

AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

MAY 16, 2016

FLOWER MOUND TOWN HALL, 2121 CROSS TIMBERS ROAD
FLOWER MOUND, TEXAS

6:00 P.M.

NOTE: At 5:00 p.m. a public reception will be held in the Town Hall lobby for the outgoing and newly elected council members.

An agenda information packet is available online at www.flower-mound.com/AgendaCenter

Please silence or turn off all electronic devices in the Council Chambers.

A. CALL MEETING TO ORDER

B. INVOCATION

C. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND TO THE TEXAS FLAG *"Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."*

D. PRESENTATIONS

1. National Public Works Week Proclamation

E. PUBLIC PARTICIPATION

Please fill out a speaker form, available in the Town Hall on the night of the meeting, in order to address the Council and turn it in to the Town Secretary prior to Public Participation. Speakers are normally limited to three minutes. Time limits can be adjusted by the Mayor as to accommodate more or fewer speakers.

The purpose of this item is to allow the public an opportunity to address the Town Council on issues that are not the subject of a public hearing. Issues regarding daily operational or administrative matters should first be dealt with at the administrative level by calling Town Hall at 972-874-6000 during business hours.

F. ANNOUNCEMENTS

1. Announce recent and upcoming civic and social events
2. Veteran's Liaison, Doug Brown, to announce the Memorial Day event, "A Day to Remember"
3. National Police Week recognition
4. National Emergency Medical Services Week recognition

G. TOWN MANAGER'S REPORT

1. Update and status report related to capital improvement projects.
2. Update and discussion on Economic Development projects.

Town Council Meeting Agenda

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H. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on May 2, 2016.
2. Consider approval of a candidate nomination for appointment to the Denco Area 9-1-1 District Board of Managers.
3. Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at the Heritage Park of Flower Mound during the Flower Mound Rotary's Neon Run and Festival. *(The Parks, Arts and Library Services (PALS) Board recommended approval by a vote of 4 to 0 at its April 7, 2016, meeting.)*
4. Consider approval of Change Order No. 1, for a decrease in the amount of \$80,797.15, the final acceptance of the FM 2499 at Lakeside Parkway Improvements project, and authorization of final payment to the contractor, 3-D Paving and Contracting, LLC, in the amount of \$32,604.93; and authorization for the Mayor to execute on behalf of the Town.
5. Consider approval of the award of Bid No. 2016-51, to Roadway Solutions Inc., for the construction of the FM 1171 at Kirkpatrick – Reconstruction and FM 1171 at Timber Creek – Reconstruction signal projects, in the amount of \$227,778.00; and authorization for the Mayor to execute same on behalf of the Town.
6. Consider approval of the award of Request for Proposal Number 2016-41 to Oxley Williams Tharp Architects for architectural design services for Police Department and Central Fire Station Renovations in an estimated amount of \$75,000.
7. Consider approval of the purchase of one new 2017 International 7400 Tandem Dump Truck with snow plow hookups, PTO, controls, and hydraulics to include installing Town of Flower Mound owned snow plow attachment and related from Southwest International Trucks, through the Buy Board cooperative purchasing program, in the total amount of \$117,134.21.
8. Consider approval of an Interlocal Agreement between the Town of Flower Mound and the City of Highland Village to allow for a cooperative purchasing agreement; and authorize the Mayor to execute same on behalf of the Town.
9. Consider approval of a resolution approving parkland design and improvements for the Kierstin Eaddy Memorial.

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I. REGULAR ITEMS

10. Solid Waste Ordinance

Public Hearing

Public Hearing to consider adopting on second reading the attached ordinance granting to Allied Waste Services of Fort Worth, LLC dba Republic Services, the right and privilege to operate and maintain the service of solid waste and recycling collection and hauling over, upon, along, and across the present and future streets, alleys, bridges, and public properties of the Town of Flower Mound in order to preserve and protect the public health of the citizens of the Town, rejecting all other proposals received, in accordance with section 11.2 of the Request for Proposals and State law and authorize the Mayor to execute a Franchise Agreement for solid waste and recycling collection services.

J. RECOGNITION OF, AND ANNOUNCEMENT FROM, OUTGOING MAYOR PRO TEM STEVE DIXON

K. RECOGNITION OF, AND ANNOUNCEMENT FROM, OUTGOING COUNCILMEMBER MARK WISE

L. CANVASS GENERAL/SPECIAL ELECTION AND OATHS OF OFFICE FOR NEWLY ELECTED OFFICIALS

11. Consider approval of an ordinance canvassing and declaring the results of a general election held May 7, 2016, for the purpose of electing the offices of Mayor, Town Council Places 2 and 4; and declaring the result of a Special Election held on such date for the purpose of electing a person to the remaining term of office of Town Council Place 1, of the Town of Flower Mound, Texas and providing an effective date.

a. Administer Oaths of Office and issue Certificates of Election.

(RECESS)

M. ANNOUNCEMENT FROM NEWLY ELECTED MAYOR TOM HAYDEN

N. ANNOUNCEMENT FROM NEWLY ELECTED PLACE 1 COUNCILMEMBER JASON WEBB

O. ANNOUNCEMENT FROM NEWLY ELECTED PLACE 2 COUNCILMEMBER BRYAN WEBB

P. ANNOUNCEMENT FROM NEWLY ELECTED PLACE 4 COUNCILMEMBER DON MCDANIEL

Q. CLOSED MEETING

The Town Council to convene into a closed meeting pursuant to Texas Government Code Chapter 551.074 to discuss matters relating to personnel as follows:

a. Discuss and consider election of Mayor Pro Tem.

b. Discuss and consider election of Deputy Mayor Pro Tem.

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R. RECONVENE TO REGULAR MEETING

The Town Council to reconvene into an open meeting to take any action deemed necessary as a result of the closed meeting.

S. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

1. The next Town Council regular meeting will be held on June 6th.
2. Strategic Planning Session tentatively scheduled for June 16th and to discuss proposed agenda items.

T. ADJOURN MEETING

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time: May 13, 2016, at 2:00 p.m., at least 72 hours prior to the scheduled time of said meeting.



Theresa Scott, Town Secretary

Pursuant to Section 551.071 of the Texas Government Code, the Town Council reserves the right to consult in a closed meeting with its attorney and to receive legal advice regarding any item listed on this agenda.

The Flower Mound Town Hall and Council Chambers are wheelchair accessible. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting by contacting Theresa Scott, Town Secretary, at (972) 874-6076.



TOWN COUNCIL AGENDA ITEM NO. 1

CONSENT ITEM

DATE: May 16, 2016

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on May 2, 2016.

BACKGROUND INFORMATION: The Town Council held a regular meeting on May 2, 2016.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure:

Account Number(s):

Finance Review by: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft minutes

RECOMMENDATION: Move to approve the minutes from a regular meeting of the Town Council held on May 2, 2016.

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 2ND DAY OF MAY 2016, IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 6:00 P.M.

The Town Council met in a regular meeting with the following members present:

Tom Hayden	Mayor
Steve Dixon	Mayor Pro Tem
Itamar Gelbman	Deputy Mayor Pro Tem
Mark Wise	Councilmember Place 1
Bryan Webb	Councilmember Place 2
Kevin Bryant	Councilmember Place 3

constituting a quorum with the following members of the Town Staff participating:

Theresa Scott	Town Secretary
Bryn Meredith	Town Attorney
Jimmy Stathatos	Town Manager
Gary Sims	Executive Director of Community Services
Doug Powell	Executive Director of Development Services
Ken Parr	Executive Director of Public Works
Eric Greaser	Fire Chief
Andy Kancel	Police Chief
Tracy Knierim	Executive Director of Community Relations

A. CALL REGULAR MEETING TO ORDER

Mayor Hayden called the regular meeting to order at 6:01 p.m.

B./C. INVOCATION/PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND THE TEXAS FLAG

Chaplain Roger Little gave the invocation and Girl Scout Troop 4773 led the pledges.

D. PRESENTATIONS

1. Certificate of Recognition to the Flower Mound Fire Department

Cinda and Doug Fulmer offered expressions of thanks to first responders in a recent medical emergency and Girl Scout Troop 4773 assisted Mayor Hayden in presenting certificates of recognition to each firefighter.

2. Certificate of Achievement FM High School Girls' Soccer Team – State Champions

Flower Mound High School Coach Misail Tsapos accepted a certificate of achievement for the team.

