project, vital documents such as notices should be published in the predominant language of these non-English speaking citizens.
3. Each public hearing shall be held at a time and location convenient to potential or actual beneficiaries and will include accommodation for persons with disabilities. Persons with disabilities must be able to attend the hearings and the City must make arrangements for individuals who require auxiliary aids or services if contacted at least two days prior to the hearing.
4. A public hearing held prior to the submission of a TxCDBG application must be held after 5:00 PM on a weekday or at a convenient time on a Saturday or Sunday.
5. When a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing, an interpreter should be present to accommodate the needs of the non-English speaking residents.

The City shall comply with the following citizen participation requirements for the preparation and submission of an application for a TxCDBG project:

1. At a minimum, the City shall hold at least one (1) public hearing prior to submitting the application to the Texas Department of Agriculture.

2. The City shall retain documentation of the hearing notice(s), a listing of persons attending the hearing(s), minutes of the hearing(s), and any other records concerning the proposed use of funds for three (3) years from closeout of the grant to the state. Such records shall be made available to the public in accordance with Chapter 552, Texas Government Code.
3. The public hearing shall include a discussion with citizens as outlined in the applicable TxCDBG application manual to include, but is not limited to, the development of housing and community development needs, the amount of funding available, all eligible activities under the TxCDBG program, and the use of past TxCDBG contract funds, if applicable. Citizens, with particular emphasis on persons of low- and moderate-income who are residents of slum and blight areas, shall be encouraged to submit their views and proposals regarding community development and housing needs. Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing.
4. When a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing, an interpreter should be present to accommodate the needs of the non-English speaking residents.

The City must comply with the following citizen participation requirements in the event that the City receives funds from the TxCDBG program:

1. The City shall also hold a public hearing concerning any substantial change, as determined by TxCDBG, proposed to be made in the use of TxCDBG funds from one eligible activity to another again using the preceding notice requirements.
2. Upon completion of the TxCDBG project, the City shall hold a public hearing and review its program performance including the actual use of the TxCDBG funds.
3. When a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing, for either a public hearing concerning substantial change to the TxCDBG project or for the closeout of the TxCDBG project, publish notice in both English and Spanish, or other appropriate language and provide an interpreter at the hearing to accommodate the needs of the non-English speaking residents.
4. The City shall retain documentation of the TxCDBG project, including hearing notice(s), a listing of persons attending the hearing(s), minutes of the hearing(s), and any other records concerning the actual use of funds for a period of three (3) years from closeout of the grant to the state. Such records shall be made available to the public in accordance with Chapter 552, Texas Government Code.

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Jeff Jordan, Mayor

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Date

# MUESTRAS

## LA CIUDAD DE KAUFMAN PLAN DE PARTICIPACIÓN CIUDADANA PROGRAMA DE TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

### *Nota a los receptores de subvención en relación a requisitos de Dominio Limitado del Inglés:*

De acuerdo con la ley federal hay un número significativo de población que son residentes y que no hablan inglés y son afectados por el proyecto TxCDBG, estos ciudadanos deben tener "acceso significativo" a todos los aspectos del proyecto TxCDBG. Para proporcionar "acceso significativo", receptores de la subvención pueden ser utilizados para proporcionar servicios de interpretación en las audiencias públicas o proporcionar materiales no escritos en inglés que se proporcionan de manera rutinaria en Inglés. Para obtener más información, consulte LEP.gov.

### PROCEDIMIENTOS DE QUEJA

Estos procedimientos de queja cumplen con los requisitos del Departamento de Programa de Agricultura de Texas Community Development Block Grant (TxCDBG) y los requisitos del gobierno local de Texas se encuentran en 24 CFR §570.486 (Código de Regulaciones Federales). Los ciudadanos pueden obtener una copia de estos procedimientos en la Ciudad de Kaufman, 209 S Washington St, Kaufman TX, 75142, (972) 932-2216, en horario de oficina.

A continuación se presentan los procedimientos formales de quejas y quejas relativas a los servicios prestados en el marco del proyecto TxCDBG.

1. Una persona que tiene una queja o reclamación sobre cualquiera de los servicios o actividades en relación con el proyecto TxCDBG, o si se trata de una propuesta, en curso o determinado proyecto TxCDBG, pueden durante las horas regulares presentar dicha queja o reclamo, por escrito a la ciudad de Kaufman, a 209 S Washington St, Kaufman TX, 75142, o puede llamar a (903) 932-2216.
2. Una copia de la queja o reclamación se transmitirá por el administrador de la ciudad a la entidad que es encargada de la queja o reclamación y al Abogado de la Ciudad dentro de los cinco (5) días hábiles siguientes a la fecha de la queja o día que la reclamación fue recibida.
3. El Ciudad de Kaufman deberá cumplir una investigación de la queja o reclamación, si es posible, y dara una respuesta oportuna por escrito a la persona que hizo la denuncia o queja dentro de los diez (10) días.
4. Si la investigación no puede ser completada dentro de los diez (10) días hábiles anteriormente, la persona que hizo la queja o denuncia sera notificada, por escrito, dentro de los quince (15) días cuando sea posible después de la entrega de la queja original o quejas y detallará cuando se debiera completar la investigación.

5. Si es necesario, la queja y una copia escrita de la investigación posterior se remitirán a la TxCDBG para su posterior revisión y comentarios.
6. Se proporcionara copias de los procedimientos de queja y las respuestas a las quejas, tanto en Inglés y Español, u otro lenguaje apropiado.

## ASISTENCIA TÉCNICA

Cuando lo solicite, la Ciudad proporcionará asistencia técnica a los grupos que son representantes de las personas de bajos y moderados ingresos en el desarrollo de propuestas para el uso de los fondos TxCDBG. La Ciudad, en base a las necesidades específicas de los residentes de la comunidad en el momento de la solicitud, deberá determinar el nivel y tipo de asistencia.

## DISPOSICIONES AUDIENCIA PÚBLICA

Para cada audiencia pública programada y llevada a cabo por la Ciudad, se observarán las disposiciones siguientes de audiencias públicas:

1. Aviso público de todas las audiencias deberá publicarse al menos setenta y dos (72) horas antes de la audiencia programada. El aviso público deberá publicarse en un periódico local. Cada aviso público debe incluir la fecha, hora, lugar y temas a considerar en la audiencia pública. Un artículo periodístico publicado también puede utilizarse para cumplir con este requisito, siempre y cuando cumpla con todos los requisitos de contenido y temporización. Los avisos también deben ser un lugar prominente en los edificios públicos y se distribuyen a las autoridades locales de vivienda pública y otros grupos interesados de la comunidad.
2. Cuando se tenga un número significativo de residentes que no hablan inglés serán una parte de la zona de servicio potencial del proyecto TxCDBG, documentos vitales como las comunicaciones deben ser publicados en el idioma predominante de estos ciudadanos que no hablan inglés.
3. Cada audiencia pública se llevará a cabo en un momento y lugar conveniente para los beneficiarios potenciales o reales e incluirá alojamiento para personas con discapacidad. Las personas con discapacidad deben poder asistir a las audiencias y la Ciudad debe hacer los arreglos para las personas que requieren ayudas o servicios auxiliares en caso de necesitarlo por lo menos dos días antes de la audiencia será pública.
4. Una audiencia pública celebrada antes de la presentación de una solicitud TxCDBG debe hacerse después de las 5:00 pm en un día de semana o en un momento conveniente en sábado o domingo.
5. Cuando un número significativo de residentes que no hablan inglés se registra para participar en una audiencia pública, un intérprete debe estar presente para dar cabida a las necesidades de los residentes que no hablan inglés.

La Ciudad deberá cumplir con los siguientes requisitos de participación ciudadana para la elaboración y presentación de una solicitud para un proyecto TxCDBG:

1. Como mínimo, la Ciudad deberá tener por lo menos un (1) audiencia pública antes de presentar la solicitud al Departamento de Agricultura de Texas.
2. La Ciudad conservará la documentación de la convocatoria(s) audiencia, un listado de las personas que asistieron a la audiencia(s), acta de la vista(s), y cualquier otra documentación relativa a la propuesta de utilizar los fondos para tres (3) años a partir de la liquidación de la subvención para el Estado . Dichos registros se pondrán a disposición del público, de conformidad con el Capítulo 552, Código de Gobierno de Texas.
3. La audiencia pública deberá incluir una discusión con los ciudadanos como se indica en el manual correspondiente de aplicación TxCDBG, pero no se limita a, el desarrollo de las necesidades de vivienda y desarrollo comunitario, la cantidad de fondos disponibles, todas las actividades elegibles bajo el programa TxCDBG y el uso de fondos últimos contratos TxCDBG, en su caso. Los ciudadanos, con especial énfasis en las personas de bajos y moderados ingresos que son residentes de las zonas de tugurios y tizón, se fomentará a presentar sus opiniones y propuestas sobre el desarrollo de la comunidad y las necesidades de vivienda. Los ciudadanos deben ser conscientes de la ubicación en la que podrán presentar sus puntos de vista y propuestas en caso de que no pueda asistir a la audiencia pública.
4. Cuando un número significativo de residentes que no hablan inglés se registra para participar en una audiencia pública, un intérprete debe estar presente para dar cabida a las necesidades de los residentes que no hablan inglés.

La Ciudad debe cumplir con los siguientes requisitos de participación ciudadana en el caso de que la Ciudad recibe fondos del programa TxCDBG:

1. La Ciudad celebrará una audiencia pública sobre cualquier cambio sustancial, según lo determinado por TxCDBG, se propuso que se hará con el uso de fondos TxCDBG de una actividad elegible a otro utilizando de nuevo los requisitos de notificación
2. Una vez finalizado el proyecto TxCDBG, la Ciudad celebrará una audiencia pública y revisara el desempeño del programa incluyendo el uso real de los fondos TxCDBG.
3. Cuando un número significativo de residentes que no hablan inglés se puede registra para participar en una audiencia pública, ya sea para una audiencia pública sobre el cambio sustancial del proyecto TxCDBG o para la liquidación del proyecto TxCDBG, publicará un aviso en Inglés y Español u otro idioma apropiado y se proporcionara un intérprete en la audiencia para dar cabida a las necesidades de los residentes.
4. La Ciudad conservará la documentación del proyecto TxCDBG, incluyendo aviso de audiencia(s), un listado de las personas que asistieron a la audiencia(s), acta de la vista(s), y cualquier otro registro concerniente al uso real de los fondos por un período de a tres (3) años a partir de la liquidación del proyecto al estado.

Dichos registros se pondrán a disposición del público, de conformidad con el Capítulo 552, Código de Gobierno de

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Jeff Jordan, Alcalde  
La Ciudad de Kaufman

---

Fecha

## **Fair Housing Policy**

In accordance with Fair Housing Act, the City of Kaufman, hereby adopts the following policy with respect to the Affirmatively Furthering Fair Housing:

1. *The City of Kaufman agrees to* affirmatively further fair housing choice for all seven protected classes (race, color, religion, sex, disability, familial status, and national origin).
2. *The City of Kaufman agrees to* plan at least one activity during the contract term to affirmatively further fair housing.
3. *The City of Kaufman* will introduce and pass a resolution adopting this policy.

As officers and representatives of the City of Kaufman, we the undersigned have read and fully agree to this plan and become a party to the full implementation of this program.

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Signature

---

Title

---

Date

## Section 3 Certification as S3 Business Concern

### Business Information

|                                          |                                                                                                                                                   |
|------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| Business Name                            |                                                                                                                                                   |
| Address of Business Headquarters         |                                                                                                                                                   |
| County of Business Headquarters          |                                                                                                                                                   |
| County of residence for 51% of employees |                                                                                                                                                   |
| Name of Owners /Operators                |                                                                                                                                                   |
| Section 3 status of Owner/Operators      | <input type="checkbox"/> Low-to-Moderate income<br><input type="checkbox"/> Public Housing Resident<br><input type="checkbox"/> None of the above |
|                                          |                                                                                                                                                   |

### Labor Hours – Previous 3 Months\*

|                                                                                         |  |
|-----------------------------------------------------------------------------------------|--|
| Start Date of Reporting Period                                                          |  |
| End Date of Reporting Period                                                            |  |
| Total Number of Labor Hours – all work                                                  |  |
| Number of S3 Labor Hours (work performed by LMI Persons and/or YouthBuild Participants) |  |
| S3 Hours as percent of Total Labor Hours                                                |  |

*\*Records supporting these hours must be made available upon request. Please redact Personally Identifiable Information from payroll records prior to releasing any documentation under this requirement. Employee ID numbers other than an employee's Social Security Number should be used to facilitate this expectation.*

CERTIFICATION: By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and this reporting measure is for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title XXX).

|                                                      |           |      |
|------------------------------------------------------|-----------|------|
|                                                      |           |      |
| Business Owner or Designee<br>Name and Title (Print) | Signature | Date |



**Meeting**  
**Date: 11/21/2022**

**Date: 11/17/2022**

**Item #: 19.**

**Dept.: Administration**

**Resolution**

**SUBJECT:**

Consider and take appropriate action on Resolution R-42-22, a resolution of the City Council of the City of Kaufman, Texas, approving an authorized signatory in matters pertaining to TxCDBG Grant No. CPC-21-0058.

**BACKGROUND:**

Required to submit for the administration of the CDBG Planning Grant

**Author:**  
Mike Slye, City Manager

**Reviewed:**  
Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation: Staff recommends approval of Resolution R-42-22 as presented.**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|--------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input checked="" type="checkbox"/>       | <input type="checkbox"/>                    | <input type="checkbox"/>       |

**RESOLUTION NO. R-42-22**

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF KAUFMAN TEXAS DESIGNATING AUTHORIZED SIGNATORIES FOR CONTRACTUAL DOCUMENTS AND DOCUMENTS FOR REQUESTING FUNDS PERTAINING TO THE TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (TxCDBG) CONTRACT NUMBER CPC-21-0058.

WHEREAS, the City of Kaufman, Texas has received a Texas Community Development Block Grant award to provide a planning study, and;

WHEREAS, it is necessary to appoint persons to execute contractual documents and documents for requesting funds from the Texas Department of Agriculture, and;

WHEREAS, an original signed copy of the TxCDBG *Depository/Authorized Signatories Designation Form (Form A202)* is to be submitted with a copy of this Resolution, and;

WHEREAS, the City of Kaufman Texas acknowledges that in the event that an authorized signatory of the City changes (elections, illness, resignations, etc.), the City must provide TxCDBG with the following:

- a resolution stating who the new authorized signatory is (not required if this original resolution names only the title and not the name of the signatory); and
- a revised TxCDBG *Depository/ Authorized Signatories Designation Form (Form A202)*.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KAUFMAN TEXAS, AS FOLLOWS:

The Mayor, Mayor Pro-Tem, City Manager, will be authorized to execute contractual and environmental review documents between the Texas Department of Agriculture and the City for the Texas Community Development Block Grant Program.

The Mayor, Mayor Pro-Tem, City Manager, and City Secretary will be authorized to execute the *State of Texas Purchase Voucher* and *Request for Payment Form* documents required for requesting funds approved in the 2019 Texas Community Development Block Grant Program.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF KAUFMAN, TEXAS on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Jeff Jordan, Mayor

Attest:

\_\_\_\_\_  
Jessie Hanks, City Secretary



Meeting  
Date: 11/21/2022

Date: 11/09/2022

Item #: 20.

Dept.: Administration

**Action Item**

**SUBJECT:**

Consider and take appropriate action on the award of bid and contract to AquaGreen Global, LLC for the construction of pedestrian paving and landscape/irrigation improvements for the Kaufman Downtown Square and authorizing the Mayor or his designee to execute necessary documents.

**BACKGROUND:**

City received 2 bids for the downtown square renovation project. Both bids were scored and AquaGreen Global, LLC scored highest and is the most qualified firm to complete the project. This project is dually funded with Kaufman County.

Author:  
Mike Slye, City Manager

Reviewed:  
Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation:** Staff recommends awarding the bid for the construction of pedestrian paving and landscape/irrigation improvements for the Kaufman Downtown Square to AquaGreen Global, LLC.

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship      |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input checked="" type="checkbox"/>       | <input type="checkbox"/>                    | <input checked="" type="checkbox"/> |

November 16, 2022

Michael T. Slye, City Manager  
City of Kaufman  
209 S. Washington St.  
Kaufman, Texas 75142

**Re: Bid Proposal Evaluation for Pedestrian Paving & Landscape/Irrigation  
Maintenance Improvements for Kaufman Square**

Dear Mike:

On November 3, 2022, competitive sealed proposal (CSP) were opened for the above referenced City project. Two bids were received and a bid tabulation report has been prepared and attached for record. The following are the bid results for the total project bid (base):

| Contractor                      | Total Project Bid | Total Calendar Days |
|---------------------------------|-------------------|---------------------|
| AquaGreen Global, LLC           | \$393,931.35      | 150                 |
| Firefighters Landscape & Design | \$533,602.50      | 120                 |

The project was bid as a CSP (Competitive Sealed Proposal) in which the published selection criteria was used. The selection criteria is as follows:

1. Cost – 40%
2. Bid Time – 20%
3. Qualifications & Experience – 20%
4. Reputation/References – 20%

A panel consisting of representatives from City of Kaufman and TNP scored the respective bidders based on the selection criteria above. Information for Items 3 & 4 of the selection criteria were provided by the bidders for the scoring evaluation. The scores were tabulated and are attached for record.

Based on the scores, AquaGreen Global, LLC, submitted the proposal that offers the best value to the City.

If you have any questions or need any additional information, please do not hesitate to contact us.



