ORDINANCE NO. 1087

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS, AMENDING CHAPTER 102 OF THE CODE OF ORDINANCES BY ADDING ARTICLE X TO BE ENTITLED “MUNICIPAL DRAINAGE UTILITY SYSTEM” ESTABLISHING THE TOWN’S DRAINAGE SYSTEM AS A PUBLIC UTILITY; ESTABLISHING DRAINAGE SERVICE; ESTABLISHING BILLING FOR SERVICE; ESTABLISHING THE AUTHORITY TO LEVY CHARGES; ESTABLISHING EXEMPTIONS; ESTABLISHING RATES AND A FEE SCHEDULE; PROVIDING A PROCESS FOR APPEALS FOR BILLING AND PAYMENT DISPUTES; ESTABLISHING PENALTIES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Little Elm, Texas, (the “Town Council”) seeks to promote the health, safety and welfare of the citizens of the Town of Little Elm, Texas; and

WHEREAS, the Town Council finds that it is in the best interest of the Town to protect the public health and safety of the Town’s residents from the loss of life and property caused by surface water overflows, surface water stagnation, and pollution arising from nonpoint source runoff within the boundaries of the Town; and

WHEREAS, the Town Council finds that it is in the best interest of the Town to declare its drainage system to be a public utility; and

WHEREAS, the Town finds that it is in the best interest of the Town to prescribe bases on which the Town’s drainage utility system may be funded and fees in support of the system may be assessed, levied and collected; and

WHEREAS, pursuant to V.T.C.A., Local Government Code § 552.041, Subchapter C, the Town is authorized to establish and implement a municipal drainage utility system; and

WHEREAS, the Town Council finds that it is necessary and proper for the good of the government, peace and order of the Town to adopt an ordinance implementing a municipal drainage utility system;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS, THAT:

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Adoption. Chapter 102 “Utilities” of the Code of Ordinances, Little Elm, Texas is hereby amended to add a new article to be numbered and entitled Article X “Municipal Drainage Utility System,” which said article shall read as follows:
“ARTICLE X. MUNICIPAL DRAINAGE UTILITY SYSTEM

Sec. 102-476. Adoption of Act.

The Municipal Drainage Utility Systems (Act) [Subchapter C of Chapter 552, Local Government Code], V.T.C.A., is hereby adopted and shall be fully implemented as provided by the Act and by the Town Council; and the drainage of the Town is hereby found to be a public utility within the meaning of the Act.

Sec. 102-477. Drainage service provided.

The Town will provide storm water drainage for all real property within its boundaries upon payment of the determined drainage charges, as defined in the Act, and excluding certain exempted real property, and that the fees, assessments, and charges will be based on nondiscriminatory, reasonable, and equitable terms.

Sec. 102-478. Billing for service.

The Town is hereby authorized to bill the drainage charges incurred as a result of the adoption of the Act and through the establishment of the municipal storm water utility system. The storm water utility fee shall be separately identified from other public utility billings.

Sec. 102-479. Authority to levy charges.

The Town may levy a schedule of drainage charges upon satisfaction of the procedural requirements provided in the Act and passage of this article.

Sec. 102-480. Exemption authorized.

The Town is authorized to exempt certain entities or persons from all ordinances, resolutions, and rules which the Town may adopt from time to time in connection with the adoption of the Act and the establishment of its municipal storm water utility system.

Sec. 102-481. Rates.

(a) The rates as provided for in Sec. 102-484 (Municipal Storm Water Utility System Fee Schedule) are hereby established and shall be collected through the Town’s bill for public utilities pursuant to Subchapter C of Chapter 552, Local Government Code, V.T.C.A., including, without limitation, Section 580.003, and other applicable law.

(b) The rates established above apply to the accounts maintained by the Town for utility services.

(c) The income of the storm water utility fee shall be segregated and completely identifiable in the Town accounts. The monies received from utility drainage charges shall be used only for purposes that are directly or indirectly related to the municipal storm water utility system.