3. Recognition of CoServ for funding the new Utility Terrain Vehicle (UTV)

Chief Kancel acknowledged CoServ for their contribution of a Bobcat utility vehicle and he pointed out what it will be used for.

4. Motorcycle Safety and Awareness Month (May) Proclamation

Elmer McKeegan accepted the Proclamation.

5. Proclamation for Children's Mental Health Awareness Day in Denton County

Tiana Gooden, Whitney McGee, Roxanne Del Rio, and Marla Conger accepted the Proclamation.

E. PUBLIC PARTICIPATION

Names listed below don't necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.

	Speaker names and address	Subject (<i>as written on the form</i>)
1.	Christopher Cleveland, 2607 Spinks Rd	Parkside
2.	Felipe Delgado, 2601 Rembert Dr	Thank you
3.	Jody Smith, 3705 Sarah Springs Trl	Thank you

F. ANNOUNCEMENTS

Mayor Pro Tem Dixon reported on his recent Washington D.C. trip coordinated with the area Chambers of Commerce.

Councilmember Webb announced polling information for the upcoming May 7th election.

G. TOWN MANAGER'S REPORT

1. Update and status report related to capital improvement projects.

Mr. Stathatos or Mr. Parr gave a report on the following CIP projects:

- Fire Station No. 6
- Sagebrush road construction update and an anticipated projected full completion date of September 1st
- New growth numbers just under 2%

2. Update and discussion on Economic Development projects.

Mr. Stathatos gave a report on the following ED projects or events:

- Marriott Courtyard
- Lakeside DFW – additional retail tenants
- Leadercast event

3. Discussion on Fire Department involvement with maintenance of The Mound.

Chief Greaser responded to an inquiry from Council relative to the Fire Department being involved with the maintenance of The Mound, particularly because of the benefit that a burn brings to the land. He also addressed the challenges that it would present, noting it could be done; however, they would need to be very methodical in how this gets done. He also indicated they would need to bring in additional resources.

Mr. Al Picardi, Chair of The Mound Foundation, offered his comments regarding their desire, as well as the benefit in having a controlled burn. He also indicated they understand weather conditions would need to be favorable before proceeding.

H. FUTURE AGENDA ITEMS

1. Discussion on Parkside at Woodlake Phase 2 development, the property is generally located south of Rembert Drive and west of Long Prairie Road.

There was Council discussion regarding reconsideration of this item at a future date given the unique circumstances associated with the potential removal of the trees.

Mr. Meredith responded to questions from Council regarding:

- Planned development zoning
- Council's ability to bring the item forward and consider a potentially less intense use

Councilmember Webb indicated he would be willing to put it in writing that he is willing to hear the zoning part of the case.

Deputy Mayor Pro Tem Gelbman asked for an update on his request for bullet proof vests for Fire Department personnel. Chief Greaser offered his comments as to if there is a need.

I. COORDINATION OF CALENDARS

Mayor Hayden announced that the next Town Council meeting is scheduled for May 16, 2016.

J. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on April 18, 2016.

RECOMMENDATION: Move to approve the minutes from a regular meeting of the Town Council held on April 18, 2016.

2. Consider approval of the minutes from a special meeting of the Town Council held on April 21, 2016.

RECOMMENDATION: Move to approve the minutes from a special meeting of the Town Council held on April 21, 2016.

3. Consider approval for the final acceptance of the Western Pump Station Phase I project and authorization of final payment to the contractor, Crescent Constructors, Inc., in the amount of \$510,994.66.

RECOMMENDATION: Move to approve the final acceptance of the Western Pump Station Phase I project and authorization of final payment to the contractor, Crescent Constructors, Inc., in the amount of \$510,994.66.

4. Consider approval of Amendment No. 4 to the Fiscal Year 2015-2016 Capital Improvement Program.

RECOMMENDATION: Move to approve Amendment No. 4 to the Fiscal Year 2015-2016 Capital Improvement Program.

5. Consider approval of a Professional Services Agreement with Alliance Geotechnical Group, to provide construction materials engineering and testing, for the Forest Vista Reconstruction Phase I project, in the amount of \$29,817.50; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve a Professional Services Agreement with Alliance Geotechnical Group, to provide construction materials engineering and testing, for the Forest Vista Reconstruction Phase I project, in the amount of \$29,817.50; and authorize the Mayor to execute the same on behalf of the Town.

6. *Item 6 was pulled from consent (see regular items).*

7. Consider approval of final acceptance of the Heritage Park of Flower Mound Phase II project, Dog Park section, and authorization for final payment to 2L Construction, LLC., in the amount of \$3,000.00.

RECOMMENDATION: Move to approve final acceptance of the Heritage Park of Flower Mound Phase II project, Dog Park section, and authorize final payment to 2L Construction, LLC., in the amount of \$3,000.00.

8. Consider approval of a Professional Services Agreement for the design phase services of the Shady Point Acres Water Line Replacement project, with Wade Trim, Inc., for \$128,629.00; and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Move to approve the Professional Services Agreement for the design phase services for the Shady Point Acres Water Line Replacement project, with Wade Trim, Inc., for \$128,629.00; and authorize the Mayor to execute same on behalf of the Town.

9. Consider approval of Change Order No. 1, for an increase in the amount of \$676.45, the final acceptance of the Raintree 12-inch Water Line project, and authorization of final payment to the contractor, Wilson Contractor Services, LLC., in the amount of \$36,615.69; and authorization for the Mayor to execute on behalf of the Town.

RECOMMENDATION: Move to approve Change Order No. 1, for an increase in the amount of \$676.45, the final acceptance of the Raintree 12-inch Water Line project, and authorize final payment to the contractor, Wilson Contractor Services, LLC., in the amount of \$36,615.69; and authorize the Mayor to execute on behalf of the Town.

10. Consider approval of final acceptance of the Individual Park Improvements project for Westchester, Glenwick, and Northshore Parks, and authorization for final payment to Wall Enterprises, in the amount of \$6,964.68.

RECOMMENDATION: Move to approve the final acceptance of the Individual Park Improvements project, Westchester, Glenwick, and Northshore Parks, and authorize final payment to Wall Enterprises in the amount of \$6,964.68.

11. Consider approval of the purchase and installation of play equipment for the Timber Creek Park Playground project, from Child's Play, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$179,096.00.

RECOMMENDATION: Move to approve purchase and installation of play equipment for the 2015-16 Playground Replacements (Timber Creek) project, from Child's Play, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$179,096.00.

12. *Item 12 was pulled from consent (see regular items).*

13. Consider approval of an ordinance amending the Code of Ordinances of the Town of Flower Mound by amending Appendix A "Fee Schedule", relative to adding a permit fee for farmers' market applications.

RECOMMENDATION: Move to approve an ordinance amending the Code of Ordinances of the Town of Flower Mound by amending Appendix A "Fee Schedule", relative to adding a permit fee for farmers' market applications.

ORDINANCE NO. 23-16

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING APPENDIX A "FEE SCHEDULE" SECTION 18-123(A) "FOOD ESTABLISHMENT PERMIT FEES" OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND TO ADD ANNUAL PERMIT FEES FOR FARMERS' MARKETS; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.

Mayor Pro Tem Dixon moved to approve by consent Items 1 – 5; 7 – 11; and 13. Councilmember Webb seconded the motion. Each item, as approved by consent, is restated above along with the approved recommendation, and if applicable, the Ordinance or Resolution caption for each, for the record.

VOTE ON MOTION:

Motion passed

AYES: GELBMAN, DIXON, BRYANT, WEBB, WISE

NAYS: NONE

K. REGULAR ITEMS

6. Consider approval of the award of Bid No. 2016-49 to TISEO Paving Company, Inc., for the Forest Vista Reconstruction Phase I project, in the amount of \$3,012,867.70; and authorization for the Mayor to execute same on behalf of the Town.

Staff Presentation

Mr. Parr outlined the purpose of the item.

Councilmember Bryant moved to award Bid No. 2016-49 to TISEO Paving Company, Inc., for the Forest Vista Reconstruction Phase I project, in the amount of \$3,012,867.70; and authorize the Mayor to execute same on behalf of the Town. Councilmember Webb seconded the motion.

VOTE ON MOTION:*Motion passed***AYES: WISE, WEBB, BRYANT, DIXON, GELBMAN****NAYS: NONE**

12. Consider approval of Farm Lease between the Town of Flower Mound and the Wayne Haynes Estate, for the Lease of Town Property located at 10300 Dunham Road; and authorization for the Mayor to execute same on behalf of the Town.