Sincerely,  
**tnp**  
**teague nall & perkins**

Philip C. Varughese, P.E.  
Associate/Team Leader

## Attachments

cc: Mike Holder, Assistant City Manager (via email)  
Tim Hopwood, Director of Public Works (via email)  
Nick Nelson, Teague, Nall & Perkins (via email)  
KAU 22348 File

**Pedestrian Paving & Landscape/Irrigation Maintenance Improvements for Kaufman Square**

**Rating Category Scoring System**

|                                 | Bid Amount        |          | Bid Time*  |          | Qualifications & Experience | Reputation & References |       |
|---------------------------------|-------------------|----------|------------|----------|-----------------------------|-------------------------|-------|
| Contractor                      | Total Project Bid | (40 pts) | Total Time | (20 pts) | (20 pts)                    | (20 pts)                | Total |
|                                 |                   |          |            |          |                             |                         |       |
| AquaGreen Global, LLC           | \$393,931.35      | 40.0     | 150        | 16.0     | 20.0                        | 20.0                    | 96.0  |
|                                 |                   |          |            |          |                             |                         |       |
| Firefighters Landscape & Design | \$533,602.50      | 29.5     | 120        | 20.0     | 20.0                        | 20.0                    | 89.5  |
|                                 |                   |          |            |          |                             |                         |       |

# BID TABULATION REPORT

**TEAGUE NALL AND PERKINS, INC.**

**CONSULTING ENGINEERS**

TNP JOB NO: KAU 22348

BID DATE: THURSDAY, NOVEMBER 3, 2022

BID TIME: 2:00 PM CST

ENGINEER'S ESTIMATE: \$388,000.00

CLIENT: CITY OF KAUFMAN

DESCRIPTION: PEDESTRIAN PAVING & LANDSCAPE/IRRIGATION MAINTENANCE  
IMPROVEMENTS FOR KAUFMAN SQUARE

|               |                                                                     |       |      | BIDDERS               |                     |                                 |                     |
|---------------|---------------------------------------------------------------------|-------|------|-----------------------|---------------------|---------------------------------|---------------------|
|               |                                                                     |       |      | AquaGreen Global, LLC |                     | Firefighters Landscape & Design |                     |
| ITEM NO.      | DESCRIPTION OF ITEMS                                                | Y     | UNIT | UNIT COST             | TOTAL               | UNIT COST                       | TOTAL               |
| <b>UNIT A</b> | <b>KAUFMAN SQUARE PAVING &amp; HARDSCAPE IMPROVEMENTS</b>           |       |      |                       |                     |                                 |                     |
| A-1           | Bonds & Insurance (Paving & Landscape/Irrigation)                   | 1     | LS   | \$20,000.00           | \$20,000.00         | \$20,695.00                     | \$20,695.00         |
| A-2           | Mobilization                                                        | 1     | LS   | \$19,500.00           | \$19,500.00         | \$15,000.00                     | \$15,000.00         |
| A-3           | 20" Boulder                                                         | 9     | EA   | \$350.00              | \$3,150.00          | \$695.00                        | \$6,255.00          |
| A-4           | 30" Boulder                                                         | 7     | EA   | \$500.00              | \$3,500.00          | \$895.00                        | \$6,265.00          |
| A-5           | City of Kaufman Style Bench                                         | 4     | EA   | \$4,000.00            | \$16,000.00         | \$3,500.00                      | \$14,000.00         |
| A-6           | Flagpole                                                            | 4     | EA   | \$10,000.00           | \$40,000.00         | \$6,500.00                      | \$26,000.00         |
| A-7           | Large Concrete Planter                                              | 24    | EA   | \$1,000.00            | \$24,000.00         | \$1,950.00                      | \$46,800.00         |
| A-8           | Stamped Concrete                                                    | 5,100 | SF   | \$14.00               | \$71,400.00         | \$25.00                         | \$127,500.00        |
| A-9           | Thickened Stamped Concrete                                          | 1,900 | SF   | \$17.00               | \$32,300.00         | \$30.00                         | \$57,000.00         |
| A-10          | Aluminum Edging                                                     | 170   | LF   | \$20.00               | \$3,400.00          | \$25.00                         | \$4,250.00          |
| A-11          | In Ground Flag Pole Lighting and Associated Electrical Improvements | 1     | LS   | \$15,000.00           | \$15,000.00         | \$15,000.00                     | \$15,000.00         |
| A-12          | Erosion Control                                                     | 1     | LS   | \$5,000.00            | \$5,000.00          | \$4,900.00                      | \$4,900.00          |
| A-13          | Traffic Control                                                     | 1     | LS   | \$15,000.00           | \$15,000.00         | \$15,000.00                     | \$15,000.00         |
|               | <b>TOTAL BID UNIT A - PAVING &amp; HARDSCAPE IMPROVEMENTS</b>       |       |      |                       | <b>\$268,250.00</b> |                                 | <b>\$358,665.00</b> |

## BID TABULATION REPORT

**TEAGUE NALL AND PERKINS, INC.**

**CONSULTING ENGINEERS**

TNP JOB NO: KAU 22348

BID DATE: THURSDAY, NOVEMBER 3, 2022

BID TIME: 2:00 PM CST

ENGINEER'S ESTIMATE: \$388,000.00

CLIENT: CITY OF KAUFMAN

DESCRIPTION: PEDESTRIAN PAVING & LANDSCAPE/IRRIGATION MAINTENANCE  
IMPROVEMENTS FOR KAUFMAN SQUARE

|               |                                                                       |       |      | BIDDERS               |                    |                                 |                    |
|---------------|-----------------------------------------------------------------------|-------|------|-----------------------|--------------------|---------------------------------|--------------------|
|               |                                                                       |       |      | AquaGreen Global, LLC |                    | Firefighters Landscape & Design |                    |
| ITEM NO.      | DESCRIPTION OF ITEMS                                                  | Y     | UNIT | UNIT COST             | TOTAL              | UNIT COST                       | TOTAL              |
| <b>UNIT B</b> | <b>LANDSCAPE/IRRIGATION IMPROVEMENTS</b>                              |       |      |                       |                    |                                 |                    |
| B-1           | Green Mountain Boxwood                                                | 16    | EA   | \$85.00               | \$1,360.00         | \$65.00                         | \$1,040.00         |
| B-2           | Stokes Dwarf Yaupon Holly                                             | 233   | EA   | \$22.50               | \$5,242.50         | \$35.00                         | \$8,155.00         |
| B-3           | Crimson Fire Loropetalum                                              | 17    | EA   | \$31.85               | \$541.45           | \$35.00                         | \$595.00           |
| B-4           | Flirt Nandina                                                         | 140   | EA   | \$32.50               | \$4,550.00         | \$35.00                         | \$4,900.00         |
| B-5           | Black-Eyed Susan                                                      | 29    | EA   | \$15.75               | \$456.75           | \$20.00                         | \$580.00           |
| B-6           | Pansy - Annual Color                                                  | 270   | EA   | \$1.68                | \$453.60           | \$10.00                         | \$2,700.00         |
| B-7           | Big Blue Liriope                                                      | 470   | EA   | \$4.25                | \$1,997.50         | \$20.00                         | \$9,400.00         |
| B-8           | Asian Jasmine                                                         | 299   | EA   | \$2.95                | \$882.05           | \$20.00                         | \$5,980.00         |
| B-9           | 3" Fine Cut Hardwood Mulch                                            | 3,850 | SF   | \$0.45                | \$1,732.50         | \$0.75                          | \$2,887.50         |
| B-10          | 6" Ready to Plant over 2" Gumbo Buster                                | 3,850 | SF   | \$0.90                | \$3,465.00         | \$2.00                          | \$7,700.00         |
| B-11          | Irrigation Improvements                                               | 1     | LS   | \$25,000.00           | \$25,000.00        | \$40,000.00                     | \$40,000.00        |
|               | <b>TOTAL BID UNIT B - LANDSCAPE/IRRIGATION IMPROVEMENTS</b>           |       |      |                       | <b>\$45,681.35</b> |                                 | <b>\$83,937.50</b> |
|               | <b>ALTERNATE BID</b>                                                  |       |      |                       |                    |                                 |                    |
| BA-1          | Lacebark Elm w/ Permanent Irrigation (Alternate Bid)                  | 10    | EA   | \$600.00              | \$6,000.00         | \$1,700.00                      | \$17,000.00        |
| BA-2          | EarthPlanter - Urban Vase 41 (Alternate Bid)                          | 24    | EA   | \$1,000.00            | \$24,000.00        | \$1,000.00                      | \$24,000.00        |
|               | <b>TOTAL BID UNIT BA -ALTERNATE LANDSCAPE/IRRIGATION IMPROVEMENTS</b> |       |      |                       | <b>\$30,000.00</b> |                                 | <b>\$41,000.00</b> |

# BID TABULATION REPORT

TEAGUE NALL AND PERKINS, INC.  
CONSULTING ENGINEERS

CLIENT: CITY OF KAUFMAN  
DESCRIPTION: PEDESTRIAN PAVING & LANDSCAPE/IRRIGATION MAINTENANCE  
IMPROVEMENTS FOR KAUFMAN SQUARE

TNP JOB NO: KAU 22348  
BID DATE: THURSDAY, NOVEMBER 3, 2022  
BID TIME: 2:00 PM CST  
ENGINEER'S ESTIMATE: \$388,000.00

|                                       |                      |   |      | BIDDERS               |             |                                 |             |
|---------------------------------------|----------------------|---|------|-----------------------|-------------|---------------------------------|-------------|
|                                       |                      |   |      | AquaGreen Global, LLC |             | Firefighters Landscape & Design |             |
| ITEM NO.                              | DESCRIPTION OF ITEMS | Y | UNIT | UNIT COST             | TOTAL       | UNIT COST                       | TOTAL       |
| UNIT C OWNERS CONTINGENCY             |                      |   |      |                       |             |                                 |             |
| C-1                                   | Owners Contingency   | 1 | LS   | \$50,000.00           | \$50,000.00 | \$50,000.00                     | \$50,000.00 |
| TOTAL BID UNIT C - OWNERS CONTINGENCY |                      |   |      | \$50,000.00           |             | \$50,000.00                     |             |

BASE BID ITEMS

|                                                        |              |              |
|--------------------------------------------------------|--------------|--------------|
| TOTAL BID UNIT A - KAUFMAN SQUARE PAVING & HARDSCAPE   | \$268,250.00 | \$358,665.00 |
| TOTAL BID UNIT B - KAUFMAN SQUARE LANDSCAPE/IRRIGATION | \$45,681.35  | \$83,937.50  |
| TOTAL ALTERNATE BID                                    | \$30,000.00  | \$41,000.00  |
| TOTAL BID UNIT C - OWNERS CONTINGENCY                  | \$50,000.00  | \$50,000.00  |

|                       |              |              |
|-----------------------|--------------|--------------|
| TOTAL AMOUNT BASE BID | \$393,931.35 | \$533,602.50 |
|-----------------------|--------------|--------------|

|                               |     |     |
|-------------------------------|-----|-----|
| CONTRACT TIME (CALENDAR DAYS) | 150 | 120 |
|-------------------------------|-----|-----|



**Meeting**  
**Date: 11/21/2022**

**Date: 11/01/2022**

**Item #: 21.**

**Dept.: Administration**

**Action Item**

**SUBJECT:**

Consider and take appropriate action on an amendment to the agreement for Emergency Medical Services between the City of Kaufman and CareFlite; and authorizing the Mayor or his designee to execute necessary documents

**BACKGROUND:**

Staff has been working for some time to negotiate updated performance measures for our current EMS contract with CareFlite. The original 5-year contract became effective on June 1, 2016, and ended on May 31, 2021. The contract allows for 5 (five) one-year extensions as long as their performance is acceptable. The Kaufman Fire Department expressed some concern regarding the length of time Unscheduled Transfers from the hospital have been taking. This was the point of negotiation for an extension. After several meetings, all parties agreed that the response time should be changed from 29.59 (less than 30 minutes) to 59.59 (less than an hour). Traffic patterns and volume have certainly changed between Kaufman and Dallas since 2016. One-hour travel time is currently more appropriate.

Staff recommends amending Attachment Number 1 to reflect this change and approve the 1 (one) year extension to the contract from June 1, 2022, through May 31, 2023.

Author:  
Mike Holder, Assistant City Manager

Reviewed:  
Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation: Staff recommends approval of an amendment to the contract between Careflite and the City of Kaufman.**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|--------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input checked="" type="checkbox"/>       | <input checked="" type="checkbox"/>         | <input type="checkbox"/>       |

**FIRST AMENDMENT  
TO  
AGREEMENT FOR EMERGENCY MEDICAL SERVICES**

This First Amendment to Agreement for Emergency Medical Services (this "Amendment") is made and entered into as of December 1, 2022 (the "Amendment Effective Date"), by and between the City of Kaufman, Texas, ("City") and CareFlite, a Texas nonprofit corporation ("Provider"). All capitalized but undefined terms herein shall have the meanings ascribed to them in the Agreement (as defined below).

**WHEREAS**, City and Provider entered into that certain Agreement for Emergency Medical Services, dated as of May 23, 2016 (the "Agreement"), wherein Provider provides certain emergency medical services for City; and

**WHEREAS**, the parties desire to amend and replace Attachment #1 in the Agreement in its entirety in accordance with the terms and conditions set forth in this Amendment.

**NOW, THEREFORE**, for and in consideration of the mutual promises set forth in the Agreement and this Amendment, the parties agree as follows:

1. Pursuant to Article 3.2 and the terms of the agreement including but not limited to a 90% compliance, the following response times are established and agreed to by Provider and City.

Within the city limits:

|                                             |                                  |
|---------------------------------------------|----------------------------------|
| 1) Life Threatening Emergencies             | 8:59                             |
| 2) Potentially Life Threatening Emergencies | 11:59                            |
| 3) Non-Life Threatening Emergencies         | 14:59                            |
| 4) Unscheduled Transfer                     | 59:59                            |
| 5) Scheduled Transfer                       | +/- 15 minutes of scheduled time |

2. Due to the unpredictable nature of emergency services, if Provider cannot meet the response times above regarding Unscheduled or Scheduled Transfers, which are not considered emergent, Provider will communicate updates to the requesting facility and if applicable, City of Kaufman 911.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective as of the Amendment Effective Date.

**CITY:**

CITY OF KAUFMAN, TEXAS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PROVIDER:**

CAREFLITE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Agreement for Emergency Medical Services between City of Kaufman, Texas and CareFlite

This Agreement for Emergency Medical Services ("Agreement") is between the City of Kaufman, Texas ("City") and CareFlite, a Texas non-profit corporation ("Provider"). City and Provider are at times collectively referred as the "Parties" in this Agreement.

RECEIVED

JUN 16 2016

City of Kaufman

### Recitals

WHEREAS; Provider currently operates the 911/EMS service in City; and

WHEREAS, Provider's performance has met or exceeded City's expectations since replacing the prior entity on very short notice; and

WHEREAS, City desires to provide emergency medical services for all those needing such services within the City Limits and ETJ; and

WHEREAS, City desires to enter into an Agreement with Provider to provide emergency medical services within City in the areas designated above; and

WHEREAS, state law authorized City to enter into a contract with Provider for emergency medical services.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties agree as follows:

### Article I.

#### Scope of Agreement and Term

**1.1 Contract for Emergency Medical Services.** Provider must provide services as described in Article III to City according to the terms and conditions set forth in this Agreement in exchange for consideration from City as described in Article II. The resolution of conflict shall be made by ranking in the following order, highest rank first:

- a. Applicable Federal statutes, laws, rules, and regulations;
- b. Applicable State statutes, laws, rules and regulations;
- c. This Agreement;

**1.2 Term.** The base term of this Agreement commences as of June 1, 2016, and continues for five (5) consecutive years ending on May 31, 2021, unless one or more extensions have been earned in accordance with this section of the Agreement. The Provider may earn up to five (5) individual one (1) year extensions for a maximum total term of ten (10) years. These earned extensions shall be on the same terms and conditions of this Agreement. Each extension may be earned by exceeding the minimum requirements of the Agreement during the previous one (1) year term. If granted, the first renewal year

(or sixth year) will commence at the end of the five (5) year base term awarded by City. Absent a six month notice prior to the end of the five year base term and one year extensions, if any, the Agreement will automatically renew for an additional term of five years during which the Provider may earn up to five (5) individual one (1) year extensions for a maximum total term of 10 years.

City shall evaluate the Provider's performance and may elect to award extensions subject to the following requirements:

1. **Response Time Performance Exceeding Requirements.** Finding by the City that the clinical and response time performance of the Provider has, in general, exceeded the minimum requirements set forth in the contract, and
2. **Substantial Compliance.** Finding by the City that the Provider substantially and consistently meets the various requirements of federal, state and local laws, rules and regulations and the performance obligations of this contract.

1.3 **Exclusive Rights.** The rights granted under this Agreement to provide EMS Emergency and non-Emergency Transports shall be exclusive to Provider. This provision is essential consideration without which Provider would not have entered the Agreement.

## Article II. City's Obligations

2.1 **Payments.** City will pay to Provider \$1.00 per year, which is payable without offset in annual payments of \$1.00 due on the first day of each year of this Agreement, for EMS Services under this Agreement. Provider shall not be required to invoice City to receive payment but will provide confirmation of payment if requested by City.

2.2 **Billing Revenues.** Provider is authorized to bill for EMS Services provided under this Agreement and keep any revenues from such billings, provided that all charges and fees assessed for EMS Services rendered within the City are the same as the Providers charges and fees that Provider assesses for those same services in any other areas. The parties agree that charges and fees for EMS services may be adjusted by Provider in the regular course of business.

2.3 **EMS Membership Program.** CareFlite has an EMS membership program approved by the State of Texas. This program protects citizens against certain costs of ground and air ambulance transports performed by CareFlite. City agrees that it will fully cooperate with CareFlite during the term(s) of this contract in providing and executing documents if required by the State of Texas in connection with CareFlite's membership program. CareFlite agrees to comply with all appropriate federal and state regulations applying to EMS membership programs. The parties acknowledge that they have separately contracted for the billing of the EMS membership program through City's utility billing system. Should City terminate that contract prior to the termination of this agreement, Provider would have the right, but not the obligation, to terminate this Agreement following ninety (90) days written notice to City.

2.4 **Prisoner Transports.** City shall be billed at the then current Medicare allowable rate at the service level provided for all medical transports for prisoners under the jurisdiction of the City or Municipality based on the zip code of the originating location. City shall pay CareFlite within thirty (30) days of

receipt of invoices for aforementioned medical transports. (Insert language to add to membership program)

2.5 Exclusive Rights. To the extent permitted by law, City shall take all necessary steps including the creation of an ordinance to administer this Agreement and to work cooperatively with CareFlite to enforce the exclusive rights granted in this Agreement.

### Article III. CareFlite Obligations

3.1 EMS Services. Provider must operate twenty-four (24) hour, seven days-a-week ground based emergency medical pre-hospital transport services and non-emergency ground transport services within the territory of City ("EMS Services"), including providing the following in accordance with the terms of this Agreement:

- (A) the necessary number of full time fully equipped ambulance vehicles certified as BLS to Mobile Intensive Care Unit ("MICU") or better with less than 300,000 odometer miles, unless otherwise agreed to in writing by City;
- (B) 9-1-1 and non-emergency dispatch services;
- (C) all ambulance personnel required for the vehicles certified at the BLS to MICU level or better;
- (D) all in-service training required of ambulance personnel;
- (E) all fuel, lubricants, maintenance, repairs, and insurance, for vehicles and equipment;
- (F) programs to maintain superior working relationship with First Responders;
- (G) programs to maintain superior working relationships with law enforcement agencies;
- (H) programs to ensure courteous, professional, and safe conduct of all ambulance personnel, and other staff at all times;
- (I) programs to maintain personnel certifications and Provider's license(s);
- (J) programs and procedures to keep City informed in a timely manner of all activities, issues, and policy/procedures modifications (internal and external) that may reasonably be expected to affect (positively or negatively) the City;
- (K) programs to provide monthly Continuing Education (CE) training held at the Kaufman Fire Station, support and one for one re-supply for First Responders in City and to offer Medical Direction for the purpose of licensure by the State of Texas for those First Responders who request it;

(L) a minimum fleet size of 115% of proposed peak deployment. City recognizes that to the extent Provider uses resources of its system in other jurisdictions to support its operations in City, it may use its resources in other jurisdictions should the need arise in other jurisdictions provided it maintains the performance standards required under this Agreement in City. All ambulances shall be maintained in accordance with the manufacturer's guidelines for low and high mileage vehicles in order to minimize each vehicle's environmental impact.

