

DEC 14 2020

APPROVED

REQUEST FOR AGENDA PLACEMENT FORM

Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: David Disheroon **TODAY'S DATE:** 12/08/2020

DEPARTMENT: Public Works

SIGNATURE OF DEPARTMENT HEAD: _____

REQUESTED AGENDA DATE: 12/14/2020

SPECIFIC AGENDA WORDING: Consideration of Approval of Irrevocable Letter of Credit Number 2206987 from La La Enterprises LLC for the sum of \$90,000.00, secured by Ciera Bank, for the Construction of Roads, Streets, Drainage, and Signage for Benjamin Franklin Aviation Estates, in Precinct #2- Public Works Department

PERSON(S) TO PRESENT ITEM: David Disheroon

SUPPORT MATERIAL: (Must enclose supporting documentation)

TIME: 10 minutes	ACTION ITEM:	<u>X</u>
	WORKSHOP	_____
(Anticipated number of minutes needed to discuss item)	CONSENT:	_____
	EXECUTIVE:	_____

STAFF NOTICE:

COUNTY ATTORNEY: X **IT DEPARTMENT:** _____
AUDITOR: _____ **PURCHASING DEPARTMENT:** _____
PERSONNEL: _____ **PUBLIC WORKS:** X _____
BUDGET COORDINATOR: _____ **OTHER:** _____

*****This Section to be Completed by County Judge's Office*****

ASSIGNED AGENDA DATE: _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE: _____

COURT MEMBER APPROVAL _____ Date _____

IRREVOCABLE LETTER OF CREDIT

Account Party: La La Enterprises LLC
9132 Palmer Lane
Ponder, TX 75269

Issuing Bank: Ciera Bank
1801 Cross Timbers
Flower Mound, TX 75028

Beneficiary: Roger Harmon, Johnson County Judge, or his successor
Johnson County Courthouse
2 N. Main St.
Cleburne, TX 76033

NO.: 2206987

EXPIRATION DATE. This letter of credit shall start 01/01/2021 and expire upon the close of business on 12/31/2021 and all drafts and accompanying statements or documents must be presented to Issuing Bank on or before that time (the "Expiration Date").

AMOUNT OF CREDIT. Issuing Bank hereby establishes at the request and for the account of Account Party, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of Ninety Thousand & 00/100 Dollars (\$90,000.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Issuing Bank's receipt from Beneficiary of sight drafts drawn on Issuing Bank at Issuing Bank's address indicated above (or other such address that Issuing Bank may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT ACCOUNT PARTY IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

DRAFT TERMS AND CONDITIONS. Issuing Bank shall honor drafts submitted by Beneficiary under the following terms and conditions: Each Draft must be accompanied by the following, an original and two copies except as stated:

A. The original Letter of Credit, together with any amendments.

B. A signed draft drawn by Beneficiary on Issuing Bank and marked "DRAWN UNDER CIERA BANK IRREVOCABLE LETTER OF CREDIT NUMBER 2206987.

C. A signed and dated statement by Beneficiary reading as follows: "LA LA ENTERPRISE LLC, HAS, AFTER DUE NOTICE, FAILED TO CONSTRUCT ROADS, STREETS, DRAINAGE, DRAINAGE WAYS OR SIGNAGE ON THAT CERTAIN TRACT OF LAND TO BE SUBDIVIDED AS BENJAMIN FRANKLIN AVIATION ESTATES AN ADDITION TO JOHNSON COUNTY, TEXAS AS DESCRIBED MORE PARTICULARLY BELOW, BY December 31, 2021, IN ACCORDANCE WITH THE SPECIFICATIONS CONTAINED IN THE SUBDIVISION RULES AND REGULATIONS OF JOHNSON COUNTY, TEXAS AS AMENDED AND APPROVED ON NOVEMBER 14, 2011, AND FURTHER AMENDED MARCH 13, 2017 AND JULY 10, 2017, AND IN CONFORMANCE WITH THE PLAT APPROVED BY THE JOHNSON COUNTY COMMISSIONERS COURT."

The land to be subdivided as BENJAMIN FRANKLIN AVIATION ESTATES, located in the Johnson County School Land Survey, Abstract No. 144, Johnson County, Texas, and being a part Block A, Lots 1-8, Official Public Records, Johnson County, Texas.

Upon Issuing Bank's honor of such drafts, Issuing Bank shall be fully discharged of Issuing Bank's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Issuing Bank for any amount paid under this Letter of Credit once Issuing Bank has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Issuing Bank makes no representation as to the correctness of the amount demanded and Issuing Bank shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any non-application or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Issuing Bank or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Issuing Bank any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

USE RESTRICTIONS. All drafts must be marked "DRAWN UNDER Ciera Bank IRREVOCABLE LETTER OF CREDIT NO. 2206987 DATED 12-03-2020," and the amount of each draft shall be marked on the draft. Only Beneficiary may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Issuing Bank's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Issuing Bank shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Issuing Bank may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

PERMITTED TRANSFEREES. The right to draw under this Letter of Credit shall be nontransferable, except for:

A. A transfer (in its entirety, but not in part) by direct operation of law to the administrator, executor, bankruptcy trustee, receiver, liquidator, successor, or other representative at law of the original Beneficiary; and

B. The first immediate transfer (in its entirety, but not in part) by such legal representative to a third party after express approval of a governmental body (judicial, administrative, or executive).

TRANSFEREES REQUIRED DOCUMENTS. When the presenter is a permitted transferee (i) by operation of law or (ii) a third party receiving transfer from a legal representative, as described above, the documents required for a draw shall include a certified copy of the one or more documents which show the presenter's authority to claim through or to act with authority for the original Beneficiary.

COMPLIANCE BURDEN. Issuing Bank is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Issuing Bank's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Issuing Bank is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

NON-SEVERABILITY. If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Issuing Bank's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Issuing Bank and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

IRREVOCABLE LETTER OF CREDIT

Letter of Credit No: 2206987

(Continued)

GOVERNING LAW. This Agreement will be governed by federal law applicable to issuing Bank and, to the extent not preempted by federal law, the laws of the State of Texas without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by issuing Bank in the State of Texas.

EXPIRATION. Issuing Bank hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to issuing Bank on or before the Expiration Date unless otherwise provided for above.

CONSTRUCTION OF ROADS, STREETS, DRAINAGE, DRAINAGE WAYS AND SIGNAGE. Any and all roads, streets, drainage, drainage ways and signage shall be constructed on that certain tract of land to be subdivided as BENJAMIN FRANKLIN AVIATION ESTATES by December 31, 2021, in accordance with the specifications contained in the subdivision rules and regulations of Johnson County, Texas, as amended and approved on November 14, 2011, and further amended March 13, 2017 and July 10, 2017, and in conformance with the plat approved by the Johnson County Commissioners Court.

Dated: December 3, 2020

ISSUING BANK:

CIERA BANK

By: Authorized Signer

Date

12-3-20

ENDORSEMENT OF DRAFTS DRAWN:

Date	Negotiated By	Amount in Words	Amount in Figures