Staff Presentation

Mr. Parr provided background information regarding the lease and responded to questions from Council in response to correspondence received from a resident.

Deputy Mayor Pro Tem Gelbman moved to approve a Farm Lease between the Town of Flower Mound and Wayne Haynes Estate, for the Lease of Town Property located at 10300 Dunham Road; and authorize the Mayor to execute same on behalf of the Town. Councilmember Wise seconded the motion.

VOTE ON MOTION:*Motion passed***AYES: GELBMAN, DIXON, BRYANT, WEBB, WISE****NAYS: NONE**

14. Public Hearing to consider adopting on first reading an ordinance of the Town Council of the Town of Flower Mound, Texas, granting a franchise to operate and maintain the service of solid waste and recycling collection and hauling over, upon, along, and across the present and future streets, alleys, bridges, and public properties of the Town of Flower Mound, Texas; providing regulations for the operation of said services, and all matters incident and related thereto.

Staff Presentation

Ms. Knierim gave a presentation identifying or noting:

- Request for proposals (RFP) process
- Additional requests made with the RFP
- Supplemental information
- Required readings
- Changes since the last meeting on April 18th
- Franchise term

Ms. Knierim responded to questions from Council regarding:

- What happens after 5 years – any type of ceiling

Applicant Presentation

Two of the three solid waste providers reiterated or highlighted services they would provide should they be awarded the solid waste franchise for the Town:

1. President Greg Roemer, Community Waste Disposal
2. Jonathan Kissel, Director of Operations, and Jeri Harwell, Municipal Services Manager, Allied Waste/Republic Service

Each representative responded to questions from Council as follows:

- What would happen in five years regarding the price
- Fees clarification (add ons)
- Brush pick up services
- Commercial services
- Is labor the highest part of the cost
- Per ton charges
- Frequency of renewals

There was Council discussion as follows:

- Quality measures
- Price
- How this evening is to grant the franchise and other details can be clarified at a future meeting
- Concerns regarding limited access to the landfill given the lease versus ownership of the site
- Next steps and the reason why a name is needed with Council action this evening

Mayor Hayden opened the Public Hearing at 8:21 p.m.

The following individuals either spoke in support or opposition, or had questions / comments related to the item: *Names listed below don't necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.*

Support: Comments/Questions	Opposition: Comments/Questions	Question(s)/Comments Only
None.	None.	Laura Dillon, 1316 Rock Cove

Mayor Hayden closed the Public Hearing at 8:22 p.m.

Councilmember Bryant moved to adopt on first reading the attached ordinance granting to Republic/Allied Waste, the right and privilege to operate and maintain the service of solid waste and recycling collection and hauling over, upon, along, and across the present and future streets, alleys, bridges, and public properties of the Town of Flower Mound in order to preserve and protect the public health of the citizens of the Town and rejecting all other proposals received, in accordance with section 11.2 of the Request for Proposals and State law. Mayor Pro Tem Dixon seconded the motion.

ORDINANCE NO. xx-16

(Ordinance number to be assigned upon adoption at the second reading)

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, GRANTING A FRANCHISE FOR SOLID WASTE SERVICES TO ; AMENDING CHAPTER 70, ARTICLE IV "SOLID WASTE" OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; REPEALING DIVISIONS 1 AND 2 OF ARTICLE V "SOLID WASTE" IN APPENDIX B; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

Motion passed

AYES: WISE, WEBB, BRYANT, DIXON, GELBMAN

NAYS: NONE

15. Public Hearing to consider a request for a Specific Use Permit No. 444 (SUP16-0002 – West Accessory Dwelling) to permit an accessory dwelling, and to consider adopting an ordinance providing for said amendment. The property is generally located west of Post Oak Road and south of Cross Timbers Road. *(The Planning and Zoning Commission recommended approval by a vote of 5 to 0 at its April 25, 2016, meeting.)*

Staff Presentation

Mr. Powell gave a presentation identifying or noting:

- General location
- Detailed location
- Land use and zoning
- Pictures of the area
- Site plan
- Elevations
- Accessory dwelling standards
- Feedback from the neighbors
- SUP process requirement

Mayor Pro Tem Dixon opened the Public Hearing at 8:52 p.m. No one spoke in support or opposition. Mayor Pro Tem Dixon closed the Public hearing at 8:52 p.m.

Deputy Mayor Pro Tem Gelbman moved to approve a Specific Use Permit No. 444 (SUP16-0002 – West Accessory Dwelling) to permit an accessory dwelling, and adopt an ordinance providing for said amendment. Councilmember Webb seconded the motion.

ORDINANCE NO. 24-16

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY APPROVING SPECIFIC USE PERMIT NO. 444 (SUP-444) FOR AN ACCESSORY DWELLING ON CERTAIN PROPERTY DESCRIBED AS LOT 3A1 OF POST OAK WEST, AND ZONED SINGLE-FAMILY ESTATE DISTRICT (SF-E); PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

Motion passed

AYES: GELBMAN, DIXON, BRYANT, WEBB, WISE

NAYS: NONE

16. Public Hearing to consider a request for a waiver to Section 82-275 of the Town's Code of Ordinances to allow outdoor lighting for a private recreational facility (MISC16-0002 – 900 Oak Drive). The property is located at 900 Oak Drive. *(The Planning and Zoning Commission recommended approval by a vote of 5 to 0 at its April 25, 2016, meeting.)*

Staff Presentation

Mr. Powell gave a presentation identifying or noting:

- General & detailed location
- Land use and zoning
- Site plan
- Photos of the house and sports court
- Outdoor lighting provision

Mayor Hayden opened the Public Hearing at 8:54 p.m.

The following individuals either spoke in support or opposition, or had questions / comments related to the item: *Names listed below don't necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.*

Support: Comments/Questions
Jody Smith, 3705 Sarah Springs Trl

Mayor Hayden closed the Public Hearing at 8:55 p.m.

Councilmember Webb moved to approve a request for a waiver to Section 82-275 of the Town's Code of Ordinances to allow outdoor lighting for a private recreational facility (MISC16-0002 – 900 Oak Drive). Councilmember Bryant seconded the motion.

VOTE ON MOTION:

Motion passed

AYES: WISE, WEBB, BRYANT, DIXON, GELBMAN

NAYS: NONE

L. BOARDS/COMMISSIONS (Executive Conference Room)

Discuss and consider resignations, appointments, or evaluations for the following boards or commissions: Animal Services Board, Cultural Arts Committee, Environmental Conservation Commission, Parks, Arts and Library Services Board, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number One (TIRZ #1), and Transportation Commission.

No action taken.

M./N. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 8:58 p.m. on May 2, 2016, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.074, 551.087, 551.072, and 551.071 to discuss matters relating to personnel, economic development negotiations, real property, and consultation with attorney, and reconvened into an open meeting at 9:25 p.m. on May 2, 2016, to take action on the items as follows:

- a. Discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions: Board of Adjustment/Oil & Gas Board of Appeals, Community Development Corporation, and Planning and Zoning Commission.

No action taken.

- b. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, and performance related to certain incentive agreements.

No action taken.

- c. Discuss and consider purchase, exchange, lease or value of real property for parks, public rights of way, and/or other municipal purposes and all matters incident and related thereto.

No action taken.

d. Consultation with Attorney as follows:

1. Official request for information

No action taken.

O. ADJOURN REGULAR MEETING

Mayor Hayden adjourned the meeting at 9:25 p.m. on Monday, May 2, 2016, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

THOMAS E. HAYDEN, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 2

REGULAR ITEM

DATE: May 16, 2016

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of a candidate nomination for appointment to the Denco Area 9-1-1 District Board of Managers.

BACKGROUND INFORMATION: [Denco Area 9-1-1](#) (District) serves as the coordinating agency for 9-1-1 emergency service throughout Denton County and the entire City of Carrollton. It is the organization which implemented and maintains the 9-1-1 system. The District is overseen by a locally elected or appointed Board of Managers.

There are six members serving on the District. The Texas Health and Safety Code provides for the District Board of Managers to have “two members appointed jointly by all the participating municipalities located in whole or part of the district”. Each year the term of one of the two members appointed by participating municipalities expires.

The purpose of this item is to present Council with the option of nominating a person to serve on the Denco Area 9-1-1 District Board. In June Denco staff will send the slate of nominees to each city/town with a request to vote for one of the nominees.