(M) comply with all other obligations and conditions set forth in this Agreement.

### 3.2 EMS Response Time Standards.

(A) *EMS 90% Response Time.* Provider must place a transport capable MICU rated ambulance at the dispatched address of each request of a life-threatening emergency, a potentially life-threatening or a non-life threatening emergency request within the time standards set forth in Attachment # 1 from the time of dispatch on not less than 90% of all emergency dispatch response requests. These response times will be measured using the last 100 patient contacts.

(B) *First Response Vehicle (FRV).* Provider may choose to operate a first response vehicle with a Paramedic licensed by the State of Texas, meeting all ALS standards for equipment and operated by an employee of CareFlite. Responses provided by such first response vehicle will be considered meeting the terms of Subsection (A) above if the vehicle reaches the dispatched address within the time standard requirements of Attachment #1. If the patient refuses transport after the arrival of a first response vehicle, then the response shall be deemed to have met the response time requirements of this Agreement.

(C) *Response Time Calculation.*

(1) The "time of dispatch" will be 60 seconds from the time the Provider's communications center is notified of the emergency (i.e., the moment callback number and location are acquired, either by voice or by ANI/ALI 911 data transmission and confirmed).

(2) The time of arrival "at the scene" will be the time an appropriate classification fully equipped transport capable ambulance or First Response Vehicle arrives at the dispatched address of the request for emergency services and notifies the communication center that it is fully stopped at the location where the ambulance crew or FRV's Paramedic will exit to approach a patient. If the ambulance crew fails to report the time of arrival "at the scene", the time of the next communication from the ambulance crew will be used as the time of arrival "at the scene" except that for any vehicle used by Provider that has GPS tracking, it may rely upon times provided by GPS tracking system to meet this requirement. It may also rely upon times provided by other First Responder agencies if reported by radio to the Sheriff's Office or other appropriate agency.

(3) All response times will be measured in seconds, not whole minutes.

(D) *Response Time Exemptions and Failures.*

(1) The Parties understand that isolated instances may occur in which Provider does not meet the stated performance specifications. However, a chronic failure to comply with the response time standards would constitute a major default under this Agreement. Chronic failure is defined as the failure of Provider to meet any monthly response time standard (as defined in this article), emergency or non-emergency, in any three out of five consecutive calendar month periods.

(2) Provider must maintain mechanisms for reserve response capacity to increase response capability if temporary system overload persists. However, it is understood that from time to time unusual factors beyond Provider's reasonable control may affect the achievement of specified response time standards. These unusual factors are limited to unusually severe weather conditions or declared disasters as noted below.

(3) Equipment failure, normal traffic congestion, ambulance failure, dispatch error, or other causes reasonably under Provider's control will not be grounds for granting an exception to compliance with the response time standards. No other causes of late responses may serve to justify exemption from response time requirements unless specifically authorized by City or as provided below in Article 3.2(D)(4).

(4) Exemptions will be as follows:

(a) Requests occurring during a period of unusually severe weather conditions when response time compliance is either impossible or could be achieved only at a greater risk to EMS personnel and the public than would result from a delayed response. Provider must make such requests to City within 72 hours after the event is concluded by notifying City's Fire Chief. City shall not unreasonably refuse a request under this section.

(b) Requests during a declared disaster confirmed by City locally or in a neighboring jurisdiction, in which Provider is rendering assistance. During such periods, Provider must use its best efforts to maintain primary coverage, while simultaneously providing disaster assistance as needed.

(c) If the patient refuses transport after the arrival of an ambulance, then the response shall be deemed to have met the response time requirements of this Agreement as provided in Attachment #1 even if the actual time exceeded the requirements of Attachment #1.

(d) Late runs as a consequence of inaccurate or incomplete information obtained by a 911 control center during telephone interrogation of a caller or an error in conveying such information to Provider's Communications Center either orally or by way of data transmission. This exemption does not apply to any call in which

the caller is interrogated directly by CareFlite's Communications Center except when the caller is using a cellular phone, is unsure of his/her location or GPS data cannot be obtained for the phone.

(e) In cases where multiple paramedic units including ground and air are dispatched to a single incident, the first arriving unit shall "stop the clock" and response times for subsequently arriving units shall be excluded from response time statistics.

(f) During periods of unusual system overload, which shall mean that at least two or more emergency responses are occurring simultaneously within the City's service area (but not including responses to a hospital). Any additional emergency service requests that exceed the response time requirements shall not be included in response time calculations.

(g) Vehicle crashes not caused by Provider's personnel shall serve to justify an exemption from the response time requirements of this Agreement.

(5) Subject to finding by the Provider's Medical Director that the clinical quality of care provided by a proposed MICU staffed Mutual Aid Provider, helicopter ambulance service, or a fully equipped ALS First Response Vehicle operated by a Provider, is deemed substantially equivalent to the quality of care required under this Agreement, such paramedic units responding at Provider's request to locations within City will be deemed to "stop the clock" for response time calculations.

(6) If a presumptive run code classification is upgraded to a higher priority while the ambulance is enroute (as a result of information provided by a physician, first responder or law enforcement officer at the scene), the applicable run code designation will be the upgrade priority, and response time will be measured from the moment of upgrade. If a presumptive run code classification is downgraded to a lower priority while the ambulance is enroute (as a result of information provided by a physician, first responder or law enforcement officer at the scene), the applicable run code designation will be the downgraded priority and response time will be measured from the original dispatch time.

#### *(E) Penalties*

Except as provided in Article 3.2(A) above, Provider shall pay City a \$100.00 fine for any month in which the response time standards are not met at least 90% of the time in one or more categories.

**3.3 Compliance with Other Laws.** Provider must provide the EMS Service in accordance and in compliance with all Federal, State and local laws, rules and regulation, including those rules and regulation promulgated by the Texas Department of State Health Services ("TDSHS"), or its successor agency, relating to pre-hospital emergency medical services.

3.4 National Incident Management System ("NIMS"). Provider must operate in compliance with NIMS to the extent of job function and interaction with other fire, EMS, law enforcement and other government agencies.

3.5 Standard Operation Procedures. Provider shall provide copies of the EMS Services standard operating guidelines, training requirements and programs, and other procedures related to the EMS Services ("EMS SOPs") upon request from the City. Provider agrees to reasonably consider any suggestions for changes submitted by City.

3.6 Provider Executive Management. Provider's Medical Director and the Vice President of Ground Operations and Communications will be responsible for oversight of all EMS Services provided under this Agreement. Provider's Director of Ground Operations East will be responsible for day to day supervision and management of the EMS Services provided under this Agreement and shall attend, upon request of City, City regular monthly meetings and, upon receipt of reasonable advance notice, attend any City special or emergency meetings and be prepared to present information and respond to questions regarding any items on the agenda for those meetings.

3.7 Personnel. Provider must provide all personnel necessary to provide the EMS Services and must be solely responsible for the salary, benefits, support costs, and other payments for those personnel. At a minimum, Provider must provide the following personnel:

- (A) Medical Director. Provider must employ or contract with a Medical Director, whose duties must include oversight and management of the medical aspects of the EMS Services provided under this Agreement and the services provided by first responders operating within City who request medical direction; and
- (B) Emergency Medical Services Personnel. Provider must employ a sufficient number of properly licensed and qualified personnel ("EMS Personnel") on a 24-hour, 7 days-a-week basis to meet the response time requirements set forth in Section 3.2.

3.8 Medical Protocols. Protocols approved by the Medical Director will include protocols for selection of the destination hospital and will be strictly followed by paramedic personnel and on-line medical control physicians, except when a departure from protocol is justified on the basis of special considerations of patient care or practical barriers to implementation (e.g., blocked roads, hospital divert status, etc.). The Parties enter into this Agreement under a mutual assumption that transport protocols approved by the Medical Director will strictly adhere to the following priorities of consideration and recognize these priorities in the sequence presented:

- (A) First Consideration: patient care and safety;
- (B) Second Consideration: patient/family choice; and
- (C) Third Consideration: fairness in distribution of patients among hospitals and system demand.

In this regard, the following rules apply:

(1) *Life-Threatening Emergencies.* Patients experiencing life-threatening or potentially life-threatening emergencies (as defined by patient-assessment protocols approved by the Medical Director) will, in accordance with transport protocols approved by the Medical Director, be delivered to the nearest appropriate facility, taking into consideration the patient's condition and location, the patient's medical requirements, and the respective capabilities of hospitals within and, for some types of patients, outside City. Such transport protocols may not be inconsistent with then-currently-approved trauma system protocols (when available).

(2) *Non-Life-Threatening Emergencies.* Patients experiencing a non-life threatening emergency (as defined by patient-assessment protocols approved by the Medical Director) will be transported to the facility of choice designated by the patient, the patient's family, or the patient's personal physician, or if no such preference is stated, to the nearest hospital approved by the Medical Director.

(3) *Non-Emergency Transports.* All non-emergency patients will be transported to the destination reasonably selected by the patient, the patient's family, or the patient's personal physician in normal circumstances.

(4) *Disaster or System Overload.* In times of disaster or system overload (3 or more simultaneous emergency calls or more within City), all patients transported by Provider (except those transported by air) will be taken to the closest hospital. The closest hospital will be determined by time not distance taking into account traffic, weather and road conditions.

(5) *Enforcement.* Inappropriate and unjustified deviations from these patient-destination protocols by EMS personnel without direct authorization by a Medical Control Physician will be subject to sanction by the Medical Director in accordance with Provider's due process procedures. Such sanction may include reprimand, probationary clinical status, suspension, to termination, depending upon frequency and severity of error at the sole discretion of the Medical Director.

3.9 Training. Provider must provide an on-going in service training program and a Quality Assurance/Improvement program for all Provider personnel and first-responders operating within City that, at a minimum, provide for retrospective chart review and internal controls to insure protocol compliance and appropriate transport mode and destination. Monthly Continuing Education (CE) training will be provided at the Kaufman Fire Station and coordinated with the Kaufman Fire Chief.

3.10 First Responder Support. Provider should develop a strong working relationship with the volunteer and municipal fire departments in City, including all first responder organizations. Provider must include in its annual report information on the support to first responders operating within City.

3.11 Independent Contractor. Notwithstanding anything in this Agreement that may be construed to the contrary, the Provider and all of its personnel, including contract emergency service Providers, volunteers and agents are at all times independent contractors and not employees of City. The Provider

and its personnel will at all times have the right to control the details of their work and exercise their independent, professional and discretionary judgment. If any compensation is paid to any person, the Provider will be liable for the payment of all taxes (including income, social security, withholding and unemployment taxes – state and federal), and must provide worker's compensation insurance for all Provider's personnel.

### 3.12 Reporting and Notifications.

(A) Monthly Report. Provider will provide City with a written monthly report, including a report of the number of EMS Service calls originating within City in the previous calendar month ("Monthly Report"). The Monthly Report must be provided at least seven days before City's regular monthly meeting provided City meeting is scheduled on or after the 15<sup>th</sup> of the subsequent month or later. The Monthly Report must be provided at least three days before City's regular monthly meeting provided City meeting is scheduled on the 10<sup>th</sup> to the 14<sup>th</sup> of the subsequent month. The Monthly Report must be provided at least 24 hours before City's regular monthly meeting provided City meeting is scheduled on the 8<sup>th</sup> or 9<sup>th</sup> of the subsequent month. These reports will be sent by email to the City's Fire Chief as designated by City within the time frames of this paragraph.

(B) Compliance Report. Provider will provide City an annual written report in the month of December of each year regarding the regulatory compliance of EMS Services by Provider in the previous fiscal year ("Compliance Report"). The Compliance Report must be in a form that is sufficient to satisfy the requirements of any Federal, State or local agency or entity with jurisdiction over the EMS Services, or any portion of those services, provided under this Agreement.

#### (C) Notifications.

(1) Media Issues. Provider's Vice President of Ground Operations, or his designee, must notify, as soon as practical, the City Manager, by telephone or by email of any incident that has a high degree of probability of adverse publicity to V or City, or potential legal action against Provider or City, to the extent permitted by law and after consultation with Provider's attorney.

(2) Provider must file with City a copy of all reports, investigations, complaints, inspections and the like (maintaining all necessary confidentiality as otherwise required by law) prepared or conducted by the TDSHS under the Emergency Medical Services Act, V.T.C.A., Health and Safety Code Section 773.001, et seq., as amended, where such TDSHS action is initiated by a complaint filed against the Provider or arising from a failed TDSHS inspection. Provider's filing must be made with Emergency Management Coordinator within ten (10) days following the Provider's receipt of or becoming aware of the TDSHS action.

### 3.13 Dispatch Services. Provider must provide the following services to City:

- (A) Computer aided dispatch ("CAD") system to dispatch each call for emergency services received by telephone or radio communication for the City, from the City Sheriff's Office, from any municipal dispatch for cities covered by this contract or from any member of the public. The CAD shall record the date, hour, minutes and seconds of each communication, all radio and telephone communication (including pre-arrival instructions) and time track;
- (B) Communications methods using standard industry radio communications, GPS and mapping, paging and alert capabilities at all times;
- (C) Provide EMD trained personnel for 911 call taking and dispatching duties 24 hours per day each day during the term of this Agreement and any extensions or renewals thereof;
- (D) Maintain written reports of all emergency telephone calls, radio communications; and dispatches of emergency services, which reports must include (i) the time and nature of each communication; (ii) the time of dispatch in response to a call for emergency services; (iii) the time the first emergency service Provider(s) left to respond to an emergency; (iv) the identity, by unit number or other wise of Provider's responders; (v) the time the Provider arrived at the scene of an emergency and identity of such responder; (vi) the response time and identity of others responding to an emergency; (vii) the time of completion of an emergency response and a return to readiness for additional responses; (viii) all other information as may be reasonable necessary in order to maintain a complete and accurate record of each call received, dispatched, and serviced including, but not limited to, the nature of the resolution of the emergency.
- (E) Maintain CAD records for at least 365 days;
- (F) Ensure that all persons performing services pursuant to this Agreement on behalf of Provider perform such services in a prompt, proficient, efficient, professional and courteous manner at all times; and
- (G) Ensure that dispatch personnel have the initial and on-going training, map knowledge and geographic understanding of the coverage area in City.

**3.14 Air Medical Services.** The parties agree that the "most appropriate aircraft" shall be used when the Provider or a First Responder on the scene determines that a particular patient requires air medical transport. All requests for air medical service shall be communicated to Provider's Communications Center who shall assign the "most appropriate aircraft". The parties further agree that "most appropriate aircraft" is defined as the aircraft having the shortest elapsed time from call to definitive care. The Provider will maintain dispatch records for all air medical transports originating from its 911/EMS service in City's territory. The Provider will, as part of its monthly report to City, provide data on all air medical transports originating from its 911/EMS service in City's territory. Destinations for patients being transported by air from Provider's 911/EMS shall be selected as follows:

- (A) First Consideration: patient care and safety;

- (B) Second Consideration: reasonable patient/family choice; and
- (C) Third Consideration: fairness in distribution of patients among hospitals and system demand.

#### Article IV. Insurance

4.1 Insurance. Throughout the term of this Agreement, and any extensions thereof, Provider must procure, pay for, and maintain the minimum insurance coverage and limits as provided for herein. Provider must provide City with certificates of insurance written by one or more insurance companies with an A.M. Best rating of "A" or better, licensed to do business in the State of Texas and reasonably acceptable to City. These insurance certificates must name City as an additional insured and list coverage and limits, expiration dates and terms of policies, and the names of all carriers issuing or reinsuring these policies. These insurance requirements will remain in effect throughout the term of this Agreement. The following minimum coverage must be provided:

- (A) Commercial general liability insurance, including but not limited to, bodily injury, property damage and personal injury, with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence, and annual aggregate. Coverage must be on "an occurrence basis," and the policy must include broad form property damage coverage, and contracted liability and fire legal liability of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence, unless otherwise stated by exception herein.
- (B) Professional medical liability insurance including error and omissions with minimum limits of not less than One Million and 00/100 Dollars (\$1,000,000) per occurrence, and an aggregate limit of no less than Two Million and 00/100 Dollars (\$2,000,000).
- (C) Automobile Liability with One Million and 00/100 Dollars (\$1,000,000.00) combined single limit for bodily injury and property damage of per occurrence, and
- (D) Worker's Compensation coverage and policy, in compliance with the State of Texas. The Worker's Compensation policy must waive subrogation rights.

"No Representation of Coverage Adequacy:" By requiring insurance herein, City does not represent that coverage and limits will be adequate to protect Provider. City reserves the right to review any and all of the insurance policies and/or endorsements cited in the Contract but have no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify and insurance deficiency does not relieve Provider from, nor may it be construed or deemed a waiver of, Provider's obligation to maintain the required insurance at all times during the performance of the Contract.

Policies other than the Worker's Compensation Insurance must name City, its agents and employees as additional name insureds. City must receive at least 30 days' prior written notice of any expiration, cancellation, non-renewal or material change in coverage of Provider's insurance coverage. Nothing may absolve Provider of this requirement to provide notice. Any program of self-insurance risk

employed by the Provider for the coverages required herein is subject to prior written approval and ongoing monitoring by City and its legal counsel. The City's prior written approval will not be unreasonably withheld.

## Article V. General Provisions

5.1 Immediate Termination. Either Party may terminate this Agreement with at least thirty (30) days prior written notice if: (1) the Attorney General of Texas renders an official opinion that voids, modifies, or otherwise affects any provision in this Agreement; (2) a court of competent jurisdiction issues a judgment or ruling that voids, modifies, or otherwise affects any provision of this Agreement; or (3) a duly authorized statute, law, rule, or regulation is enacted by a competent legislative authority in such a manner that could reasonably jeopardize the taxing or other authority of either City or otherwise modifies, voids, or affects this Agreement. If any such an above-described event occurs, the Parties will exert best efforts to agree on an alternative agreement for shared assets and management responsibilities in conformance with any such opinion, judgment, or legislative enactment.