(d) The Town shall not require a deposit for drainage charges as a precondition to accepting surface flow from benefited property into the Town’s drainage utility system.
All real property of the Town will be provided with drainage service on payment of drainage charges.

(e) All billings, credits, exemptions and other procedures relating to this charge shall be subject to the provisions of Subchapter C of Chapter 552, Local Government Code, V.T.C.A., including, without limitation, Section 580.003.

Sec. 102-482. Appeals.

(a) Billing and payment disputes for administrative issues shall be subject to appeals procedures used by the Town for other utility billing disputes.

(b) Appeals for the following reasons shall be directed to the Public Works Director or his designee for evaluation and determination.

(1) exempt property has been assessed a storm water utility fee.

(2) storm water utility fee for an individual property is based on an incorrect determination of the property’s contribution to the storm water system, as established in Section 102-484 (Municipal Storm Water Utility Fee Schedule).

(3) storm water utility fee for an individual property is assessed on more than one utility account.

(4) storm water utility fee is assessed to individual property outside the Town’s jurisdictional area.

(c) The Public Works Director or his designee shall render a written decision on such appeals within thirty (30) days after receiving a written notice of appeal from the landowner.

(d) Any landowner who disagrees with the decision of the Public Works Director or his designee may appeal such decision to the Town Council. The decision of the Town Council shall be final.

Sec. 102-483. Penalties.

The storm water utility fee is delinquent if payment for such fee and/or full payment on the utility account is not received by the due date and a delinquent account will be levied a ten percent penalty on the entire amount due. If full payment is not received within ten days after the due date, the water utility service will be disconnected and a reconnect fee will be assessed before service will be restored as provided in Sections 102-141 and 102-168 of the Town of Little Elm’s Code of Ordinances.

Sec. 102-484. Municipal storm water utility system fee schedule.

The following rates are hereby established and shall be collected through the Town’s bill for public utilities pursuant to Subchapter C of Chapter 552, Local Government Code, V.T.C.A., including, without limitation, Section 580.003, and other applicable law:

(a) Equivalent Residential Unit

Page 3 of 5
(1) Rates shall be charged based on a property’s contribution to the public storm water utility system. The contribution shall be based on the impervious area for the property.

(2) One equivalent residential unit (ERU) is defined as 3,687 square feet of impervious area. ERUs shall be calculated in whole increments, with no fee maximum.

(3) The rate per ERU is $3.35 per month.

(4) Single family residential properties will be assessed one (1) ERU per month.

(5) All other non-exempt properties will be assessed based on their measured impervious area at a rate of $3.35 per ERU per month.

(6) A minimum charge of one (1) ERU shall be applied monthly to each non-exempt property, regardless of classification.

(b) Tax-exempt religious institutions are exempt from the municipal storm water utility fee, in accordance with V.T.C.A., Local Government Code, 552.053.

(c) The rates established above apply to the accounts maintained by the Town for public utility services.

(d) All billings, credits, exemptions and other procedures relating to this charge shall be subject to the provisions of V.T.C.A., Local Government Code, including, without limitation, Sections 552.053 and 580.003.

Sec. 102-485 – 102.499. Reserved.”

Section 3. Savings. This Ordinance shall be cumulative of all other ordinances of the Town, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that any complaint, notice, action, cause of action, or claim which prior to the effective date of this Ordinance has been initiated or has arisen under or pursuant to such other ordinance(s) shall continue to be governed by the provisions of that ordinance or those ordinances, and for that purpose that ordinance or those ordinances shall be deemed to remain and shall continue in full force and effect.

Section 4. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the Town Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 7. Effective Date. This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.
PASSED, APPROVED AND ADOPTED by the Town Council of the Town of Little Elm, Texas, on this the ___ day of November, 2011.

[Signature]
Charles Platt, Mayor

ATTEST:

[Signature]
Kathy Phillips, Town Secretary

APPROVED AS TO FORM:

[Signature]
Robert F. Brown, Town Attorney