ALTERNATIVES/OPTIONS:

If no action is taken in the way of submitting a nominee, Council will have the option to vote on the slate of nominees in June, as selected by the following municipal jurisdictions:

- | | | |
|-------------------------------|----------------|-------------------|
| •Argyle | •Aubrey | •Bartonville |
| •Carrollton | •Copper Canyon | •Corinth |
| •Corral City | •Cross Roads | •Denton |
| •Dish | •Double Oak | •Flower Mound |
| •Hackberry | •Hebron | •Hickory Creek |
| •Highland Village | •Justin | •Krugerville |
| •Krum | •Lake Dallas | •Lakewood Village |
| •Lewisville | •Little Elm | •Northlake |
| •Oak Point | •Pilot Point | •Ponder |
| •Providence Village | •Roanoke | •Sanger |
| •Shady Shores | •The Colony | •Trophy Club |
| •Unincorporated Denton County | | |

ATTACHMENTS:

1. Appointment letter
2. B. Barth Resume
3. Draft resolution

RECOMMENDATION: The Town of Flower Mound hereby nominates Brandon Barth, Emergency Management Officer, as a candidate for election to the Board of Managers of the Denco Area 9-1-1- District.



Denco Area 9-1-1 District

1075 Princeton Street • Lewisville, TX 75067 • Mailing: PO BOX 293058 • Lewisville, TX 75029-3058

Phone: 972-221-0911 • Fax: 972-420-0709

TO: Denco Area 9-1-1 District Participating Municipal Jurisdictions

RECEIVED

FROM: Mark Payne, Executive Director

MP

MAR 22 2016

DATE: March 15, 2016

RE: Appointment to the Denco Area 9-1-1 District Board of Managers

TOWN OF FLOWER MOUND
TOWN SECRETARY'S OFFICE

Chapter 772, Texas Health and Safety Code, provides for the Denco Area 9-1-1 District Board of Managers to have "two members appointed jointly by all the participating municipalities located in whole or part of the district." The enclosed resolution, approved by the district's board of managers on March 10, 2016, describes the appointment process of a municipal representative to the Denco Board of Managers.

Each year on September 30th, the term of one of the two members appointed by participating municipalities expires. This year it is the term of Mr. Jim Carter. Members are eligible for consecutive terms and Mr. Carter has expressed his desire to serve another term.

In order to coordinate the appointment among 34 participating municipalities, the Denco requests the following actions by the governing bodies of each city/town:

1. **Immediate Action (Nominate):** If your city/town would like to nominate a candidate to represent the municipalities on the Denco Board of Managers, please send a letter of nomination, by way of council action, and résumé of the candidate to the Denco Area 9-1-1 District office. For a nomination to be considered, written notification of council action must reach the Denco Area 9-1-1 District by 5:00 p.m. June 15, 2016. No nominations shall be considered after that time.
2. **Future Action (Vote):** On June 16, 2016, Denco staff will send the slate of nominees to each city/town for consideration, requesting the city/town council vote by resolution for one of the nominees. Written notice of the council's selection must reach the Denco Area 9-1-1 District by 5:00 p.m. on September 15, 2016. No votes will be accepted after that time.
3. **Process Closure (Results):** The Denco Board of Managers and all municipal jurisdictions will be informed of the votes from responding cities/towns. The candidate with the most votes will be the municipalities' representative to the Denco Area 9-1-1 District Board of Managers for the two-year term beginning October 1, 2016.

Please send a copy of your council's official action and candidate résumé to the Denco Area 9-1-1 District, P.O. Box 293058, Lewisville, TX 75029-3058 or to Andrea Zepeda at andrea.zepeda@denco.org. Denco staff will acknowledge receipt and sufficiency of the submitted documents. If that acknowledgement is not received within one (1) business day, or you have any other questions, please contact Ms. Zepeda at 972-221-0911. As a courtesy, Denco will provide notification of your council's action to the nominee.

A sample nomination resolution has been enclosed for your convenience. Thank you for your support of the Denco Area 9-1-1 District.

c: Denco Area 9-1-1 District Board of Managers

Enclosures

www.denco.org

2016.03.10.AI.08

DENCO AREA 9-1-1 DISTRICT**RESOLUTION****DEFINING PROCEDURE FOR APPOINTMENT OF PARTICIPATING
MUNICIPALITIES' REPRESENTATIVE TO THE DISTRICT BOARD OF MANAGERS**

WHEREAS, this resolution shall take the place of Resolution 1999.02.04.R01 by the same title; and

WHEREAS, Chapter 772, Texas Health and Safety Code provides for the Denco Area 9-1-1 District Board of Managers to have "two members appointed jointly by all the participating municipalities located in whole or part of the district."; and

WHEREAS, each member serves a term of two years beginning on October 1st of the year member is appointed; and

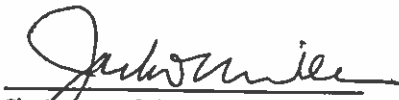
WHEREAS, one member representing participating municipalities is appointed each year.

NOW, THEREFORE BE IT RESOLVED BY THE DENCO AREA 9-1-1 DISTRICT BOARD OF MANAGERS:

The procedure for participating municipalities to appoint a representative to the Denco Area 9-1-1 District Board of Managers shall be the following:

1. **Nominate Candidate:** Prior to March 15th of each year, the executive director shall send a written notice to the mayor of each participating municipality advising that nominations are being accepted until June 15th of that same year, for one of the municipal representatives to the Denco Area 9-1-1 District Board of Managers. The notice shall advise the mayors that for a nomination to be considered, written notification of council action must be received at the Denco office prior to 5:00 p.m. on June 15th of that year. No nominations shall be considered after that time.
2. **Vote for Candidate:** On June 16th of each year, the executive director shall send written notice to the mayor of each participating municipality, providing the slate of nominees to be considered for appointment to the Denco Area 9-1-1 District Board of Managers for the term beginning October 1st. The notice shall advise the mayor that the city/town council shall vote, by resolution from such city/town, for one of the nominees. Written notice of the council's selection must be received at the district office by 5:00 p.m. on September 15th. No votes will be accepted after that time.
3. **Tally Votes:** The one nominee with the most votes received by the deadline will be the municipal representative appointed for the two-year term beginning October 1st.
4. **Tie Breaker:** If there is a tie between two candidates with the most votes, a runoff election will be held immediately with the candidate receiving the most votes serving the remainder of the term. The incumbent representative shall serve in that position until replaced.

APPROVED and ADOPTED on this 10th day of March 2016.


Chairman of the Board


Secretary of the Board

Brandon Barth

PROFILE SUMMARY

Results-oriented, dependable self-starter who is knowledgeable of and experienced in media relations, customer service, safety, and hazardous materials work in a fast-paced, high-stress environment. Exhibits superior communication and multi-tasking skills with an acute attention to detail.

EDUCATION

Bachelor of Business Administration, International Business

Georgia College & State University, Milledgeville, GA, May 2007

PROFESSIONAL EXPERIENCE

Flower Mound Fire Department, Town of Flower Mound, TX

March 2014-Present

Emergency Management Officer

- Examines potential disaster events and evaluates the effect on the Town.
- Produces the Town's Emergency Operations Plan. Plans the Town's response to disasters and ensures that all entities are able to respond as outlined in the Emergency Operations Plan.
- Serves in the Town's Emergency Operation Center (EOC), if activated.
- Trains and coordinates activities in preparing for or responding to disaster situations with all Town departments, neighboring communities, schools, hospitals, and public and private agencies
- Responsible for designing, training, and evaluation of periodic exercises to test elements of emergency plan.
- Responsible for ensuring operability of outdoor warning and other Town emergency communication systems.
- Serves as liaison with community, state and federal authorities concerned with disaster planning and response.
- Serves as one of the fire department's Fire Investigators
- Maintains certification as a State of Texas Firefighter and National Registry Emergency Medical Technician
- Coordinates the fire department's Citizen Fire Academy
- Serves as a Public Information Officer

Allied International Emergency, Fort Worth, TX

September 2013-March 2014

Operations Manager

- Managed the daily operations of the company's Fort Worth/Corporate branch.
- Oversaw multiple hazardous materials and environmental remediation projects daily (500+ annually) in a rapid paced environment with multiple deadlines.
- Prepared bids and proposals to current and future customers.
- Ensured that all supplies and equipment at the facility are in a constant state of operational readiness.
- Provided response and laboratory reports to customers as well as state regulatory agencies regarding hazardous material/environmental incidents.
- Executed service agreements with new customers during an emergency response.