5.2 Termination for Major Default. City may terminate this Agreement by providing written notice to Provider upon occurrence of any of the following:

- (A) Failure of Provider to operate the service in a manner consistent with Federal, State, and local laws, rules, and regulations.
- (B) Supplying City with false or misleading information with regard to records, documents or data kept for the purposes of determining Provider's performance under the terms of this Agreement;
- (C) Deliberate and unauthorized scaling down of operations by Provider to the detriment of performance or level of service, including during "lame duck" period of transition to a new EMS Service Provider but before termination of this Agreement;
- (D) Chronic and persistent failures by Provider's employees to conduct themselves in professional manner, and to present a professional appearance to such extent that the City's reputation could reasonably be expected to be harmed;
- (E) Failure of Provider to provide data generated in the course of operations, including, but not limited to, patient report data, response time data, or financial data;
- (F) Failure of Provider to assist City in its take-over after the declaration of a major default has been declared by City;
- (G) Failure of Provider to substantially and consistently meet or exceed the various clinical response standards provided for herein;

- (H) Failure of Provider to maintain equipment in accordance with manufacturer or industry maintenance practices;
- (I) Provider making an assignment for the benefit of creditors; filing a petition for bankruptcy; being adjudicated insolvent or bankrupt; petitioning by a custodian, receiver or trustee for a substantial part of its property; or, commencing any proceeding relating to it under the bankruptcy, reorganization arrangements, readjustment of debt, dissolution or liquidation law or statute;
- (J) Chronic failure of Provider to meet response time requirements as set forth in this Agreement;
- (K) Provider's failure to furnish key personnel of quality and experience as set forth in this Agreement;
- (L) Provider's failure to submit reports and information as set forth in this Agreement;
- (M) Provider's failure to maintain insurance as set forth in this Agreement; and
- (N) Any other failure of performance required in this Agreement by Provider that is reasonably determined by City to constitute an endangerment to public health and safety.

A termination under the provisions of this section must be reasonable and exercised only after giving Provider prior written notice of alleged failure and a reasonable opportunity to cure alleged default. In the event City determines that a major default has occurred, and if the nature of the default is, in the opinion of City, such that public health and safety are endangered, CareFlite shall be given written notice specifying the particular complaints and identifying them as appropriate by date, place, etc. with a reasonable opportunity to correct said deficiency. In the event CareFlite fails to correct said deficiency within a reasonable period of time, CareFlite may thereafter be found to be in default. In such event, CareFlite shall cooperate completely and immediately with City to affect a prompt and orderly transfer to City of CareFlite's responsibilities. City's exclusive remedy for defaults described hereunder shall be termination of the Contract and transfer of services as described herein. Except as provided in Section 5.4 below, in no event will CareFlite be liable for monetary damages or other direct, indirect incidental or consequential damages, whether arising in contract or tort. Such transfer of responsibilities shall be affected within 24 hours after such finding of major default by City after Provider is given a reasonable opportunity to correct the deficiency and at the conclusion of the 24 hours Provider would have no further contractual obligations.

**5.3 Indemnification.** EACH PARTY MUST DEFEND, IDEMNIFY AND HOLD HARMLESS THE OTHER PARTY AND ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES OF INVESTIGATION AND LITIGATION, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, JUDGMENTS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER, (COLLECTIVELY, "CLAIMS") RESULTING OR ARISING FROM THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, TO THE EXTENT ARISING OUT OF ANY NEGLIGENT

ACT OR OMISSION OR WILLFUL MISCONDUCT OF THE OTHER PARTY, OR ITS AGENTS, EMPLOYEES OR CONTRACTORS. CITY IS NOT RESPONSIBLE FOR THE ACTS OR OMISSIONS OF PROVIDER'S EMPLOYEES OR PERSONNEL. IT IS EXPRESSLY UNDERSTOOD THAT CITY DOES NOT WAIVE, AND MAY NOT BE DEEMED TO WAIVE, ANY IMMUNITY OR DEFENSE THAT WOULD OTHERWISE BE AVAILABLE TO IT AGAINST CLAIMS ARISING IN THE EXERCISE OF ITS GOVERNMENTAL POWERS AND FUNCTIONS, OR THAT MIGHT OTHERWISE BE AVAILABLE AT LAW OR IN EQUITY. THE PROVISIONS OF THIS SECTION WILL SURVIVE THE EXPIRATION OR EARLY TERMINATION OF THIS AGREEMENT OR ANY EXTENSIONS HEREOF.

5.4 Entire Agreement. The terms and provisions of this Agreement contain the entire agreement between the parties and supersede all previous communications, representations or agreements, either oral or written, with respect to the matters addressed herein. In case of conflict between this Agreement and any other agreement or contract now existing or later entered into by either of the parties hereto with other entities, this Agreement prevails except that this Agreement may be modified as provided below. Such modification(s) would not be considered to conflict with this Agreement. The parties may enter into a separate agreement to provide Caring-Heart Memberships to all residents of City. Such a contract by definition does not conflict with this agreement. Any funds paid under that contract are not subsidy funds and will not be used in any way to offset any funding requirements of this agreement.

5.5 Written Modifications. All modifications to this Agreement must be in writing and approved by the appropriate governing authority for both Parties.

5.6 Assignment. No rights, duties, or obligations under this Agreement may be assigned nor may any interest or options contained herein be made available or otherwise assigned to any third party without the prior written consent of the Parties, which may be withheld in either Party's absolute and sole discretion.

5.7 Severability. If any provision or application of this Agreement is held illegal, invalid, or unenforceable by any Court of competent jurisdiction, the invalidity of such provision will not affect or impair any of the remaining provisions of this Agreement, except as expressly set forth herein.

5.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue over any dispute arising from this Agreement will, by agreement, be in Kaufman County, Texas. This Agreement will be interpreted and construed as broadly as possible consistent with purposes stated herein.

5.9 Notice. Notices and paperwork required under this Agreement shall be mailed and/or faxed to the following addresses and fax numbers:

CareFlite  
Attention: James C. Swartz  
President & CEO  
3110 S. Great Southwest Parkway  
Grand Prairie, Texas 7505  
(972) 339-4001 Office

City of Kaufman  
Attention: Mike Slye  
City Manager  
209 S. Washington St.  
Kaufman, Texas 75142  
(972) 932-2216 Office

6.1 *This paragraph was intentionally removed from this Agreement.*

6.2 Terms and Conditions. The terms and conditions of CareFlite's Ambulance Membership Program are as described in the attached Exhibit 2 Ambulance Membership Program Terms and Conditions. Each membership covers the entire household except for any person in the household who is now or later becomes a recipient of Medicaid. CITY agrees to provide CareFlite with a completed application for each CITY employee. CareFlite agrees to provide CITY with a form for this purpose. The parties agree that any employee leaving CITY's employment during the plan year shall retain their CareFlite Ambulance Membership for the duration of that plan year (as required by state law). New employees hired or officials elected during any plan year shall be included in this program for the balance of the plan year provided a completed application and payment is received within 30 days of the start of employment.

6.3 Voluntary Opt Out Membership Program on CITY's water system.

- A. CareFlite agrees to provide an optional enrollment in its membership program for every member of each household served by the City's utility system. This optional membership shall be at a cost to the utility customers of one dollar (\$1.00) per month per household. The membership shall apply to all emergency transports on board a CareFlite operated vehicle wherever available, whether that vehicle be a ground ambulance or an air ambulance ("Ambulance Services"). The program shall be CareFlite's standard, state approved Membership Program (which includes all members of the household except those excluded by law) and includes benefits provided at no additional cost by certain other air transport entities within Texas. The price of this program shall not change during the initial term of this agreement. CareFlite shall have the right but not the obligation to raise the cost of each membership by a maximum of \$1 per month at the start the first renewal term of this agreement.
- B. The City agrees, beginning bills sent covering service in the month starting June 1, 2016, to add an optional one dollar (\$1.00) fee to all of its utility bills for single family residences. For multi-family residences, the fee shall be \$1 per residential unit. This one dollar fee shall be completely optional with each customer retaining the right to opt-out of the membership program and the one dollar fee. To opt out, a utility

customer must complete the opt-out form and file it with the City Secretary at City Hall. CareFlite shall provide City with the opt-out form. If a customer chooses to opt-out of the membership program, said opt-out shall take effect on the first day of the following month except that any customer who completes and submits an opt out form to City Hall on or before the effective date of this agreement shall not participate in the program when it takes effect. City shall provide CareFlite a list of those households or multifamily complexes that paid the voluntary fee in the prior month. CareFlite's use of the list is restricted to implementation and administration of this agreement. The list may not be provided to any other organization under any conditions. Payment to CareFlite shall not be rendered until the City has completed its normal billing cycle and confirmed its receipt of funds from its customers. Customers not paying the fee as reflected in the City's payment of the funds to CareFlite shall not have a membership and not be entitled to the benefits thereof.

- C. CareFlite shall provide a notice to be mailed to all residential utility customers on or before thirty days prior to the effective date notifying utility customers of the program, its effective date and the method for opting out for those who desire to do so. City shall provide CareFlite the mailing list of all residential utility accounts no later than forty five (45) days prior to the effective date in order that CareFlite may print labels and mail the aforementioned notice at its own cost on or before the thirty day deadline.
- D. Any households within the city not receiving utilities from the City (if any) shall have the option to join this program at the same annual rate utilizing a separate application form provided to CITY by CareFlite.

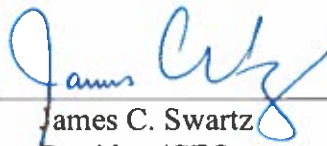
6.4 Membership Definition. Membership in CareFlite's Caring-Heart Membership Program is an EMS membership in a program sponsored by CareFlite and is not a membership in CareFlite's non-profit entity as the term "membership" is contemplated under the Texas Non-Profit Corporation Act.

IN WITNESS WHEREOF, the Parties hereto make and enter into this Agreement on this the 23<sup>rd</sup> day of May, 2015 to be effective as of the 1<sup>st</sup> day of August 2015 at 7am. By their signatures below, the individuals signing and the Parties represent that they are authorized and intend to enter this agreement.

CITY OF KAUFMAN, TEXAS

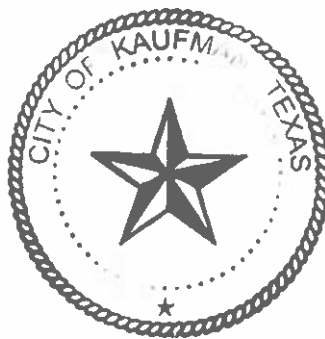
PROVIDER: CAREFLITE

By:   
Jeff Jordan  
Mayor

By:   
James C. Swartz  
President/CEO

I certify that this agreement was approved by the Kaufman City Council at its meeting on May 23, 2015. Witness my signature below and the City Seal affixed hereto.

By: JoAnn Talbot  
JoAnn Talbot  
City Secretary



***This space intentionally left blank***

## **Attachment # 1**

### **Response Time Reliability**

Pursuant to Article 3.2 and the terms of the agreement including by not limited to a 90% compliance, the following response times are established and agreed to by Provider and City:

#### **Within the City Limits:**

- |                                             |                                  |
|---------------------------------------------|----------------------------------|
| 1) Life Threatening Emergencies             | 8:59                             |
| 2) Potentially Life Threatening Emergencies | 11:59                            |
| 3) Non-Life-Threatening Emergencies         | 14:59                            |
| 4) Unscheduled Transfer                     | 29:59                            |
| 5) Scheduled Transfer                       | +/- 15 minutes of scheduled time |

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**Meeting**  
**Date: 11/21/2022**

**Date: 11/01/2022**

**Item #: 22.**

**Dept.: Administration**

**Action Item**

**SUBJECT:**

Consider and take appropriate action on the appointment of three (3) members to the Planning and Zoning Commission for two-year terms to expire in November 2024 and the appointment of one (1) member to the Planning and Zoning Commission for a term expiring in November 2023.

**BACKGROUND:**

There are currently three members of the Planning and Zoning Commission whose terms have expired. Burton Brown, Richard Dunn, and Kathy Thorpe have all expressed interest in being reappointed to the Commission. In addition, Derrill Deaton was supposed to be reappointed last year but was missed. Therefore, he will need to be reappointed to fill his term until November 2023

The procedure for considering the appointment of a Planning and Zoning member is as follows: A simple majority of the Council, four votes, is necessary to make a nomination for appointment of a prospective member. Any member of the Council may make a nomination for appointment.

Procedurally, the Council should adhere to the process as outlined below:

- Council will vote for a two (2) year term expiring in November 2023.
- If the nominee does not attain a simple majority of the Council (four votes), they will not serve as a P&Z member.
- Any Council member can make a nomination for consideration.
- If the nominee then receives a simple majority of the votes by the Council (four votes) that individual will be appointed to serve as a P&Z member.

The procedures outlined will serve the Council well in its deliberations about to serve as a P&Z member.

Author:  
Jessie Hanks, City Secretary

Reviewed:  
Mike Slye, City Manager

**Cost:**

**Funds Available:**

**Source:**

**Recommendation: Staff recommends the reappointment of Burton Brown, Richard Dunn, and Kathy Thorpe for 2-year terms to expire in November 2024, and the appointment of Derril Deaton to fill an unexpired term set to expire in November 2023.**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|--------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input type="checkbox"/>                  | <input type="checkbox"/>                    | <input type="checkbox"/>       |



**Meeting**  
**Date: 11/21/2022**

**Date: 11/09/2022**

**Item #: 23.**

**Dept.: Administration**

**Resolution**

**SUBJECT:**

Consider and take appropriate action on Resolution R-39-22, a resolution of the City of Kaufman, Texas, appointing a member to the Kaufman Central Appraisal District Board of Directors.

**BACKGROUND:**

KISD and the City have collectively agreed to appoint a single person to represent both entities, in lieu of swapping board members every 2 years. This will provide a more cohesive approach to representing both entities over time.

I have spoken with John Zaby, who has served on this board for several terms, and he has agreed to represent both entities if appointed.

Author:  
Mike Slye, City Manager

Reviewed:  
Mike Slye, City Manager

**Cost: N/A**

**Funds Available: N/A**

**Source: N/A**

**Recommendation: Approve Resolution R-39-22 appointing John Zaby as the city/KISD representative to the Kaufman Central Appraisal District Board of Directors.**

| Safe & Secure            | Business<br>Friendly/Economic<br>Development | Partnership &<br>Community<br>Involvement | Healthy &<br>Environmentally<br>Cons. Comm. | Financial &<br>OPS Stewardship |
|--------------------------|----------------------------------------------|-------------------------------------------|---------------------------------------------|--------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>                     | <input checked="" type="checkbox"/>       | <input type="checkbox"/>                    | <input type="checkbox"/>       |

STATE OF TEXAS           §  
COUNTY OF KAUFMAN   §

**RESOLUTION R-39-22**

**APPOINTING MEMBER TO KAUFMAN COUNTY APPRAISAL  
DISTRICT BOARD OF DIRECTORS**

WHEREAS, the voting taxing units participating in the Kaufman County Appraisal District previously approved a change under Tex. Tax Code §6.031, resulting in the current selection process for board members of the Appraisal District, and

WHEREAS, the current process for selection of board members of the Kaufman County Appraisal District allows the City of Kaufman to appoint 1 person to be shared with the Kaufman ISD beginning on January 1, 2023 through December 31, 2024; and

NOW THEREFORE, the City of Kaufman hereby resolves to appoint John Zaby, KISD Trustee, to serve on of the Board of Directors of the Kaufman County Appraisal District beginning on January 1, 2023.

In witness of this resolution, signed on the 21<sup>st</sup> day of November, 2022.

\_\_\_\_\_  
Jeff Jordan, Mayor, City of Kaufman

Attest:

\_\_\_\_\_  
Jessie Hanks, City Secretary

# Christmas on the Square

## December 3, 2022

The Polar Express Theme

### Schedule of Events

- 12 pm – 8 pm (Downtown Square)
  - Christmas Market
  - Food/Craft Vendors
  - Train Rides
  - Pony Rides
  - Chuck Wagon Rides
- 12 pm – 6 pm (Downtown Square)
  - Story Time With Mrs. Clause (1 pm, 3 pm, 5 pm)
  - Local Talent Performances

|               |                 |
|---------------|-----------------|
| 12:00 - 12:15 | Dancin'Ovations |
| 12:30-12:45   | Dance Factory   |
| 1:00- 1:45    | Hannah Dot Cook |
| 1:30-3:00     | Carolers        |
| 3:00-3:45     |                 |
| 4:00-4:15     | KHS Jazz Band   |
| 4:30-4:45     | KHS Lionettes   |
| 5:00-5:15     | KHS Cheer       |
| 5:30-5:45     | KHS Choir       |

- 1 pm – 5 pm (Downtown Square)
  - North Pole Square (KKBB Craft Station- inside ReChurch)
  - Longhorn Pictures
  - Face Painter, Balloon Artist, Airbrush Tattoos
- 5:30 pm – 8 pm
  - Live Reindeer at City Hall
- 6 pm
  - Lighted Christmas Parade
- 7 pm
  - At City Hall
    - Choirs from Helen Edwards Elementary and Kaufman High School
    - Pictures with Santa
    - Cookies and Cocoa



| City of Kaufman                                                    |          |       |       |       |       |        |
|--------------------------------------------------------------------|----------|-------|-------|-------|-------|--------|
| FY 22 Performance Measures                                         |          |       |       |       |       |        |
| Safe and Secure                                                    |          |       |       |       |       |        |
| Provide superior fire, police and emergency services.              |          |       |       |       |       |        |
|                                                                    | FY Goal  | FY Q1 | FY Q2 | FY Q3 | FY Q4 | EOY    |
| <b>Fire Department</b>                                             |          |       |       |       |       |        |
| Number of Fire calls                                               | 511      | 119   | 152   | 164   | 163   | 598    |
| Number of EMS calls                                                | 1150     | 293   | 267   | 285   | 292   | 1137   |
| Number of Accident calls                                           | 435      | 140   | 95    | 90    | 80    | 405    |
| Average Response Time                                              | 5 mins   | 5.16  | 5.26  | 5.25  | 5.3   | 5.2425 |
| <b>Police Department</b>                                           |          |       |       |       |       |        |
| Average Response Time                                              | > 5 min. | 5.47  | 5.02  | 5.03  | 5.25  | 5.1925 |
| Number of calls for service                                        | 6155     | 1638  | 1450  | 1802  | 1670  | 6560   |
| Number of offenses reported                                        | 420      | 119   | 127   | 152   | 91    | 489    |
| <b>Criminal Investigation Division</b>                             |          |       |       |       |       |        |
| Number of crimes against people reported                           | 60       | 17    | 11    | 10    | 15    | 53     |
| Number of property crimes reported                                 | 130      | 39    | 48    | 72    | 35    | 194    |
| Number of crimes against society reported                          | 230      | 63    | 62    | 71    | 41    | 237    |
| Number of criminal cases assigned                                  | 575      | 117   | 164   | 204   | 123   | 608    |
| Number of criminal cases filed with the District Attorney's Office | 550      | 106   | 104   | 118   | 96    | 424    |
| Number of criminal cases filed with the Municipal Court            | 180      | 38    | 54    | 53    | 57    | 202    |
| <b>Animal Control</b>                                              |          |       |       |       |       |        |
| Number of calls for service                                        | 625      | 158   | 197   | 220   | 205   | 780    |
| Number of corrective action taken                                  | 100      | 15    | 18    | 30    | 22    | 85     |
| Number of animals recovered                                        | 200      | 32    | 39    | 61    | 35    | 167    |
| Number of animals turned to Humane Society                         | 200      | 33    | 42    | 61    | 34    | 170    |
| Increase citizen awareness and involvement in public safety.       |          |       |       |       |       |        |
|                                                                    | FY Goal  | FY Q1 | FY Q2 | FY Q3 | FY Q4 | EOY    |
| <b>Fire Department</b>                                             |          |       |       |       |       |        |
| Number of KFD Facebook Posts                                       | 130      | 56    | 20    | 18    | 20    | 114    |
| Number of KFD Facebook followers                                   | 10500    | 9860  | 10000 | 10133 | 10155 | 10155  |
| Number of Public Fire Education Programs                           | 12       | 2     | 3     | 2     | 5     | 12     |
| <b>Emergency Management</b>                                        |          |       |       |       |       |        |
| Increase number of CivicReady users                                | 3200     | 3115  | 3115  | 3115  | 3115  | 3115   |
| Number of CivicReady messages                                      | 10       | 0     | 1     | 3     | 1     | 5      |
| <b>Police Department</b>                                           |          |       |       |       |       |        |
| Number of KPD Facebook followers                                   | 11700    | 11415 | 11621 | 11930 | 12078 | 12078  |
| Number of Business Crime Watch announcements                       | 10       | 2     | 0     | 0     | 0     | 2      |
| Number of Neighborhood Crime Watch Programs                        | 4        | 4     | 4     | 4     | 4     | 4      |
| Number of Community Group meetings                                 | 100      | 47    | 22    | 47    | 52    | 168    |