Brandon Barth

Allied International Emergency, Fort Worth, TX

May 2011-September 2013

Project Manager

- Managed personnel at various types of hazardous materials and environmental incidents ranging from tractor-trailer accidents to chemical plant fires per OSHA 1910.120 and requiring travel to various cities and states on a moment's notice.
- Supervised projects through the emergency response, mitigation, remediation, and closure phases.
- Oversaw the decontamination of Naturally Occurring Radioactive Materials (NORM) as a Radiation Safety Officer.
- Performed confined space entry and confined space rescue standby as outlined by OSHA 1910.146.
- Interacted with customers as well as state regulatory agencies such as the Texas Railroad Commission and the Texas Commission on Environmental Quality during hazardous materials incidents as well as environmental emergencies.
- Responsible for the profiling and disposal of hazardous, non-hazardous, and RCRA E&P exempt waste streams.
- Maintained an up-to-date survey that tracks employees' training, certifications, fit tests, and physical exams to ensure conformance with OSHA regulations.
- Conducted sampling of water, air, and soil to determine potential contamination.
- Conducted training classes for employees and customers on subjects such as hazardous materials, confined space entry, and fall protection.
- Wrote policies for new hires to the company.

Baldwin County Fire Rescue, Milledgeville, GA

January 2007-March 2011

Full-time Firefighter/Public Information Officer

As the department's Public Information Officer, responsibilities include:

- Presented a marketing/communications plan to the department's executive staff, thus creating the position of a PIO as well as creating the department's social media accounts.
- Conducted interviews with local media outlets: newspaper, radio, and TV.
- Wrote news releases and operated the department's social media site.
- Redesigned the department's report writing system and making a quick reference guide to assist those writing reports.
- Interacted with members of the community in both emergency and non-emergency settings; requiring a unique set of customer service skills.
- Worked in conjunction with the Executive Staff of the fire department in projecting their message to the public.
- Assisted in the development of presentations to the County Commissioners as well as the County Manager on behalf of the Fire Chief.
- Provided public service announcements to the public through the use of various media platforms.
- Assisted with grant and compliance research on behalf of the executive staff.

Brandon Barth

As a Firefighter, responsibilities include:

- Worked 24 hour shifts; responding to various types of emergency incidents including emergency medical calls, vehicle accidents, and fires.
- Served as the acting-officer in charge; certified through the National Professional Qualifications Pro Board as a Fire Officer 1; overseeing the day-to-day tasks and emergency operations of the on-duty personnel when the shift officer was absent.
- Served as part of the regional Hazardous Materials Team; certified through the National Professional Qualifications Pro Board as a Hazardous Materials Technician
- Assisted in the training of firefighters; certified through the National Professional Qualifications Pro Board as a Fire Instructor 1
- Provided fire safety demonstrations and classes to children in the local school system.
- Wrote detailed incident reports based on the National Fire Incident Reporting System format.
- Conducted pre-incident/safety inspections of commercial properties to assess dangers and to determine proper mitigation procedures based on building layout, hazards, and building construction.
- Drove and operated fire apparatus to include engines, tankers, aerials, and rescue trucks.

Recognition: Awarded Firefighter of the Year for 2008-2009.

Baldwin County Fire Rescue, Milledgeville, GA

January 2005-January 2007

Part-time/Volunteer Firefighter

While pursuing bachelor's degree, worked part-time covering shifts for full-time personnel who were on leave. Was entrusted to work alone at stations in rural parts of the county that only had one person on-duty during a shift. Maintained attendance in excess of 80% of emergency calls and training drills and responded to emergencies via notification by pager.

TOWN OF FLOWER MOUND, TEXAS

RESOLUTION NO. -16

A RESOLUTION NOMINATING ONE CANDIDATE TO A SLATE OF NOMINEES FOR THE BOARD OF MANAGERS OF THE DENCO AREA 9-1-1 DISTRICT.

WHEREAS, Section 772, Health and Safety Code, provides that two voting members of the Board of Managers of an Emergency Communications District shall be appointed jointly by all cities and towns lying wholly or partly within the District;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, THAT:

SECTION 1

The Town of Flower Mound and they are hereby nominates Brandon Barth, Emergency Management Officer, as a candidate for appointment to the Board of Managers of the Denco Area 9-1-1 District.

SECTION 2

That this resolution shall become effective immediately upon its passage and approval.

PASSED, APPROVED, AND ADOPTED THIS 16TH DAY OF MAY, 2016

Thomas E. Hayden, Mayor

ATTEST:

Theresa Scott, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, Town Attorney



TOWN COUNCIL AGENDA ITEM NO. 03

CONSENT ITEM

DATE: May 16, 2016

FROM: Chuck Jennings, Parks and Recreation Director

ITEM: Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at the Heritage Park of Flower Mound during the Flower Mound Rotary's Neon Run and Festival. (The Parks, Arts and Library Services (PALS) Board recommended approval by a vote of 4 to 0 at its April 7, 2016, meeting.)

BACKGROUND INFORMATION: Harold Shepard with the [Flower Mound Rotary Club](#) is requesting approval from the Parks, Arts, and Library Services (PALS) Board and Town Council to hold their annual Neon Run and festival at The Heritage Park of Flower Mound on Saturday, October 1, 2016, from 3:00 – 9:00 p.m.

The Flower Mound Rotary Club, which was founded in 1984 falls under the [National Association of Rotary International](#).

The Flower Mound Rotary has hosted the neon run and festival the past three years. The Town has not received any negative feedback and the organization followed all of the Town's rules and regulations. The Rotary is proposing to offer the same activities and amenities as last year. The festival would have two major components: 5k Neon Run/Walk and festival area with music, kid's area, and food vendors. The event would be held on October 1, 2016, from 3:00 – 10:00pm. The event would be geared towards families and open to the public. The money raised by this event would go into the Club's general fund and would be used for local charitable endeavors.

The Flower Mound Rotary will work with the Environmental Services Division to secure a special event permit and provide the necessary liability insurance. During this process, the permit will be reviewed by the Health, Fire, Parks, and Police Departments concerning the event logistics and 5K route. Other permits and fees may be necessary after the review process is completed. Staff estimates that the event could attract between 700-1,000 spectators to the park over the course of the day. The Rotary Club understands they will need to secure offsite parking, shuttles, portable restrooms, and coordinate litter control for the event.

The Rotary is proposing to fence in the festival area so that beer and wine can be sold and consumed during the festival. There will be manned gates for entrance and exit into the festival area to ensure no alcohol is brought into or taken out of the festival area. The Rotary will be hiring a Texas Alcohol & Beverage Commission (TABC) licensed server to provide the beverages. The Rotary will be required to secure a TABC Permit for the event and provide Flower Mound police officers for security at the entrance/exit gates and festival area. The Flower Mound Rotary and/or a third party retailer will take on the risk and liability of selling alcohol at the event. The Town will be named as an additional insured on their liquor liability insurance.

BOARD REVIEW/CITIZEN FEEDBACK: The Parks, Arts and Library Services (PALS) Board voted 4 – 0 at their April 7, 2016, regular meeting in favor of the request.

ALTERNATIVES/OPTIONS: The Town Council can deny their request and the Flower Mound Rotary can work with Town staff to host their event without offering alcoholic beverages.

FISCAL IMPACT:

Revenue Source:	The Town's Parks and Recreation Division will receive revenue from Flower Mound Rotary in accordance with the rental policy which outlines pavilion rental fees.
Projected Receipts/Collections:	\$300.00
Proposed Use/Purpose:	The revenue generated will be deposited into the General Fund 100-4259, Parks and Recreation Fees, which helps offset the annual costs to operate and maintain the Town's pavilions.

LEGAL ISSUES: The sale of beer or wine on park property requires PALS Board consideration and the Town Council's approval since the event will be held at The Heritage Park of Flower Mound. An excerpt from the Code of Ordinances states:

- It shall be unlawful to possess alcoholic beverages in any portion of a public park or recreation facility, with the exception that the use of alcoholic beverages may be permitted during designated activities upon recommendation of the Town's PALS Board and with approval of the Town Council.

ATTACHMENTS:

1. 2015 Event Site Map

RECOMMENDATION: Move to approve the sale and consumption of alcoholic beverages (beer and wine) at the Heritage Park of Flower Mound during the Flower Mound Rotary's Neon Run and Festival.

Attachment 1





TOWN COUNCIL AGENDA ITEM NO. 04

CONSENT ITEM

DATE: May 16, 2016

FROM: Tiffany Bruce, P.E., CIP Engineering Manager

ITEM: Consider approval of Change Order No. 1, for a decrease in the amount of \$80,797.15, the final acceptance of the FM 2499 at Lakeside Parkway Improvements project, and authorization of final payment to the contractor, 3-D Paving and Contracting, LLC, in the amount of \$32,604.93; and authorization for the Mayor to execute on behalf of the Town.

BACKGROUND INFORMATION: On March 16, 2015, the contract for the FM 2499 at Lakeside Parkway Improvements project was awarded to 3-D Paving and Contracting, LLC, in the amount of \$732,895.25.

The FM 2499 at Lakeside Intersection Improvements project is now complete and included the construction of three additional 12-foot wide turn lanes, consisting of two left turn lanes on FM 2499 (one northbound and one southbound), and one right turn lane southbound on FM 2499 onto Lakeside Parkway, along with traffic signal modifications for the additional turn lanes. The turn lanes were identified as required, due to the Lakeside DFW development at this location.

Final payment of \$32,604.93 consists of retainage, for a total contract value of \$652,098.10.

FISCAL IMPACT: \$32,604.93

Proposed Expenditure:	Account Number(s):
\$32,604.93	505-220-77110

Finance Review by: Tammy Wilson, Executive Director of Financial Services *tw*

ATTACHMENTS:

1. Change Order No. 1
2. Contract Estimate for Payment
3. Bills Paid Affidavit
4. Consent of Surety Company

RECOMMENDATION: Move to approve Change Order No. 1, for a decrease in the amount of \$80,797.15, the final acceptance of the FM 2499 at Lakeside Intersection Improvements project, and authorize final payment to the contractor, 3-D Paving and Contracting, LLC., in the amount of \$32,604.93; and authorize the Mayor to execute on behalf of the Town.

CHANGE ORDER 1 and FINAL

Effective Date: Effective on the date of execution by the Mayor following approval of Town Council

Owner: Town of Flower Mound
Contractor: 3D Paving and Contracting, LLC
Attn: Roger Dupre
161 Landowne Circle
Coppell, TX 75019

Project: FM 2499 at Lakeside Intersection Improvements

CHANGE ORDER NO. 1 and Final

The compensation agreed upon in this Change Order is a full, complete, and final payment for all costs the Contractor incurs as a result of or relating to the change, whether said costs are known, unknown, foreseen, or unforeseen at this time, including without limitation, any costs for delay, extended overhead, ripple or impact costs, or any other effect on changed or unchanged work as a result of this change.

You are directed to make the following changes in the Contract Documents:

Item No.	Description	Unit	Add/ Deduct	Quan	Unit Price	Extended Amount
4	BLOCK SODDING	SF	Deduct	13400.00	\$1.00	(\$13,400.00)
5	LIME (HYD) (SLURRY)	TON	Deduct	11.70	\$155.00	(\$1,813.50)
6	LIME TREATMENT (EXISTING MATERIAL) (8")	SY	Deduct	561.80	\$6.00	(\$3,370.80)
7	DENSE GRADED HOT MIX ASPHALT (METHOD) TY-B PG 64-22	TON	Deduct	273.70	\$90.00	(\$24,633.00)
8	CONCRETE PAVEMENT (CONTINUOUS REINFORCED-CRCP) (8")	SY	Deduct	330.20	\$52.00	(\$17,170.40)
11	RIPRAP (CONCRETE) (6") (STAMPED-COLORED)	SY	Deduct	103.60	\$115.00	(\$11,914.00)
12	REINFORCED CONCRETE PIPE (CLIII) (24")	LF	Deduct	2.00	\$100.00	(\$200.00)
19	CONCRETE CURB (MONO) TY II)	LF	Deduct	314.00	\$3.00	(\$942.00)
20	CURB RAMPS (TYPE 7)	EA	Deduct	1.00	\$1,200.00	(\$1,200.00)
21	CONCRETE SIDEWALKS (4")	SY	Deduct	28.70	\$42.00	(\$1,205.40)
33	INSTALL SMALL ROADSIDE SIGN SUPPORT & ASSEMBLY TY10BWG(1)SB(P-BM)	EA	Deduct	1.00	\$450.00	(\$450.00)
34	REMOVE SMALL ROADSIDE SIGN SUPPORT & ASSEMBLY	EA	Deduct	2.00	\$150.00	(\$300.00)
35	REFLECTORIZED PAVEMENT MARKINGS TYPE I (W) 4" (SLD) (100MIL)	LF	Deduct	11.00	\$1.40	(\$15.40)
36	REFLECTORIZED PAVEMENT MARKINGS TYPE I (W) 8" (SLD) (100MIL)	LF	Deduct	173.00	\$2.20	(\$380.60)
37	REFLECTORIZED PAVEMENT MARKINGS TYPE I (W) 12" (SLD) (100 MIL)	LF	Deduct	53.00	\$4.40	(\$233.20)
38	REFLECTORIZED PAVEMENT MARKINGS TYPE I (W) 24") (SLD) (100 MIL)	LF	Deduct	25.00	\$6.60	(\$165.00)
42	REFLECTORIZED PAVEMENT MARKINGS TYPE II (W) 4" (SLD)	LF	Deduct	11.00	\$0.20	(\$2.20)
43	REFLECTORIZED PAVEMENT MARKINGS TYPE II (W) 8" (SLD)	LF	Deduct	173.00	\$0.30	(\$51.90)
44	REFLECTORIZED PAVEMENT MARKINGS TYPE II (W) 12" (SLD)	LF	Deduct	53.00	\$0.60	(\$31.80)
45	REFLECTORIZED PAVEMENT MARKINGS TYPE II (W) 24" (SLD)	LF	Deduct	25.00	\$0.60	(\$15.00)
50	REFLECTORIZED PAVEMENT MARKERS (TY I-A)	EA	Deduct	54.00	\$5.50	(\$297.00)
51	REFLECTORIZED PAVEMENT MARKERS (TY II-C-R)	EA	Deduct	13.00	\$5.50	(\$71.50)
53	ELIMINATE EXISTING PAVEMENT MARKINGS (24")	LF	Deduct	58.00	\$9.90	(\$574.20)
54	PAVEMENT SURFACE PREPARATION FOR MARKINGS (4")	LF	Deduct	11.00	\$0.10	(\$1.10)
55	PAVEMENT SURFACE PREPARATION FOR MARKINGS (8")	LF	Deduct	173.00	\$0.35	(\$60.55)
56	PAVEMENT SURFACE PREPARATION FOR MARKINGS (12")	LF	Deduct	53.00	\$0.70	(\$37.10)
57	PAVEMENT SURFACE PREPARATION FOR MARKINGS (24")	LF	Deduct	25.00	\$0.70	(\$17.50)
68	VEHICLE SIGNAL SECTION (12") LED (RED ARROW)	EA	Deduct	2.00	\$297.00	(\$594.00)
80-OP	ETHERNET CABLE (CAT. 5) (FOR OUTDOOR USE)	LF	Deduct	225.00	\$4.40	(\$990.00)
81-OP	PTZ CAMERA (INSTALL ONLY)	EA	Deduct	1.00	\$660.00	(\$660.00)
					Subtotal	(\$80,797.15)

Original Contract	\$ 732,895.25
Change Order No. 1 and Final	(\$80,797.15)
Revised Contract Price	\$ 652,098.10

Items 4 thru 81-OP listed in this change order provide for final in place quantities.