|                                                                                 |                |              |              |              |              |            |
|---------------------------------------------------------------------------------|----------------|--------------|--------------|--------------|--------------|------------|
| Improve data security                                                           |                |              |              |              |              |            |
|                                                                                 | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>IT Department</b>                                                            |                |              |              |              |              |            |
| Number of employee complete HB mandated cyber security training                 | 75             | 0            | 0            | 75           | 0            | 75         |
| <b>Smart, Business-Friendly Economic Development</b>                            |                |              |              |              |              |            |
| Create effective working relationships with businesses and developers.          |                |              |              |              |              |            |
|                                                                                 | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>Development Services</b>                                                     |                |              |              |              |              |            |
| Number of cases at internal DRC meetings                                        | 60             | 17           | 30           | 6            | 18           | 71         |
| Number of Pre-Development meetings with developers                              | 40             | 3            | 12           | 27           | 21           | 63         |
| <b>KEDC</b>                                                                     |                |              |              |              |              |            |
| Number of visits with prospective businesses or real estate contacts            | 40             | 12           | 27           | 24           | 18           | 81         |
| Number of broker events or trade shows attended                                 | 4              | 0            | 1            | 4            | 0            | 5          |
| Number of visits with existing property owners                                  | 8              | 10           | 4            | 3            | 3            | 20         |
| Retain/Expand existing businesses.                                              |                |              |              |              |              |            |
|                                                                                 | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>KEDC</b>                                                                     |                |              |              |              |              |            |
| Number of visits with existing businesses                                       | 18             | 3            | 10           | 4            | 2            | 19         |
| Number of recognized Businesses of the Month                                    | 12             | 0            | 0            | 0            | 3            | 3          |
| Number of business retention events attended                                    | 12             | 5            | 4            | 5            | 3            | 17         |
| Promote new business opportunities.                                             |                |              |              |              |              |            |
|                                                                                 | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>Administration</b>                                                           |                |              |              |              |              |            |
| Number of Economic Incentive agreements approved                                | 4              | 2            | 1            | 1            | 0            | 4          |
| <b>KEDC</b>                                                                     |                |              |              |              |              |            |
| Number of prospect lead responses                                               | 12             | 4            | 15           | 13           | 13           | 45         |
| Number of new economic incentive agreements approved                            | 4              | 2            | 1            | 1            | 0            | 4          |
| <b>Strong Partnerships and Community Involvement</b>                            |                |              |              |              |              |            |
| Create a positive regional identity.                                            |                |              |              |              |              |            |
|                                                                                 | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>Administration</b>                                                           |                |              |              |              |              |            |
| Number of press releases to the paper regarding activities and positive events. | 4              | 1            | 1            | 1            | 1            | 4          |
| Number of promotions of Kaufman's events                                        | 20             | 5            | 5            | 5            | 5            | 20         |
| Number of promotions of Kaufman Square                                          | 10             | 5            | 4            | 2            | 5            | 16         |

|                                                                              |                |              |              |              |              |            |
|------------------------------------------------------------------------------|----------------|--------------|--------------|--------------|--------------|------------|
| Forge collaborative relationships with other government and public entities. |                |              |              |              |              |            |
|                                                                              | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>Administration</b>                                                        |                |              |              |              |              |            |
| Number of Kaufman County Leadership Council Meetings attended                | 12             | 3            | 3            | 3            | 3            | 12         |
| Number of Kaufman County Communications Coalition meetings attended          | 12             | 3            | 3            | 3            | 3            | 12         |
| <b>Development Services</b>                                                  |                |              |              |              |              |            |
| Number of meetings with intergovernmental and franchise utility partners     | 12             | 0            | 4            | 3            | 6            | 13         |
| <b>KEDC</b>                                                                  |                |              |              |              |              |            |
| Number of meetings with intergovernmental and franchise utility partners     | 8              | 16           | 14           | 15           | 13           | 58         |
| Foster and support citizen volunteer opportunities.                          |                |              |              |              |              |            |
|                                                                              | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>Administration</b>                                                        |                |              |              |              |              |            |
| Number of volunteers                                                         | 20             | 0            | 0            | 50           | 20           | 70         |
| <b>Fire Department</b>                                                       |                |              |              |              |              |            |
| Number of Active Volunteer Firefighters                                      | 25             | 25           | 25           | 25           | 25           | 25         |
| <b>Healthy and Environmentally Conscious Community</b>                       |                |              |              |              |              |            |
| Promote recreational/active lifestyle opportunities.                         |                |              |              |              |              |            |
|                                                                              | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>Parks and Recreation</b>                                                  |                |              |              |              |              |            |
| Number of Park Facility Rentals (pavillions, tennis court, etc.)             | 100            | 17           | 28           | 19           | 9            | 73         |
| Number of baseball participants                                              | 700            | 375          | 375          | 375          | 218          | 1343       |
| Number of soccer participants                                                | 700            | 322          | 357          | 382          | 215          | 1276       |
| <b>Development Services</b>                                                  |                |              |              |              |              |            |
| Number of meetings regarding future park developments                        | 12             | 0            | 2            | 2            | 0            | 4          |
| Improve property maintenance standards and code enforcement.                 |                |              |              |              |              |            |
|                                                                              | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>Development Services</b>                                                  |                |              |              |              |              |            |
| Number of pro-active cases opened                                            | 400            | 80           | 108          | 123          | 46           | 357        |
| Number of NEAT Program initiated                                             | 2              | 0            | 0            | 0            | 0            | 0          |

|                                                                                                          |                |              |              |              |              |            |
|----------------------------------------------------------------------------------------------------------|----------------|--------------|--------------|--------------|--------------|------------|
| Develop/enhance environmental and sustainability standards/programs.                                     |                |              |              |              |              |            |
|                                                                                                          | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>Public Works</b>                                                                                      |                |              |              |              |              |            |
| Water loss less than 20%                                                                                 | 12%            | 312,000      | 304,000      | 394,550      | 813,200      | 1,823,750  |
| <b>Development Services</b>                                                                              |                |              |              |              |              |            |
| Number of bi-annual health inspections                                                                   | 200            | 69           | 54           | 64           | 67           | 254        |
| Number of health inspections – temporary events                                                          | 20             | 8            | 0            | 0            | 6            | 14         |
| Total number of building permits issued                                                                  | 800            | 153          | 185          | 154          | 142          | 634        |
| Total number of building plan reviews conducted                                                          | 500            | 132          | 81           | 128          | 105          | 446        |
| Total number of building inspections conducted within 24 hours of being requested                        | 100%           | 100% 500     | 100% 694     | 100% 769     | 100% 610     | 100% 2,573 |
| <b>Financial and Operational Stewardship</b>                                                             |                |              |              |              |              |            |
| Develop, recognize and retain quality staff.                                                             |                |              |              |              |              |            |
|                                                                                                          | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>Administration - HR</b>                                                                               |                |              |              |              |              |            |
| Employee turnover less than 15%                                                                          | <15%           | 4.20%        | 6.80%        | 4.10%        | 9.60%        | 6.18%      |
| Number of employee engagement events                                                                     | ≥4             | 0            | 1            | 2            | 2            | 5          |
| Number of HR/Safety Trainings                                                                            | ≥4             | 0            | 4            | 1            | 1            | 6          |
| Implement strong financial management standards.                                                         |                |              |              |              |              |            |
|                                                                                                          | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>Finance</b>                                                                                           |                |              |              |              |              |            |
| Maintain fund balance reserves in excess of city policy (minimum of 90 days)                             | 25%+           | 0.3          | 0.48         | 0.4          | 0.38         | 0.38       |
| Maintain Achievement of GFOA's Certificate of Achievement for Excellence in Financial Reporting Annually | 100%           | 1            | 1            | 1            | 1            | 1          |
| Maintain Achievement of GFOA's Distinguished Budget Presentation Award Annually                          | 100%           | 1            | 1            | 1            | 1            | 1          |
| Improve effectiveness and efficiency of operational processes.                                           |                |              |              |              |              |            |
|                                                                                                          | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>Administration</b>                                                                                    |                |              |              |              |              |            |
| Quarterly Budget review                                                                                  | 4              | 1            | 1            | 1            | 1            | 4          |
| <b>Finance</b>                                                                                           |                |              |              |              |              |            |
| Percentage of Payments, Adjustments, & new warrant cases sent to Collection Agency monthly               | 100%           | 0.32         | 0.37         | 0.48         | 0.48         | 0.48       |
| Percentage of warrants issued after FTA for Final Notice of court date after 60 days                     | 100%           | 0.33         | 0.39         | 0.45         | 0.47         | 0.47       |
| Issue FTA notice within 10 days of court date                                                            | 100%           | 0.98         | 0.99         | 0.99         | 1            | 1          |

|                                                                                                           |                |              |              |              |              |            |
|-----------------------------------------------------------------------------------------------------------|----------------|--------------|--------------|--------------|--------------|------------|
| Maintain/Improve infrastructure and assets.                                                               |                |              |              |              |              |            |
|                                                                                                           | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>Finance</b>                                                                                            |                |              |              |              |              |            |
| Percentage of fund reviews and reconciliations completed prior month by the 25th day of the current month | 100%           | 0.3          | 0.48         | 0.4          | 0.38         | 0.38       |
| <b>Public Works</b>                                                                                       |                |              |              |              |              |            |
| Number of Linear feet of street repairs                                                                   | 6,000          | 1,740        | 6,230        | 3,305        | 3,494        | 14,769     |
| Number of Linear feet of water line replaced                                                              | 189            | 34           | 52           | 20           | 33           | 139        |
| Number of water leaks repaired                                                                            | 229            | 50           | 59           | 58           | 66           | 233        |
| Provide cost effective services.                                                                          |                |              |              |              |              |            |
|                                                                                                           | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>Finance</b>                                                                                            |                |              |              |              |              |            |
| Percentage of E-Bill customers to paper statement billed customers                                        | 15%+           | 0.15         | 0.15         | 0.16         | 0.16         | 0.16       |
| Deliver responsive, professional customer service.                                                        |                |              |              |              |              |            |
|                                                                                                           | <b>FY Goal</b> | <b>FY Q1</b> | <b>FY Q2</b> | <b>FY Q3</b> | <b>FY Q4</b> | <b>EOY</b> |
| <b>Administration</b>                                                                                     |                |              |              |              |              |            |
| Number of Customer Complaints                                                                             | 0              | 0            | 0            | 0            | 0            | 0          |
| <b>Finance</b>                                                                                            |                |              |              |              |              |            |
| Percentage of ACH payments to total accounts payable                                                      | 50%+           | 0.54         | 0.5          | 0.46         | 0.5          | 0.5        |
| Percentage of invoices paid within 30 days from invoice date                                              | 100%           | 0.96         | 0.83         | 0.94         | 0.94         | 0.94       |
| Utility billing accuracy                                                                                  | 98%+           | 0.99         | 0.99         | 0.99         | 0.99         | 0.99       |
| Percentage of Automatic draft customers/total customers                                                   | 20%+           | 0.15         | 0.2          | 0.21         | 0.21         | 0.21       |
| <b>Fire Department</b>                                                                                    |                |              |              |              |              |            |
| Number of Citizen complaints                                                                              | 0              | 0            | 0            | 0            | 0            | 0          |
| Number of outside commendations                                                                           | 2              | 0            | 1            | 2            | 1            | 4          |
| <b>Police Department</b>                                                                                  |                |              |              |              |              |            |
| Number of Police Citizen Complaints                                                                       | 0              | 0            | 0            | 1            | 1            | 2          |
| Number of IA Investigations                                                                               | 0              | 0            | 0            | 1            | 1            | 2          |
| Number of IA Investigations (Unfounded)                                                                   | 0              | 0            | 0            | 1            | 1            | 2          |
| Number of IA Investigations (Sustained)                                                                   | 0              | 0            | 0            | 0            | 0            | 0          |
| <b>Public Works</b>                                                                                       |                |              |              |              |              |            |
| Number of street maintenance calls                                                                        | 356            | 236          | 38           | 46           | 24           | 344        |
| Number of utility related service calls                                                                   | 3984           | 876          | 1308         | 1119         | 1207         | 4510       |
| Number of written Citizen complaints                                                                      | 4              | 1            | 1            | 3            | 2            | 7          |

|                                                                                                    |      |            |            |            |            |            |
|----------------------------------------------------------------------------------------------------|------|------------|------------|------------|------------|------------|
| <b>Development Services</b>                                                                        |      |            |            |            |            |            |
| Percentage of plats considered by P&Z or administratively approved by staff within 30 days         | 100% | 100% (9)   | 100% (3)   | 100% (9)   | 100% (3)   | 100% (12)  |
| Percentage of zoning, SUP, or site plans considered by P&Z within 60 days                          | 100% | 100% (5)   | 100% (2)   | 100% (2)   | 100% (4)   | 100% (7)   |
| Percentage of contractor registration approval process < or = to 3 days.                           | 100% | 100% (108) | 100% (112) | 100% (104) | 100% (120) | 100% (444) |
| Percentage of single family & duplex permit plan review < or = 15 working days.                    | 100% | 100% (16)  | 100% (10)  | 100% (18)  | 100% (6)   | 100% (50)  |
| Percentage of commercial permit plan review < or = 30 working days.                                | 100% | 100% (2)   | 100% (8)   | 100% (11)  | 100% (5)   | 100% (26)  |
| Percentage of home improvement incentive program initial request review in < or = 10 working days. | 100% | 100%       | 100%       | 100%       | 100%       | 100%       |
| Number of information requests responded to                                                        | 400  | 70         | 100        | 150        | 150        | 470        |
| Average response time on request                                                                   | 100% | 100%       | 100%       | 100%       | 100%       | 100%       |

## DISCUSSION ITEMS REPORT (DIR)

| Project Title                               | Department          | Agenda Date | Entered Date | Status/Notes                                          | Strategy Map |
|---------------------------------------------|---------------------|-------------|--------------|-------------------------------------------------------|--------------|
| Splash Pad                                  | Parks & Rec         | TBD         | 10/23/2018   | Shannon Park under construction                       | 2,3,4        |
| Thoroughfare Plan Update                    | Development Serv    | TBD         | 10/23/2018   | In Progress                                           | 2,5          |
| Bldg Standards Commission Ordinance         | Development Serv    | 9/1/2019    | 10/23/2018   | BSC to review                                         | 4            |
| South Pointe                                | Development Serv    |             | 2/3/2021     | Ground breaking occurred 10/22                        | 2,3,4        |
| Subdivision Ordinance Update                | Development Serv    | 1/27/2020   | 10/23/2018   | In progress                                           | 5            |
| Citizens Academy                            | Admin/Public Safety |             | 11/27/2018   | Planning Phase                                        | 1,3          |
| Fire Department Facility Improvements       | Admin/Public Safety |             |              | Drainage improvements under construction              | 1,2,5        |
| Summer Youth Program                        | Admin/Parks         | TBD         | 7/16/2019    | COVID Postponement                                    | 1,3,4        |
| Digital Gateway Signage                     | Admin               | TBD         | 8/17/2020    | On hold due to site issues                            | 2,3          |
| City Lakes Emer Action Plan                 | Public Works        | TBD         | 8/7/2019     |                                                       | 5            |
| Disc Golf Course                            | Admin/PW            | TBD         | 8/23/2019    | TPWD Grant Awarded                                    | 2,3,4        |
| Washington Street Utility Relocation        | Admin/PW            | TBD         | 10/1/2019    | SUE forwarded to TxDOT                                | 2,5          |
| TPW Grant for City Lake Park                | Parks & Rec         | TBD         | 12/10/2019   | TPWD Grant Awarded                                    | 4,5          |
| CareFlight Facility                         | Admin               | TBD         | 3/9/2020     | Discussions regarding relocation                      | 1,3          |
| COVID - 19                                  | Admin/Public Safety | TBD         | 3/11/2020    | Action Plan in Place                                  | 4,5          |
| Comprehensive Plan                          | Admin               |             | 8/26/2020    | Need to update plan/Exploring Grant Opportunities     | 2,3,4,5      |
| Website Update                              | Admin               |             | 1/26/2021    | Planning Phase                                        | 2,3          |
| Street Maintenance Program                  | Public Works        |             | 1/29/2021    | Budget Approved, Phase 1 & 2 complete. Start Phase 3. | 2,4,5        |
| Storm Drainage Projects                     | Public Works        |             | 1/29/2021    | Phase 2 Under Construction                            | 2,4,5        |
| North & South Water Tower Rehab             | Public Works        |             | 1/29/2021    | South Tower Rehab Completed                           | 4,5          |
| Body Cameras                                | PD                  |             | 2/2/2021     | PO Issued                                             | 1,3,5        |
| Annual Report                               | Admin               |             | 2/24/2021    | Planning Phase                                        | 3            |
| Shannon Park Updates                        | Admin/PW            | 4/26/2021   | 4/26/2021    | Contract Awarded 042522                               | 3,4,5        |
| Inclusive Park                              | Admin/PW            |             | 4/29/2021    | TPWD Grant Awarded                                    | 3,4,5        |
| Connector Road                              | Admin               |             | 4/29/2021    | County has project under design                       | 2,3,5        |
| AMI                                         | Admin/PW            |             | 4/29/2021    | Installation underway                                 | 4,5          |
| High Speed Internet                         | Admin               |             |              | Suddenlink live/CIP installing                        | 2,3,5        |
| Northeast Utility Project                   | Admin/PW            |             | 9/17/2021    | Developer's agreements approved                       | 1,2,3,4,5    |
| City Lakes Park/Lower Lake Improvements     | Admin/PW            |             | 9/23/2021    | Working on Cost Estimate and Scope                    | 4            |
| Former Senior Center Demo                   | Development Serv    |             | 11/8/2021    | Working on sale of property                           | 4            |
| Kings Fort Park                             | PW/Admin            |             | 7/27/2022    | Grant Application Submitted 08/01/22                  | 3,4,5        |
| Hike & Bike Trail                           | Admin               |             | 7/27/2022    | Master Concept Plan & First Segment complete          | 3,4,5        |
| Sports Complex Football Fields/Lighting/Sha | PW/Admin            |             | 9/23/2022    | Installation underway                                 | 3,4          |
| Downtown Square Landscape Update            | PW/Admin            |             | 9/23/2022    | Bid award coming soon                                 | 3,4          |
|                                             |                     |             |              |                                                       |              |
|                                             |                     |             |              |                                                       |              |
|                                             |                     |             |              |                                                       |              |
|                                             |                     |             |              |                                                       |              |