Recommended
for Approval
Tiffany Bruce, P.E.
CIP Engineering Manager

Date

Date

Contractor

Approved

Thomas E. Hayden

Date

Mayor

Project:

FM 2499 @ Lakeside Intersection Improvements

Estimate No.:

13 & Final

Item No.	Description of Item	Unit of Measure	Contract Quantities	Unit Price	Contract Amount	Quantities Completed Previous	Quantities Completed This Month	Quantities Completed To Date	Dollar Amount Previous	Dollar Amount This Month	Amount Completed To date	% of Quantity Complete
1	PREPARING ROW	STA	18	3,000.00	54,000.00	18.00	0.00	18.00	\$ 54,000.00	\$ -	\$ 54,000.00	100.00%
2	REMOVE TXDOT PAVING SECTION	LS	1	25,000.00	25,000.00	1.00	0.00	1.00	25,000.00	-	25,000.00	100.00%
3	EXCAVATION (ROADWAY)	CY	2500	10.00	25,000.00	2500.00	0.00	2500.00	25,000.00	-	25,000.00	100.00%
4 CO1	BLOCK SODDING	SF	9600	1.00	9,600.00	9600.00	0.00	9600.00	9,600.00	-	9,600.00	100.00%
5 CO1	LIME (HYD) (SLURRY)	TON	80.3	155.00	12,446.50	80.30	0.00	80.30	12,446.50	-	12,446.50	100.00%
6 CO1	LIME TREATMENT (EXISTING MATERIAL) (8")	SY	3638.2	6.00	21,829.20	3638.20	0.00	3638.20	21,829.20	-	21,829.20	100.00%
7 CO1	DENSE GRADED HOT MIX ASPHALT (METHOD) TY-B PG 64-22	TON	692.3	90.00	62,307.00	692.30	0.00	692.30	62,307.00	-	62,307.00	100.00%
8 CO1	CONCRETE PAVEMENT (CONTINUOUS REINFORCED-CRCP) (8")	SY	2999.8	52.00	155,989.60	2999.80	0.00	2999.80	155,989.60	-	155,989.60	100.00%
9	DRILL SHAFT (TRAFFIC SIGNAL POLE) (24")	LF	38	187.00	7,106.00	38.00	0.00	38.00	7,106.00	-	7,106.00	100.00%
10	DRILL SHAFT (TRAFFIC SIGNAL POLE) (48")	LF	44	275.00	12,100.00	44.00	0.00	44.00	12,100.00	-	12,100.00	100.00%
11 CO1	RIPRAP (CONCRETE) (6") (STAMPED-COLORED)	SY	346.4	115.00	39,836.00	346.40	0.00	346.40	39,836.00	-	39,836.00	100.00%
12 CO1	REINFORCED CONCRETE PIPE (CLIII) (24")	LF	18	100.00	1,800.00	18.00	0.00	18.00	1,800.00	-	1,800.00	100.00%
13	INLET (COMPL) (TYPE C)	EA	1	5,000.00	5,000.00	1.00	0.00	1.00	5,000.00	-	5,000.00	100.00%
14	INLET EXT (TYPE E)	EA	2	5,000.00	10,000.00	2.00	0.00	2.00	10,000.00	-	10,000.00	100.00%
15	REMOVE STRUCTURE (INLET)	EA	1	800.00	800.00	1.00	0.00	1.00	800.00	-	800.00	100.00%
16	MOBILIZATION	LS	1	47,000.00	47,000.00	1.00	0.00	1.00	47,000.00	-	47,000.00	100.00%
17	BARRICADES, SIGNS & TRAFFIC HANDLING	LS	1	15,000.00	15,000.00	1.00	0.00	1.00	15,000.00	-	15,000.00	100.00%
18	TEMPRARY EROSION AND SEDIMENT CONTROL	LS	1	3,000.00	3,000.00	1.00	0.00	1.00	3,000.00	-	3,000.00	100.00%
19 CO1	CONCRETE CURB (MONO) TY II)	LF	1861	3.00	5,583.00	1861.00	0.00	1861.00	5,583.00	-	5,583.00	100.00%
20 CO1	CURB RAMPS (TYPE 7)	EA	7	1,200.00	8,400.00	7.00	0.00	7.00	8,400.00	-	8,400.00	100.00%
21 CO1	CONCRETE SIDEWALKS (4")	SY	66.3	42.00	2,784.60	66.30	0.00	66.30	2,784.60	-	2,784.60	100.00%
22	CURB RAMPS (TYPE 21)	EA	1	1,500.00	1,500.00	1.00	0.00	1.00	1,500.00	-	1,500.00	100.00%
23	CONDUIT (PVC) (SCHEDULE 40) (2")	LF	35	11.00	385.00	35.00	0.00	35.00	385.00	-	385.00	100.00%
24	CONDUIT (PVC) (SCHEDULE 40) (3")	LF	200	12.50	2,500.00	200.00	0.00	200.00	2,500.00	-	2,500.00	100.00%
25	CONDUIT (PVC) (SCHEDULE 40) (4")	LF	170	15.00	2,550.00	170.00	0.00	170.00	2,550.00	-	2,550.00	100.00%
26	CONDUIT (PVC) (SCHEDULE 40) (4") (BORED)	LF	455	25.00	11,375.00	455.00	0.00	455.00	11,375.00	-	11,375.00	100.00%
27	ELECTRICAL CONDUCTOR (NO. 6) BARE	LF	905	1.20	1,086.00	905.00	0.00	905.00	1,086.00	-	1,086.00	100.00%
28	ELECTRICAL CONDUCTOR (NO. 6) INSULATED	LF	70	1.20	84.00	70.00	0.00	70.00	84.00	-	84.00	100.00%
29	ELECTRICAL CONDUCTOR (NO. 8) INSULATED	LF	1230	1.20	1,476.00	1230.00	0.00	1230.00	1,476.00	-	1,476.00	100.00%
30	ELECTRICAL CONDUCTOR (NO. 12) INSULATED	LF	160	1.20	192.00	160.00	0.00	160.00	192.00	-	192.00	100.00%
31	GROUND BOX TYPE C (162911) W/APRON	EA	5	825.00	4,125.00	5.00	0.00	5.00	4,125.00	-	4,125.00	100.00%
32	ELECTRICAL SERVICE TYPE D 120/240 070 (NS) AL (E) PS (U)	EA	1	6,600.00	6,600.00	1.00	0.00	1.00	6,600.00	-	6,600.00	100.00%
33 CO1	INSTALL SMALL ROADSIDE SIGN SUPPORT & ASSEMBLY TY10BWG(1)SB(P-BM)	EA	0	450.00	0.00	0.00	0.00	0.00	-	-	-	#DIV/0!
34 CO1	REMOVE SMALL ROADSIDE SIGN SUPPORT & ASSEMBLY	EA	0	150.00	0.00	0.00	0.00	0.00	-	-	-	#DIV/0!
35 CO1	REFLECTORIZED PAVEMENT MARKINGS TYPE I (W) 4" (SLD) (100MIL)	LF	274	1.40	383.60	274.00	0.00	274.00	383.60	-	383.60	100.00%
36 CO1	REFLECTORIZED PAVEMENT MARKINGS TYPE I (W) 8" (SLD) (100MIL)	LF	2042	2.20	4,492.40	2042.00	0.00	2042.00	4,492.40	-	4,492.40	100.00%
37 CO1	REFLECTORIZED PAVEMENT MARKINGS TYPE I (W) 12" (SLD) (100 MIL)	LF	797	4.40	3,506.80	797.00	0.00	797.00	3,506.80	-	3,506.80	100.00%
38 CO1	REFLECTORIZED PAVEMENT MARKINGS TYPE I (W) 24" (SLD) (100 MIL)	LF	225	6.60	1,485.00	225.00	0.00	225.00	1,485.00	-	1,485.00	100.00%
39	REFLECTORIZED PAVEMENT MARKINGS TYPE I (W) (ARROW) (100MIL)	EA	10	165.00	1,650.00	10.00	0.00	10.00	1,650.00	-	1,650.00	100.00%
40	REFLECTORIZED PAVEMENT MARKINGS TYPE I (W) (WORD) (100 MIL)	EA	10	165.00	1,650.00	10.00	0.00	10.00	1,650.00	-	1,650.00	100.00%
41	REFLECTORIZED PAVEMENT MARKINGS TYPE I (Y) 4" (SLD) (100 MIL)	LF	1450	1.40	2,030.00	1450.00	0.00	1450.00	2,030.00	-	2,030.00	100.00%