## DISCUSSION ITEMS REPORT (DIR)

### COMPLETED

| Project Title                            | Project Lead     | Agenda Date           | Entered Date | Status/Notes                                           |       |
|------------------------------------------|------------------|-----------------------|--------------|--------------------------------------------------------|-------|
| PID Creation Resolution                  | Dev Svc/Admin    | 11/13/2018            | 10/24/2018   | Complete                                               |       |
| TIRZ Creation Ordinance Amendment        | Dev Svc/Admin    | 11/13/2018            | 10/24/2018   | Complete                                               |       |
| TIRZ Project Reprioritization Resolution | Dev Svc/Admin    | 11/13/2018            | 10/24/2018   | Complete                                               |       |
| Home Improvement Incentive Program       | Development Serv | 11/13/2018            | 10/23/2018   | Complete                                               |       |
| Budget Book Submission to GFOA           | Finance          |                       | 10/23/2018   | Complete                                               |       |
| Interlocal Agreement w/County for PID    | Finance          |                       | 10/30/2018   | PID Assessment for Georgetown in 2020                  |       |
| WWTP Priority Project List               | Public Works     | 11/13/2018            | 10/23/2018   | Mark Hill - Consultant                                 |       |
| 2600 Commerce Way Permit Ready           | Development Serv | NA                    | 11/6/2018    | Complete Permit Issued 11/26/2018                      |       |
| 600 N Nash KC Street Barn Permit Issued  | Development Serv | NA                    | 11/6/2018    | Complete Finaled 01/04/2019                            |       |
| Rev Ch 22 & 46 7500SF F Sprinkler Req    | Development Serv | 01/28/2019 02/25/2019 | 1/21/2019    | Complete 02/25/2019                                    |       |
| Realtor PID Training                     | Admin            | NA                    |              | Complete 4/23/2019                                     |       |
| Fee Schedule Update                      | Development Serv |                       | 6/4/2019     | Approved by Council                                    |       |
| Bureau Veritas Contract Update           | Development Serv |                       | 6/4/2019     | Approved by Council                                    |       |
| Park Master Plan Update                  | Parks & Rec      | 8/5/2019              | 10/23/2018   | Approved by Council                                    |       |
| 34/243 Signal Installation               | Public Works     |                       | 10/23/2018   | Complete                                               |       |
| HR Coordinator                           | Admin            |                       | 12/17/2018   | Admin/HR Assistant Full-Time Sept. 30                  |       |
| Agenda Software Installation/Training    | Admin            |                       | 10/23/2018   | Complete                                               |       |
| 5 Year CIP                               | Admin            | 11/25/2019            | 11/25/2019   | Work Session 12/16/19                                  |       |
| Water & Street Impact Fee Update         | Development Serv |                       | 6/10/2019    | Council approved 12/16/19                              |       |
| Intern Program                           | HR               | TBD                   | 12/10/2019   | Policy to Council 3/30/20                              | 3,5   |
| WWTP Finance Application                 | Finance          | 11/13/2018            | 10/23/2018   | GTUA Approval                                          | 5     |
| PD/FD Safety Equipment Grant             | Public Safety    | TBD                   | 3/3/2020     | Application Submitted                                  | 1     |
| Street Maintenance Priorities            | PW/Admin         |                       | 2/27/2019    | List Presented to Council/Incorporated into 5 Year CIP | 5     |
| Traffic Signal 1388@34 ByPass            | Admin            |                       | 1/28/2020    | Final Construction Underway                            | 1     |
| Solid Waste RFP                          | Admin            | TBD                   | 5/18/2020    | Contract Finanized and Approved                        | 4,5   |
| PD Body Camera Grant                     | PD               | 4/27/2020             | 5/19/2020    | Grant not awarded                                      | 1,5   |
| Civic Center                             | Admin            | 7/22/2019             |              | Accepted 01/25/21                                      | 2,3   |
| Phase II - Street Bond                   | Public Works     | 10/28/2019            | 10/23/2018   | Accepted 01/25/21                                      | 5     |
| TxDOT Turnback                           | Admin            | 12/17/2018            | 11/6/2018    | Accepted 01/25/21                                      | 2,3,5 |
| City Lakes Park Fence                    | Public Works     |                       | 1/26/2021    | Complete                                               |       |
| Building Official                        | Development Serv |                       | 12/10/2020   | Hired                                                  |       |
| 54-Acre Development                      | Development Serv | 5/18/2020             | 10/23/2018   | PD to Council 05/18/2020                               | 2,3,4 |
| Building Code Update                     | Development Serv | 10/28/2019            | 6/4/2019     | Approved O-28-19                                       | 5     |
| Park Dedication Ordinance                | Development Serv | 1/25/2021             | 10/23/2018   | PH continued to 2/22/2021                              | 4,5   |
| Police Department Server                 | PD               |                       | 1/29/2021    | Ordered thru TSM                                       | 1,5   |
| Tree Mitigation Ordinance                | Development Serv |                       | 2/24/2021    | Approved                                               | 4,5   |
| Kaufman Lake                             | Admin/PW         |                       | 1/8/2019     | Sold April 2021                                        | 2,4,5 |
| Downtown Parking                         | Admin            |                       | 1/16/2019    | 2 Hour Parking Signs going up                          | 2     |
| Fire Engine Replacement                  | FD               | 1/25/2021             | 1/25/2021    | Lease Approved                                         | 1,5   |
| Greenlight City/EDC Marketing            | Admin/EDC        |                       | 6/16/2020    | Greenlight Retainer                                    | 1,2   |
| Kaufman Square Speakers                  | Admin/PW         | TBD                   | 10/22/2019   | Installation Complete                                  | 2,3   |
| Fire Department 5 Year Plan              | FD               |                       | 8/26/2020    | Presented at Council Retreat 4/2021                    | 2,5   |
| TIRZ #2                                  | Admin            |                       | 8/6/2020     | PPFP Approved 082420                                   | 2,3,4 |
| Tabor Parkway Expansion                  | PW/Admin         |                       |              | Complete                                               | 2,3,5 |
| IT Services RFP                          | Admin            |                       | 1/6/2022     | Contract award 2/28/22                                 | 1,5   |
| Marlow Development                       | Development Serv | 4/22/2019             | 10/23/2018   | Construction Underway                                  | 2     |
| Recodification of City Ordinances        | Admin            | 11/13/2018            | 10/23/2018   | Franklin Review                                        | 5     |
| Kaufman Estates                          | PW/Admin         | 10/28/2019            |              | No Action                                              | 5     |

|                                   |          |           |           |           |   |
|-----------------------------------|----------|-----------|-----------|-----------|---|
| Sports Complex Parking Lot Paving | PW/Admin | 4/25/2022 | 4/26/2022 | Completed | 4 |
|                                   |          |           |           |           |   |
|                                   |          |           |           |           |   |
|                                   |          |           |           |           |   |
|                                   |          |           |           |           |   |

November 11, 2022

To: Kaufman County

From: Ashley Berryhill, Finance Director

Re: October 2022 STARNow – Kaufman County Ridership Report

**TRIP INFORMATION:**

|               | S    | O    | N | D | J | F | M | A | M | J | J | A | TOTAL |
|---------------|------|------|---|---|---|---|---|---|---|---|---|---|-------|
| TRIPS         | 802  | 851  |   |   |   |   |   |   |   |   |   |   | 1,653 |
| SERVICE DAYS  | 21   | 21   |   |   |   |   |   |   |   |   |   |   | 42    |
| DAILY AVERAGE | 38.2 | 40.5 |   |   |   |   |   |   |   |   |   |   | 78.7  |

KPIs

[Download](#)

Completed Boardings ⓘ

837

Avg. Boardings Per Service Hr. ⓘ

1.09

Boarding Cancellations ⓘ

474

Boarding Cancellations (No-Show) ⓘ

37

Cancellation Percentage ⓘ

36.16 %

Cancellation Percentage (No Show) ⓘ

2.82 %

Total Requests ⓘ

1240

Completed Requests ⓘ

795

No Drivers Available Requests ⓘ

2

Request Cancellations ⓘ

443

Request Cancellations (No Show) ⓘ

35

Avg. # of Requests per Rider ⓘ

5.04

Avg. Travel Duration ⓘ

14.82 min

Avg. Travel Distance ⓘ

5.62 mi

Mean Wait Time ⓘ

59.97 min

Median Wait Time ⓘ

23.08 min

Bookings from Admin Panel ⓘ

98.45 %

Bookings from Rider Mobile App ⓘ

1.55 %

Bookings from Rider Web ⓘ

0 %

Flag Down Bookings ⓘ

0 %

Avg. # Riders per Request ⓘ

1.05

November 11, 2022

To: Kaufman County

From: Ashley Berryhill, Finance Director

Re: October 2022 Demand and Response Ridership Report

**TRIP INFORMATION:**

|               | S     | O     | N | D | J | F | M | A | M | J | J | A | TOTAL |
|---------------|-------|-------|---|---|---|---|---|---|---|---|---|---|-------|
| TRIPS         | 1,846 | 1,836 |   |   |   |   |   |   |   |   |   |   | 3,682 |
| SERVICE DAYS  | 21    | 21    |   |   |   |   |   |   |   |   |   |   | 42    |
| DAILY AVERAGE | 87.9  | 87.4  |   |   |   |   |   |   |   |   |   |   | 175   |

| ELDERLY AND DISABLED RIDERSHIP |                                    |
|--------------------------------|------------------------------------|
| 348                            | Disabled Trips                     |
| 1,003                          | Elderly (&/or Dis) Trips           |
| 1,351                          | E & D Total Rides                  |
|                                | E & D Percent of Total Trips – 74% |



**Response Summary:**

|                              | Responses  | Transports | Exceptions | Compliance %  | Transport %   |
|------------------------------|------------|------------|------------|---------------|---------------|
| Priority 1 <8:59             | 35         | 26         | 3          | 91%           | 74%           |
| Priority 2 <11:59            | 83         | 48         | 2          | 98%           | 58%           |
| Priority 3 <14:59            | 22         | 14         | 4          | 82%           | 64%           |
| Emergency Transfers<0:29:59  | 104        | 100        | 67         | 36%           | 96%           |
| Non-Emergency Transfers<0:15 | 50         | 48         | 11         | 78%           | 96%           |
| Helicopter                   | 25         | 25         |            |               |               |
| <b>Totals</b>                | <b>319</b> | <b>261</b> |            | <b>93.60%</b> | <b>65.25%</b> |

**Transport Summary:**

|                                           | Number     | Percentage  |
|-------------------------------------------|------------|-------------|
| Baylor Scott and White Dallas             | 6          | 3%          |
| Baylor Scott and White Sunnyvale          | 4          | 2%          |
| Baylor Scott and White Lakepointe Rowlett | 2          | 1%          |
| Baylor Scott and White Lakepointe Forney  | 0          | 0%          |
| Childrens Medical Center                  | 2          | 1%          |
| Dallas Regional Medical Center            | 10         | 4%          |
| Medical City Dallas                       | 0          | 0%          |
| Parkland                                  | 0          | 0%          |
| Texas Health-Dallas                       | 75         | 32%         |
| Texas Health- Kaufman                     | 63         | 27%         |
| Texas Health -Plano                       | 5          | 2%          |
| Texas Health-Rockwall                     | 1          | 0%          |
| UT Health- Athens                         | 1          | 0%          |
| UT Health- Tyler                          | 2          | 1%          |
| UT Health- Cedar Creek                    | 0          | 0%          |
| VA Medical Center Dallas                  | 0          | 0%          |
| Other Hospitals                           | 28         | 12%         |
| Nursing home, residence, other            | 37         | 16%         |
|                                           | <b>236</b> | <b>100%</b> |

|                                    | Number    | % of Total  |
|------------------------------------|-----------|-------------|
| Patient Refusal/Treat No Transport | 29        | 50%         |
| Pt is DOS                          | 2         | 3%          |
| Cancellation- No Patient           | 27        | 47%         |
|                                    | <b>58</b> | <b>100%</b> |

**Average Response Time**

City Wide--Emergency Calls

0:06:46

|                       | Responses | Exceptions |     |
|-----------------------|-----------|------------|-----|
| <b>Last 100 Calls</b> |           |            |     |
| Priority 1            | 100       | 9          | 91% |
| Priority 2            | 100       | 3          | 97% |
| Priority 3            | 100       | 7          | 93% |



# KAUFMAN FIRE DEPARTMENT MONTHLY DASHBOARD REPORT OCTOBER 2022



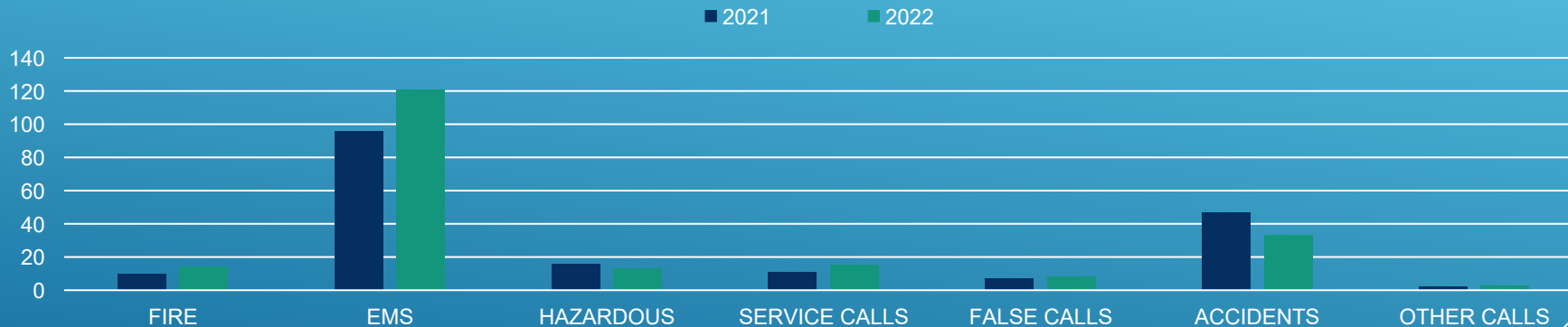


## FIRE OCTOBER 2022 ACTIVITY

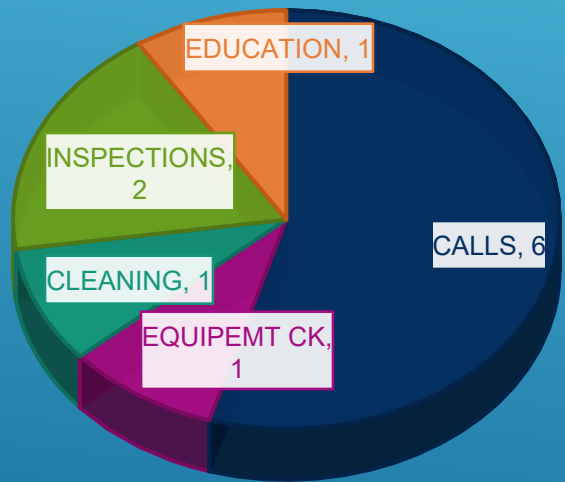
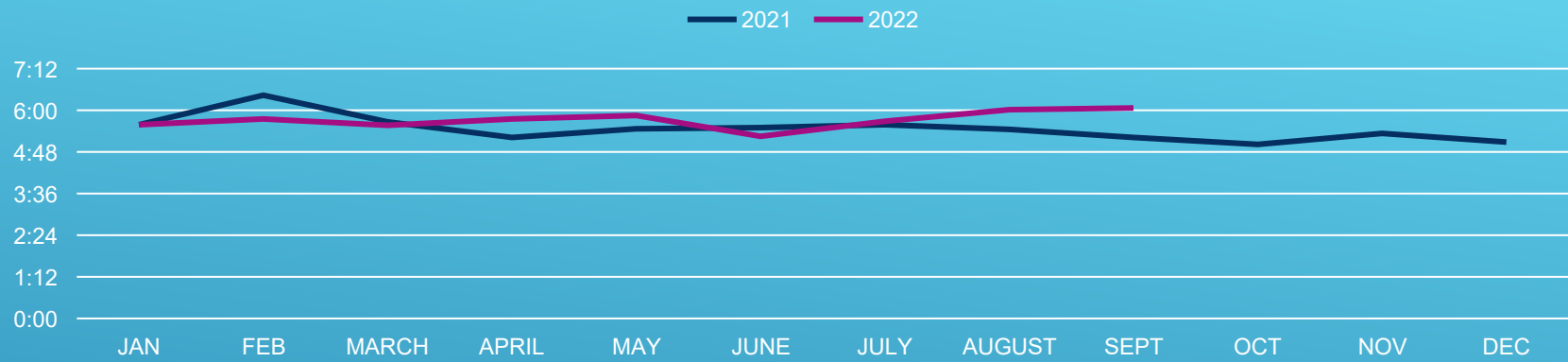
|                                     | 2021 OCT   | 2022 OCT   | MONTHLY INCREASE | FISCAL YTD OCT.21 TO OCT 21 | FISCAL YTD OCT.22 TO OCT 22 | FISCAL YTD INCREASE |
|-------------------------------------|------------|------------|------------------|-----------------------------|-----------------------------|---------------------|
| FIRE CALLS                          | 10         | 14         | 40%              | 10                          | 14                          | 40%                 |
| RESCUE & EMERGENCY MEDICAL SERVICES | 96         | 121        | 26%              | 96                          | 121                         | 26%                 |
| HAZARDOUS CONDITIONS                | 16         | 13         | -19%             | 16                          | 13                          | -23%                |
| SERVICE / GOOD INTENT CALLS         | 11         | 15         | 36%              | 11                          | 15                          | 27%                 |
| FALSE ALARMS                        | 7          | 8          | 14%              | 7                           | 8                           | 13%                 |
| ACCIDENTS                           | 47         | 33         | -30%             | 47                          | 33                          | -42%                |
| OTHER INCIDENTS                     | 2          | 3          | 50%              | 2                           | 3                           | 33%                 |
| <b>TOTAL CALLS</b>                  | <b>189</b> | <b>207</b> | <b>10%</b>       | <b>189</b>                  | <b>207</b>                  | <b>9%</b>           |



## OCTOBER 2022



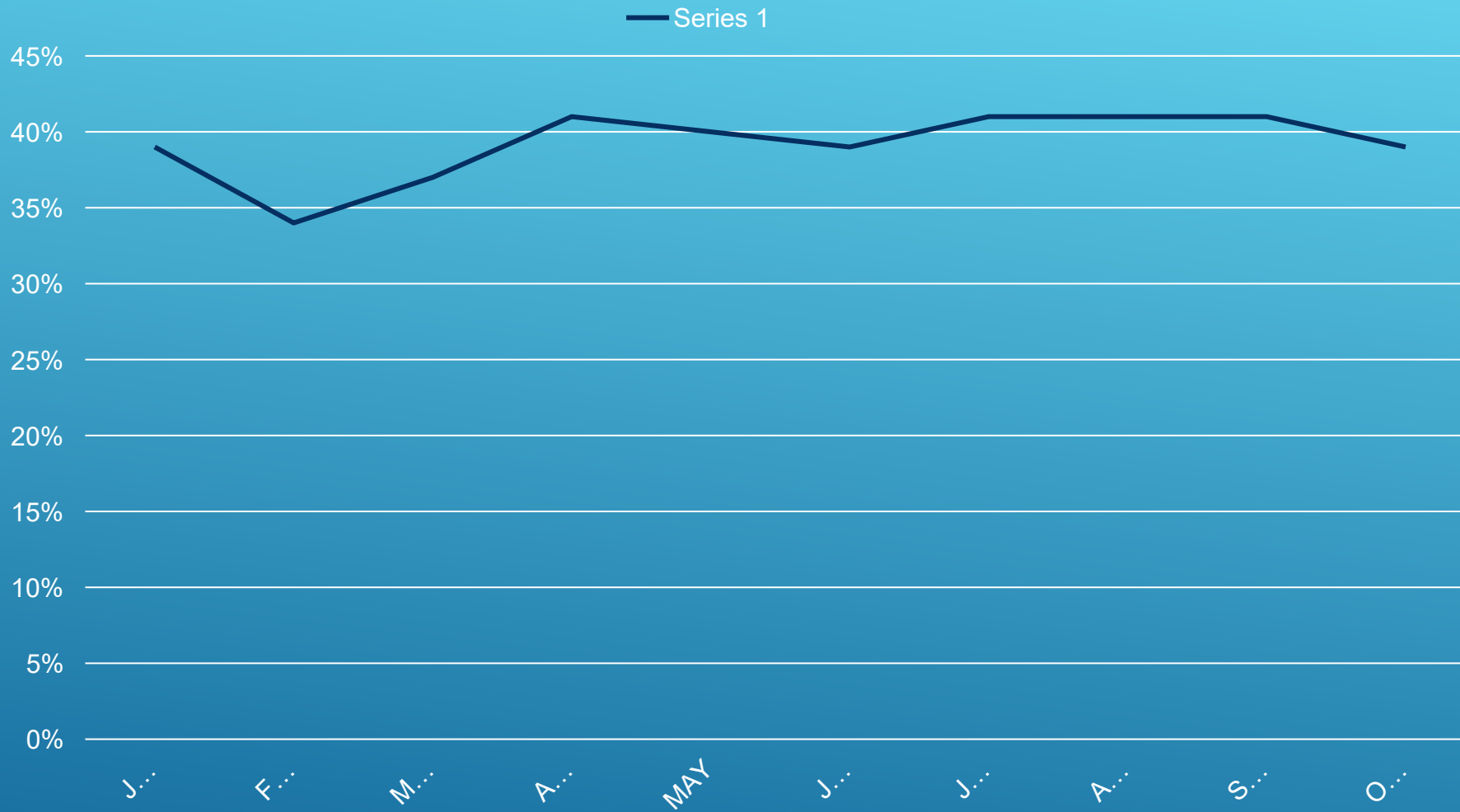
# MONTHLY RESPONSE TIMES



SHIFT HOURLY UTILIZATION 41 %

NFPA NATIONAL STANDARDS 25% TO 30% MAXIMUM

# MONTHLY HOURLY UTILIZATION



# SEPTEMBER PREVENTION REVIEW

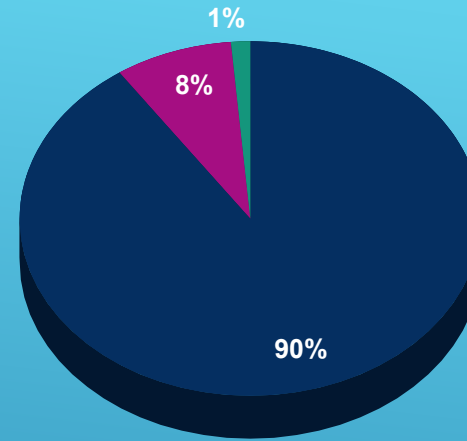
3 DEVELOPMENT PLANS REVIEWED

CONDUCTED 14 FIRE SAFETY  
INSPECTIONS

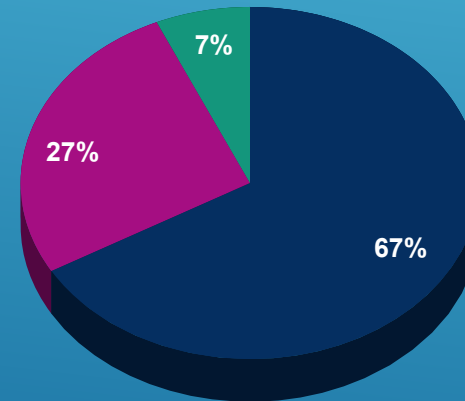
PERFORMED 2 CONSTRUCTION  
SITE FIRE SPRINKLER HYDRO  
TESTS

PASSED OUT FIRE PREVENTION  
MATERIALS TO APPROX. 2400  
CITIZENS

YEARLY 2022



OCTOBER 2022



■ PUBLIC EDUCATION  
■ INSPECTIONS  
■ PLAN REVIEW

0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%



# PERSONNEL CONTINUING EDUCATION

## FIRE

HOSE EVOLUTIONS

## EMS

BLEEDING EMERGENCIES



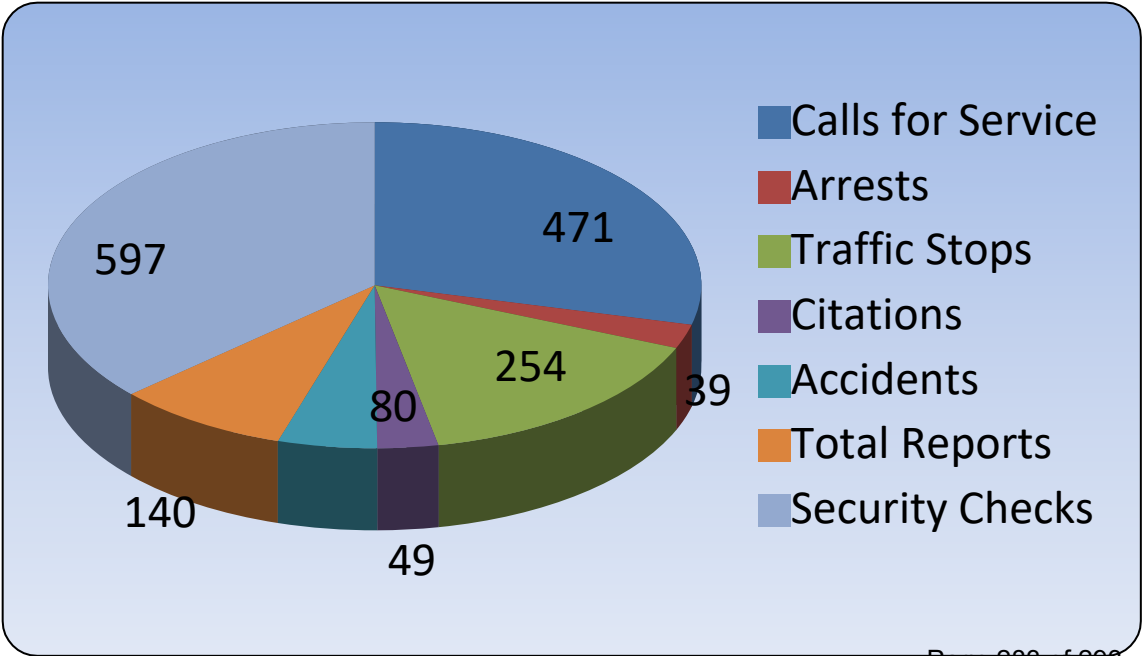
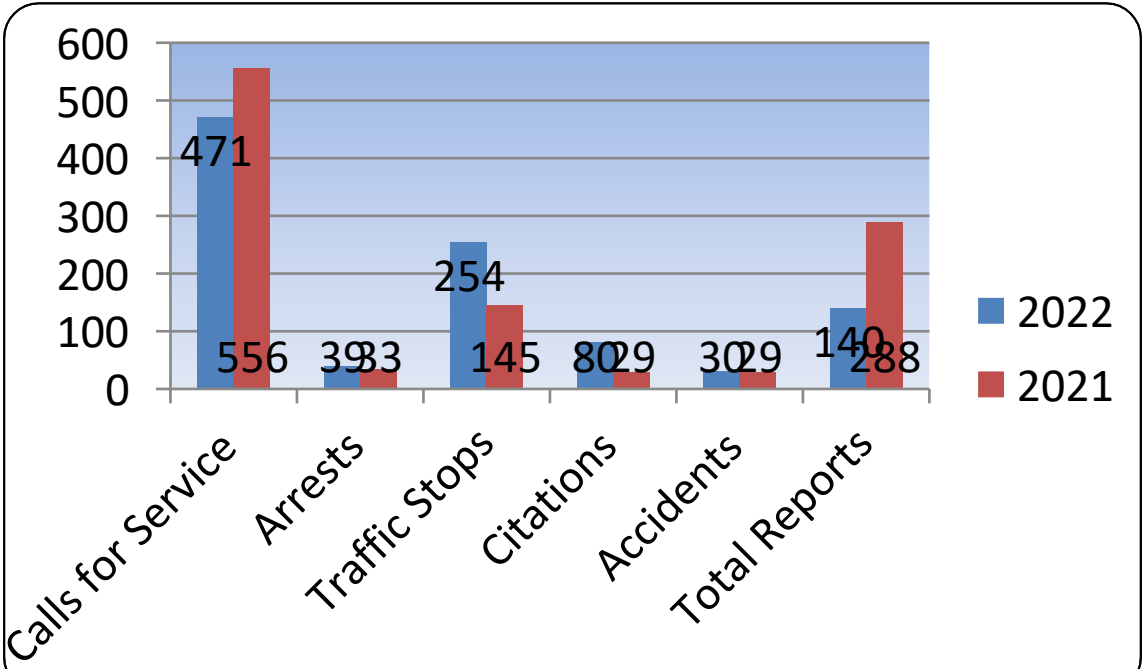
# KAUFMAN POLICE DEPARTMENT PATROL ACTIVITY OCTOBER 2022

## October 2022, Kaufman Police Department's Patrol Division Activity:

- **471** Calls For Service, Including Accidents
- **30** Traffic Accidents
- Completed **597** Homes, Parks, & Business Checks
- Completed **254** Traffic Stops
- Completed **117** Incident Reports
- Completed **140** Reports
- Made **39** Arrests
- Average monthly response time to calls is **5:26** minutes.

Other points of interest include:

- Utilized the radar trailer on 34 Bypass southbound behind the Philips Elementary.



## Community Engagement October 2022

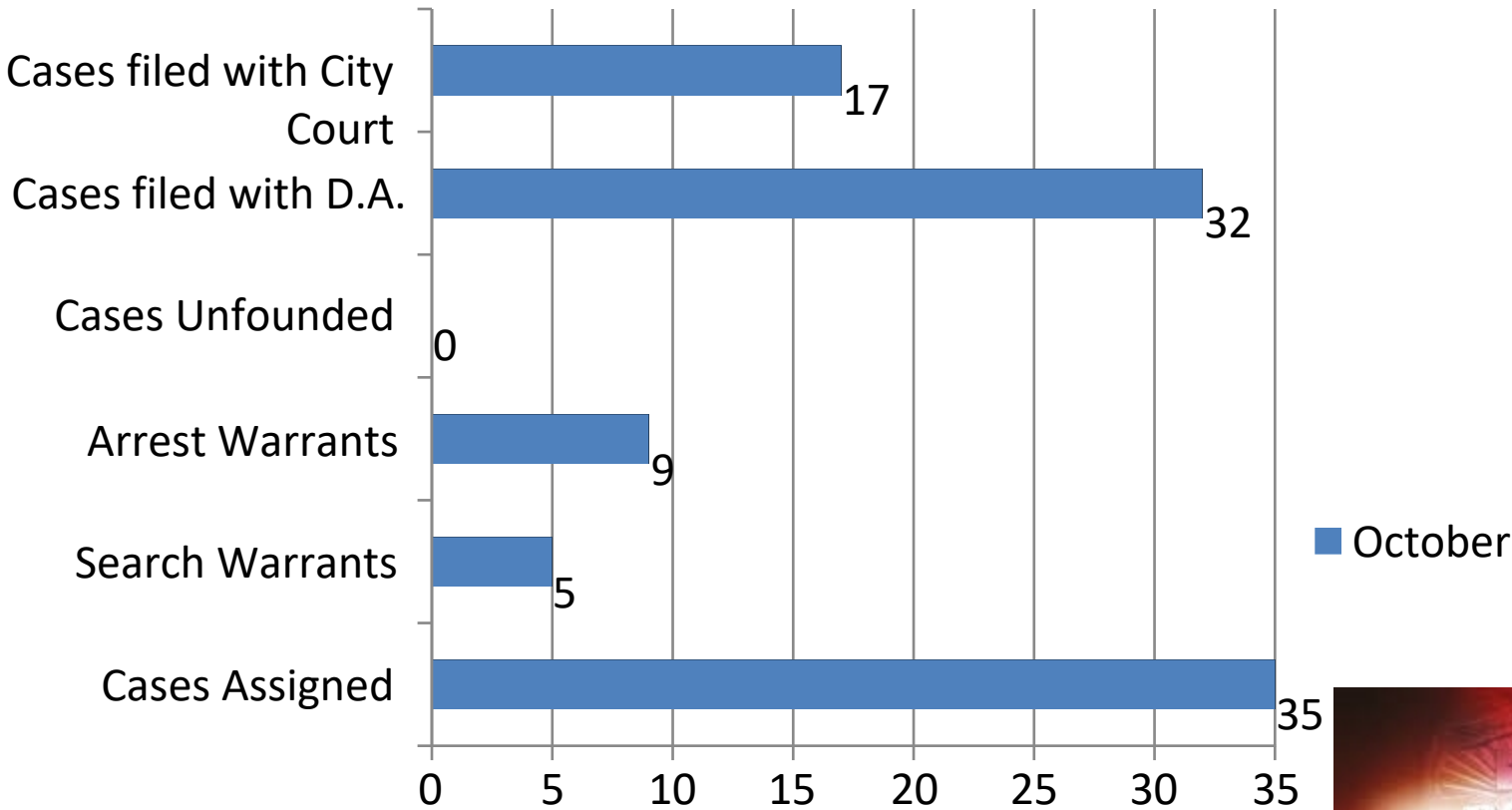
### **Social Media Posts, Facebook Followers 12,078.**

#### **Events attended by Kaufman Police Department employees:**

- National Night Out was successful.
- Officers B. Chewning and R. Miers started Field Training.
- Posted Facebook pedestrian road walking and crossing safety.
- Shared Facebook Lions Club Annual Pancake Day event October 22, 2022.
- Worked St. Ann's Annual Fall carnival that was successful on October 08, 2022.
- Posted multiple notices of found dogs that were recovered by Kaufman Animal Control.
- Posted Facebook vehicle bad weather safety precautions from NHTSA.
- Posted notice of KPD and KFD working a truck fire in the 800 Blk. of East Fair Street on 10/17/2022.
- Posted notice of KPD and KFD working a 18 wheeler roll-over accident on 10/17/2022.
- Shared Facebook post of City of Kaufman early voting locations, dates and times.
- Posted thank you to Higher Hopes Counseling for visit and goodies drop off.
- Posted prior notice of Road Closures caused by the Kaufman Harvest Fest Parade and event scheduled for 10/22/2022.
- Shared attempt to identify suspects from Forney Police Department.
- Shared Kaufman Harvest Fest event information on 10/20/2022.
- Kaufman Harvest Fest Parade and event on the square was a great success on 10/22/2022.
- Shared US National Weather Service weather notice information on October 24, 2022.
- Posted 18 wheeler accident notice closing Eastbound hwy 175 @ FM 1388 on 10/24/2022.
- Posted notice of Hwy 175 @ FM 148 in Crandall closed due to major accident 10/24/2022.
- Posted additional traffic accident notices in the city due to the weather conditions 10/24/2022.
- Shared Kaufman County S.O. / Crime Stoppers bulletin of a stolen vehicle in Kaufman County on 10/27/2022.
- Shared City of Kaufman Events Christmas on the square vendor registration is open on 10/27/2022.
- Shared NHTSA seatbelt and distracted driving safety notice on 10/27/2022.
- Shared City of Kaufman Post about National First Responder Day on 10/28/2022.
- Shared NHTSA Move Over for First Responders Safety notice on 10/28/2022.
- Shared US National Weather Service weather notice information on October 28, 2022.
- Posted additional traffic accident notices in the city due to the weather conditions 10/28/2022.
- Posted thank you to Always Accurate Hospice for visit and goodies drop off. On 10/28/2022.
- Shared Kaufman ISD Facebook post of area First Responders greeting Helen Edwards School student the morning of 10/28/2022.
- Great Annual Halloween of Houston Street Event on 10/31/2022.
- And so much more.



Kaufman Criminal Investigations Division  
October 2022



|         | Cases Assigned | Search Warrants | Arrest Warrants | Cases Unfounded | Cases filed with D.A. | Cases filed with City Court |
|---------|----------------|-----------------|-----------------|-----------------|-----------------------|-----------------------------|
| October | 35             | 5               | 9               | 0               | 32                    | 17                          |





# Year to Date - Offenses Known to Police for October 2022

Agency: TX1290200 - KAUFMAN PD

Printed On:  
11/15/2022

Page 1 of 2

| Classification of Offenses                      | Offenses Reported | Offenses Cleared | Projected Rate/1000 | Last YTD Reported | Percent Change |
|-------------------------------------------------|-------------------|------------------|---------------------|-------------------|----------------|
| Animal Cruelty, Total                           |                   |                  |                     |                   | -              |
| Arson, Total                                    |                   |                  |                     | 1                 | -100.00%       |
| Assault Offenses, Total                         | 42                | 24               | 4.77                | 47                | -10.64%        |
| Aggravated Assault                              | 16                | 9                | 1.82                | 11                | 45.45%         |
| Intimidation                                    |                   |                  |                     | 2                 | -100.00%       |
| Simple Assault                                  | 26                | 15               | 2.95                | 34                | -23.53%        |
| Bribery, Total                                  |                   |                  |                     |                   | -              |
| Burglary/Breaking and Entering, Total           | 3                 | 1                | 0.34                | 10                | -70.00%        |
| Counterfeiting/Forgery, Total                   | 1                 |                  | 0.11                | 2                 | -50.00%        |
| Destruction/Damage/Vandalism of Property, Total | 10                | 1                | 1.14                | 14                | -28.57%        |
| Drug/Narcotic Offenses, Total                   | 161               | 153              | 18.29               | 140               | 15.00%         |
| Drug Equipment Violations                       | 59                | 58               | 6.70                | 32                | 84.38%         |
| Drug/Narcotic Violations                        | 102               | 95               | 11.59               | 108               | -5.56%         |
| Embezzlement, Total                             | 1                 |                  | 0.11                | 1                 | 0.00%          |
| Extortion/Blackmail, Total                      |                   |                  |                     |                   | -              |
| Fraud Offenses, Total                           | 3                 | 2                | 0.34                | 10                | -70.00%        |
| False Pretense/Swindle/Confidence Game          |                   |                  |                     |                   | -              |
| Credit Card/Automatic Teller Machine Fraud      |                   |                  |                     | 2                 | -100.00%       |
| Welfare Fraud                                   |                   |                  |                     |                   | -              |
| Wire Fraud                                      |                   |                  |                     |                   | -              |
| Hacking/Computer Invasion                       |                   |                  |                     |                   | -              |
| Identity Theft                                  |                   |                  |                     |                   | -              |
| Impersonation                                   | 3                 | 2                | 0.34                | 8                 | -62.50%        |
| Gambling Offenses, Total                        |                   |                  |                     |                   | -              |
| Betting/Wagering                                |                   |                  |                     |                   | -              |
| Operating/Promoting/Assisting Gambling          |                   |                  |                     |                   | -              |
| Sports Tampering                                |                   |                  |                     |                   | -              |
| Gambling Equipment Violations                   |                   |                  |                     |                   | -              |
| Homicide Offenses, Total                        |                   |                  |                     | 1                 | -100.00%       |
| Murder and Nonnegligent Manslaughter            |                   |                  |                     |                   | -              |
| Negligent Manslaughter                          |                   |                  |                     | 1                 | -100.00%       |
| Human Trafficking, Total                        |                   |                  |                     |                   | -              |
| Human Trafficking, Commercial Sex Acts          |                   |                  |                     |                   | -              |
| Human Trafficking, Involuntary Servitude        |                   |                  |                     |                   | -              |
| Kidnapping/Abduction, Total                     | 3                 | 1                | 0.34                | 1                 | 200.00%        |
| Larceny/Theft Offenses, Total                   | 36                | 5                | 4.09                | 77                | -53.25%        |
| Motor Vehicle Theft, Total                      | 4                 | 3                | 0.45                | 8                 | -50.00%        |



## Year to Date - Offenses Known to Police for October 2022

Printed On:  
11/15/2022

Agency: TX1290200 - KAUFMAN PD

Page 2 of 2

| Classification of Offenses          | Offenses Reported | Offenses Cleared | Projected Rate/1000 | Last YTD Reported | Percent Change |
|-------------------------------------|-------------------|------------------|---------------------|-------------------|----------------|
| Pornography/Obscene Material, Total | 5                 |                  | 0.57                |                   | -              |
| Prostitution Offenses, Total        |                   |                  |                     |                   | -              |
| Assisting or Promoting Prostitution |                   |                  |                     |                   | -              |
| Prostitution                        |                   |                  |                     |                   | -              |
| Purchasing Prostitution             |                   |                  |                     |                   | -              |
| Robbery, Total                      | 3                 | 1                | 0.34                |                   | -              |
| Sex Offenses, Total                 | 5                 | 1                | 0.57                | 5                 | 0.00%          |
| Fondling                            | 4                 | 1                | 0.45                | 4                 | 0.00%          |
| Rape                                | 1                 |                  | 0.11                | 1                 | 0.00%          |
| Sexual Assault with an Object       |                   |                  |                     |                   | -              |
| Sodomy                              |                   |                  |                     |                   | -              |
| Sex Offenses, Non-Forcible, Total   |                   |                  |                     |                   | -              |
| Statutory Rape                      |                   |                  |                     |                   | -              |
| Incest                              |                   |                  |                     |                   | -              |
| Stolen Property Offenses, Total     | 1                 |                  | 0.11                | 4                 | -75.00%        |
| Weapons Law Violations, Total       | 4                 | 4                | 0.45                | 8                 | -50.00%        |
| Group A Offense, Total              | 282               | 198              | 32.03               | 329               | -14.29%        |
| Crimes Against Person, Total        | 50                | 28               | 5.68                | 54                | -7.41%         |
| Crimes Against Property, Total      | 62                | 13               | 7.04                | 127               | -51.18%        |
| Crimes Against Society, Total       | 170               | 157              | 19.31               | 148               | 14.86%         |
| Officers Killed or Assaulted YTD    | 3                 |                  |                     | 0                 | -              |

# KAUFMAN POLICE DEPARTMENT ANIMAL CONTROL REPORT OCTOBER 2022

## October 2022, Kaufman Animal Control Responded To-

- 55 Calls For Service
- 3 Follow-up Calls
- Warnings Issued – 10
- Citations Issued – 0
- Traps Set - 3

### Domestic Animals Captured

On Calls – 10

On View – 4

### Animals Turned Over

Owner – 5

To Humane Society – 4

Dead Animals Recovered: - 3

Non-Domestic Animals Captured – 4





Development Services  
October Monthly Report  
Permits Issued: 10/01/2022-10/31/2022

| Permit Title                                  | Project Address        | Credential Contacts                    | Permit Issued Date    | Valuation      | Project SQ. FT. | Total Fees Collected |
|-----------------------------------------------|------------------------|----------------------------------------|-----------------------|----------------|-----------------|----------------------|
| 2022 Food Permits - Expires December 31, 2022 | 1091 Rolling Wood Pl.  | Daniel Tilson (Business Manager)       | 10/21/2022 at 7:53 AM | 0              |                 | 360.5                |
| Alcohol Beverage Permit                       | 5473 W Hwy 175         | Kumas Satish (Business Manager)        | 10/31/2022 at 4:00 PM | 0              |                 | 60                   |
| Banners and Temporary Signage                 | 1609 Rand Rd           | Angel Pettigrew (Business Manager)     | 10/12/2022 at 9:58 AM | 0              |                 | 51.5                 |
| Commercial Building Tenant Finish Out         | 217 W Mulberry St.     | Christian Serrano (General Contractor) | 10/07/2022 at 1:31 PM | 26000          | 1287            | 967.03               |
| Commercial Minor Addition, Remodel or Repair  | 4875 Co Rd 151         | Bryan Banks (General Contractor)       | 10/19/2022 at 3:42 PM | 30000          |                 | 922                  |
| Driveway, Parking Lot or Sidewalk Permit      | 307 W 2Nd St.          | Linda M Elzner (Property Owner)        | 10/07/2022 at 9:54 AM | 1000           |                 | 80                   |
| Driveway, Parking Lot or Sidewalk Permit      | 501 E Fair St.         | Jorge Rico (General Contractor)        | 10/07/2022 at 1:42 PM | 6000           |                 | 80                   |
| Driveway, Parking Lot or Sidewalk Permit      | 825 E Fair St.         | Jason Mahone (General Contractor)      | 10/20/2022 at 8:19 AM | 500000         |                 | 892.68               |
| Driveway, Parking Lot or Sidewalk Permit      | 1606 Austin Dr.        | Harbinder Malhi (General Contractor)   | 10/21/2022 at 2:22 PM | 2500           |                 | 80                   |
| Fence Permit                                  | 3922 Holly Springs Ln. | Bryan Mendez (General Contractor)      | 10/11/2022 at 7:25 AM | 700            |                 | 82.4                 |
| Fence Permit                                  | 3909 Holly Springs Ln. | Bryan Mendez (General Contractor)      | 10/11/2022 at 7:26 AM | 700            |                 | 82.4                 |
| Fence Permit                                  | 3833 Myrtle Way        | Bryan Mendez (General Contractor)      | 10/11/2022 at 7:47 AM | 700            |                 | 82.4                 |
| Fence Permit                                  | 3823 Myrtle Way        | Bryan Mendez (General Contractor)      | 10/11/2022 at 7:48 AM | 700            |                 | 82.4                 |
| Fence Permit                                  | 300 Terrell Highway    | Miriam Villa (Property Owner)          | 10/26/2022 at 9:32 AM | 3000           |                 | 82.4                 |
| Foundation Repair                             | 1704 S Houston St.     | Thomas Kidd (Foundation Contractor)    | 10/18/2022 at 7:19 AM | 17567          |                 | 82.4                 |
| Mechanical Permit                             | 608 W Pyle St.         | Brad Bacon (Mechanical Contractor)     | 10/18/2022 at 3:38 PM | 5475           |                 | 82.4                 |
| Mechanical Permit                             | 1217 Crestview Dr.     | Robert Smith (Mechanical Contractor)   | 10/25/2022 at 7:23 AM | 8000           |                 | 82.4                 |
| Plumbing Permit                               | 2004 Willowcrest Dr.   | Wendell McHam (Plumbing Contractor)    | 10/13/2022 at 7:17 AM | 1000           |                 | 82.4                 |
| Plumbing Permit                               | 1111 E 1ST NORTH St.   | Charles McClain (Plumbing Contractor)  | 10/11/2022 at 8:17 AM | 900            |                 | 82.4                 |
| Plumbing Permit                               | 421 E 7Th St.          | Scott Martin (Plumbing Contractor)     | 10/14/2022 at 9:46 AM | 500            |                 | 82.4                 |
| Plumbing Permit                               | 1611 Lee St.           | David Farish (Plumbing Contractor)     | 10/21/2022 at 3:11 PM | 1100           |                 | 82.4                 |
| Plumbing Permit                               | 406 N Nash St.         | Gabriel Chavez (Plumbing Contractor)   | 10/27/2022 at 7:08 AM | 3500           |                 | 82.4                 |
| Plumbing Permit for gas test and repair       | 504 S Houston St.      | David Kirk (Plumbing Contractor)       | 10/20/2022 at 3:00 PM | 900            |                 | 82.4                 |
| Plumbing Permit for Sunday School Class       | 506 W Nash St.         | David Kirk (Plumbing Contractor)       | 10/13/2022 at 7:16 AM | 2497           |                 | 82.4                 |
| Residential Accessory/Carport Permit          | 110 S Shannon St.      | Robert Eldridge (Property Owner)       | 10/03/2022 at 3:33 PM | 15000          | 630             | 144                  |
| Residential Accessory/Carport Permit          | 1403 STILL MEADOW Dr.  | Tom Saurey (General Contractor)        | 10/19/2022 at 1:31 PM | 4663           |                 | 80                   |
| Residential Accessory/Carport Permit          | 302 W Pyle St.         | Matthew Rhys (General Contractor)      | 10/20/2022 at 2:24 PM | 10000          |                 | 80                   |
| Residential Addition, Remodel or Repair       | 400 N Jefferson St.    | Alexa Peer (General Contractor)        | 10/21/2022 at 9:58 AM | 13000          |                 | 862.11               |
| Residential Addition, Remodel or Repair       | 1106 S Jackson St.     | Fernando Rueda (General Contractor)    | 10/28/2022 at 9:40 AM | 2000           |                 | 82.4                 |
| Residential New Permit                        | 306 E Oak              | Daniel Carlos (General Contractor)     | 10/18/2022 at 1:06 PM | 130000         | 2069            | 7013.15              |
| Residential New Permit                        | 3917 Holly Springs Ln. | Ruben Reyna (General Contractor)       | 10/19/2022 at 9:45 AM | 393000         | 2587            | 5001.15              |
| Roof (Repair or Replace)                      | 401 N Jackson          | James Skinner (General Contractor)     | 10/03/2022 at 8:08 AM | 70000          |                 | 82.4                 |
| Roof (Repair or Replace)                      | 1404 Cedar Knoll Dr.   | Felipe Esquivel (General Contractor)   | 10/05/2022 at 3:08 PM | 14000          |                 | 82.4                 |
| Roof (Repair or Replace)                      | 706 Becky Ln.          | Manuel Martinez (General Contractor)   | 10/14/2022 at 8:41 AM | 3000           |                 | 82.4                 |
| Sign Permit                                   | 2700 Commerce Way      | Roberto Solis (Sign Contractor)        | 10/04/2022 at 2:38 PM | 3500           |                 | 185.4                |
| Sign Permit                                   | 201 Kings Fort Pkwy.   | Tomas Eggers (Sign Contractor)         | 10/05/2022 at 2:53 PM | 5300           |                 | 267.8                |
| Sign Permit                                   | 201 Kings Fort Pkwy.   | Tomas Eggers (Sign Contractor)         | 10/05/2022 at 2:51 PM | 5300           |                 | 267.8                |
| Sign Permit                                   | 201 Kings Fort Pkwy.   | Tomas Eggers (Sign Contractor)         | 10/05/2022 at 2:48 PM | 5300           |                 | 267.8                |
| Sign Permit                                   | 201 Kings Fort Pkwy.   | Tomas Eggers (Sign Contractor)         | 10/05/2022 at 2:45 PM | 1500           |                 | 164.8                |
| Sign Permit                                   | 201 Kings Fort Pkwy.   | Tomas Eggers (Sign Contractor)         | 10/05/2022 at 2:40 PM | 1500           |                 | 82.4                 |
| Sign Permit                                   | 201 Kings Fort Pkwy.   | Tomas Eggers (Sign Contractor)         | 10/05/2022 at 2:42 PM | 1500           |                 | 82.4                 |
| Sign Permit                                   | 106 S Washington       | Curtis Pinson (Sign Contractor)        | 10/19/2022 at 2:56 PM | 250            |                 | 65.92                |
| Solar Panel Permit                            | 1745 Nottingham Dr.    | Philip Maguire (Electrical Contractor) | 10/13/2022 at 9:02 AM | 37557          |                 | 545.9                |
| Swimming Pool / Spa                           | 302 W Pyle St.         | Matthew Rhys (General Contractor)      | 10/20/2022 at 2:20 PM | 84994          |                 | 510                  |
| Swimming Pool / Spa                           | 2104 La Jolla Dr.      | Shannon Wiley (Pool Contractors)       | 10/07/2022 at 3:50 PM | 60000          |                 | 525.3                |
| Temporary Use Permit                          | 595 N Hwy 34           | Sandra Hernandez (Business Manager)    | 10/13/2022 at 9:58 AM | 0              |                 | 51.5                 |
| Temporary Use Permit                          | 595 N Hwy 34           | Larry Vess (Business Manager)          | 10/12/2022 at 2:41 PM | 0              |                 | 50                   |
|                                               |                        |                                        |                       | \$1,474,103.00 | 6,573.00        | \$21,306.74          |

# NOVEMBER 2022

| Sunday | Monday                                   | Tuesday                           | Wednesday | Thursday                                   | Friday                                     | Saturday |
|--------|------------------------------------------|-----------------------------------|-----------|--------------------------------------------|--------------------------------------------|----------|
|        |                                          | 1<br>Planning &<br>Zoning Meeting | 2         | 3                                          | 4                                          | 5        |
| 6      | 7                                        | 8<br>KEDC                         | 9         | 10                                         | 11                                         | 12       |
| 13     | 14                                       | 15<br>KKBB                        | 16        | 17<br>Parks & Rec<br>Meeting               | 18<br>Employee<br>Thanksgiving<br>Meal     | 19       |
| 20     | 21<br>Regular City<br>Council<br>Meeting | 22                                | 23        | 24<br>City Hall<br>Closed-<br>Thanksgiving | 25<br>City Hall<br>Closed-<br>Thanksgiving | 26       |
| 27     | 28                                       | 29                                | 30        |                                            |                                            |          |

# DECEMBER 2022

| Sunday | Monday                                   | Tuesday                           | Wednesday                         | Thursday                     | Friday                                  | Saturday                           |
|--------|------------------------------------------|-----------------------------------|-----------------------------------|------------------------------|-----------------------------------------|------------------------------------|
|        |                                          |                                   |                                   | 1                            | 2                                       | 3<br>Christmas<br>on the<br>Square |
| 4      | 5                                        | 6<br>Planning &<br>Zoning Meeting | 7                                 | 8                            | 9                                       | 10                                 |
| 11     | 12                                       | 13<br>KEDC                        | 14<br>City<br>Employee<br>Banquet | 15<br>Parks & Rec<br>Meeting | 16                                      | 17                                 |
| 18     | 19<br>Regular City<br>Council<br>Meeting | 20<br>KKBB                        | 21                                | 22                           | 23<br>City Hall<br>Closed-<br>Christmas | 24                                 |
| 25     | 26<br>City Hall<br>Closed-<br>Christmas  | 27                                | 28                                | 29                           | 30                                      | 31                                 |

# JANUARY 2023

| Sunday | Monday                                   | Tuesday                              | Wednesday                                  | Thursday                     | Friday | Saturday |
|--------|------------------------------------------|--------------------------------------|--------------------------------------------|------------------------------|--------|----------|
| 1      | 2<br>City Hall<br>Closed- New<br>Years   | 3<br>Planning &<br>Zoning<br>Meeting | 4                                          | 5                            | 6      | 7        |
| 8      | 9                                        | 10                                   | 11                                         | 12                           | 13     | 14       |
| 15     | 16<br>City Hall<br>Closed- MLK<br>Day    | 17<br>KKBB                           | 18<br>First Day to<br>File for<br>Election | 19<br>Parks & Rec<br>Meeting | 20     | 21       |
| 22     | 23<br>Regular City<br>Council<br>Meeting | 24                                   | 25                                         | 26                           | 27     | 28       |
| 29     | 30                                       | 31                                   |                                            |                              |        |          |

## FEBRUARY 2023

| Sunday                     | Monday                                        | Tuesday                              | Wednesday | Thursday                     | Friday                                 | Saturday |
|----------------------------|-----------------------------------------------|--------------------------------------|-----------|------------------------------|----------------------------------------|----------|
|                            |                                               |                                      | 1         | 2                            | 3                                      | 4        |
| 5<br>Kaufman<br>County Day | 6<br>Kaufman<br>County Day                    | 7<br>Planning &<br>Zoning<br>Meeting | 8         | 9                            | 10                                     | 11       |
| 12                         | 13                                            | 14<br>KEDC                           | 15        | 16<br>Parks & Rec<br>Meeting | 17<br>Last Day to File<br>for Election | 18       |
| 19                         | 20<br>City Hall<br>Closed-<br>President's Day | 21<br>KKBB                           | 22        | 23                           | 24                                     | 25       |
| 26                         | 27<br>Regular City<br>Council<br>Meeting      | 28<br>Chamber<br>Banquet             |           |                              |                                        |          |