CONTRACT ESTIMATE FOR PAYMENT

Project: FM 2499 @ Lakeside Intersection Improvements

Estimate No.: 13 & Final

Item No.	Description of Item	Unit of Measure	Contract Quantities	Unit Price	Contract Amount	Quantities Completed Previous	Quantities Completed This Month	Quantities Completed To Date	Dollar Amount Previous	Dollar Amount This Month	Amount Completed To date	% of Quantity Complete
42 CO1	REFLECTORIZED PAVEMENT MARKINGS TYPE II (W) 4" (SLD)	LF	274	0.20	54.80	274.00	0.00	274.00	54.80	-	54.80	100.00%
43 CO1	REFLECTORIZED PAVEMENT MARKINGS TYPE II (W) 8" (SLD)	LF	2042	0.30	612.60	2042.00	0.00	2042.00	612.60	-	612.60	100.00%
44 CO1	REFLECTORIZED PAVEMENT MARKINGS TYPE II (W) 12" (SLD)	LF	797	0.60	478.20	797.00	0.00	797.00	478.20	-	478.20	100.00%
45 CO1	REFLECTORIZED PAVEMENT MARKINGS TYPE II (W) 24" (SLD)	LF	225	0.60	135.00	225.00	0.00	225.00	135.00	-	135.00	100.00%
46	REFLECTORIZED PAVEMENT MARKINGS TYPE II (W) (ARROW)	EA	10	15.00	150.00	10.00	0.00	10.00	150.00	-	150.00	100.00%
47	REFLECTORIZED PAVEMENT MARKINGS TYPE II (W) (WORD)	EA	10	15.00	150.00	10.00	0.00	10.00	150.00	-	150.00	100.00%
48	REFLECTORIZED PAVEMENT MARKINGS TYPE II (Y) 4" (SLD)	LF	1450	0.20	290.00	1450.00	0.00	1450.00	290.00	-	290.00	100.00%
49	STAMARK 3-M TAPE (PUPPY TRACKS)	LF	166	14.00	2,324.00	166.00	0.00	166.00	2,324.00	-	2,324.00	100.00%
50 CO1	REFLECTORIZED PAVEMENT MARKERS (TY I-A)	EA	15	5.50	82.50	15.00	0.00	15.00	82.50	-	82.50	100.00%
51 CO1	REFLECTORIZED PAVEMENT MARKERS (TY II-C-R)	EA	103	5.50	566.50	103.00	0.00	103.00	566.50	-	566.50	100.00%
52	ELIMINATE EXISTING PAVEMENT MARKINGS (4")	LF	80	2.75	220.00	80.00	0.00	80.00	220.00	-	220.00	100.00%
53 CO1	ELIMINATE EXISTING PAVEMENT MARKINGS (24")	LF	192	9.90	1,900.80	192.00	0.00	192.00	1,900.80	-	1,900.80	100.00%
54 CO1	PAVEMENT SURFACE PREPARATION FOR MARKINGS (4")	LF	1724	0.10	172.40	1724.00	0.00	1724.00	172.40	-	172.40	100.00%
55 CO1	PAVEMENT SURFACE PREPARATION FOR MARKINGS (8")	LF	2042	0.35	714.70	2042.00	0.00	2042.00	714.70	-	714.70	100.00%
56 CO1	PAVEMENT SURFACE PREPARATION FOR MARKINGS (12")	LF	797	0.70	557.90	797.00	0.00	797.00	557.90	-	557.90	100.00%
57 CO1	PAVEMENT SURFACE PREPARATION FOR MARKINGS (24")	LF	225	0.70	157.50	225.00	0.00	225.00	157.50	-	157.50	100.00%
58	PAVEMENT SURFACE PREPARATION FOR MARKINGS (ARROW)	EA	10	15.00	150.00	10.00	0.00	10.00	150.00	-	150.00	100.00%
59	PAVEMENT SURFACE PREPARATION FOR MARKINGS (WORD)	EA	10	15.00	150.00	10.00	0.00	10.00	150.00	-	150.00	100.00%
60	INSTALL HIGHWAY TRAFFIC SIGNAL (ISOLATED)	EA	1	21,000.00	21,000.00	1.00	0.00	1.00	21,000.00	-	21,000.00	100.00%
61	BACKPLATE (12") (3 SECTION)	EA	4	110.00	440.00	4.00	0.00	4.00	440.00	-	440.00	100.00%
62	BACKPLATE (12") (4 SECTION)	EA	1	125.00	125.00	1.00	0.00	1.00	125.00	-	125.00	100.00%
63	BACKPLATE (12") (5 SECTION)	EA	2	132.00	264.00	2.00	0.00	2.00	264.00	-	264.00	100.00%
64	VEHICLE SIGNAL SECTION (12") LED (GREEN ARROW)	EA	7	297.00	2,079.00	7.00	0.00	7.00	2,079.00	-	2,079.00	100.00%
65	VEHICLE SIGNAL SECTION (12") LED (GREEN)	EA	2	297.00	594.00	2.00	0.00	2.00	594.00	-	594.00	100.00%
66	VEHICLE SIGNAL SECTION (12") LED (YELLOW ARROW)	EA	7	297.00	2,079.00	7.00	0.00	7.00	2,079.00	-	2,079.00	100.00%
67	VEHICLE SIGNAL SECTION (12") LED (YELLOW)	EA	2	297.00	594.00	2.00	0.00	2.00	594.00	-	594.00	100.00%
68CO1	VEHICLE SIGNAL SECTION (12") LED (RED ARROW)	EA	4	297.00	1,188.00	4.00	0.00	4.00	1,188.00	-	1,188.00	100.00%
69	VEHICLE SIGNAL SECTION (12") LED (RED)	EA	2	297.00	594.00	2.00	0.00	2.00	594.00	-	594.00	100.00%
70	LED COUNTDOWN PEDISTRIAN SIGNAL MODULE	EA	8	745.00	5,960.00	8.00	0.00	8.00	5,960.00	-	5,960.00	100.00%
71	TRAFFIC SIGNAL CABLE (TY A) (14 AWG) (5 CONDUCTOR)	LF	596	2.00	1,192.00	596.00	0.00	596.00	1,192.00	-	1,192.00	100.00%
72	TRAFFIC SIGNAL CABLE (TY A) (14 AWG) (7 CONDUCTOR)	LF	28	2.00	56.00	28.00	0.00	28.00	56.00	-	56.00	100.00%
73	TRAFFIC SIGNAL CABLE (TY A) (14 AWG) (10 CONDUCTOR)	LF	1035	2.50	2,587.50	1035.00	0.00	1035.00	2,587.50	-	2,587.50	100.00%
74	TRAFFIC SIGNAL CABLE (TY A) (14 AWG) (20 CONDUCTOR)	LF	700	2.50	1,750.00	700.00	0.00	700.00	1,750.00	-	1,750.00	100.00%
75	TRAFFIC SIGNAL CBLE (TY C) (12 AWG) (2 CONDUCTOR)	LF	1430	1.20	1,716.00	1430.00	0.00	1430.00	1,716.00	-	1,716.00	100.00%
76	REMOVING TRAFFIC SIGNALS	EA	1	3,310.00	3,310.00	1.00	0.00	1.00	3,310.00	-	3,310.00	100.00%
77	VIVDS COMMUNICATION CABLE (COAXIAL)	LF	950	4.00	3,800.00	950.00	0.00	950.00	3,800.00	-	3,800.00	100.00%
78	OPTICOM DETECTOR CABLE	LF	900	2.50	2,250.00	900.00	0.00	900.00	2,250.00	-	2,250.00	100.00%
79	REPLACE IRRIGATION SYSTEM MATERIALS	LS	1	20,000.00	20,000.00	1.00	0.00	1.00	20,000.00	-	20,000.00	100.00%
	BID OPTIONS											
80-OP CO1	ETHERNET CABLE (CAT. 5) (FOR OUTDOOR USE)	LF	0	4.40	0.00	0.00	0.00	0.00	-	-	-	#DIV/0!
81-OP CO1	PTZ CAMERA (INSTALL ONLY)	EA	0	660.00	0.00	0.00	0.00	0.00	-	-	-	#DIV/0!
TOTAL					652,098.10				652,098.10	-	652,098.10	100.00%

AFFIDAVIT OF BILLS PAID AND RELEASE OF LIENS BY CONTRACTOR

The undersigned ("Contractor"), having furnished materials and/or performed labor in connection with the construction (the "Project") of certain improvements located at FM 2499 at Lakewood Intercession ("Property") for and in consideration of the payment to the Contractor of the sum hereinafter specified does hereby acknowledge and release as follows:

Upon the receipt of \$ 652,098.10 being payment on Invoice # FINAL dated 4/12/16 for materials and/or labor performed by the Contractor for the Project (the "Work"); Contractor will waive and release any and all liens, rights and interests (whether choate or inchoate, and including, without limitation, all mechanic's and materialmen's liens under the Constitution and the statutes of the "Property" state) which are or may be owed, claimed or held by Contractor in and to the Property and the improvements constructed thereon by reason of the Work or otherwise, and Contractor will thereby RELEASE AND FOREVER DISCHARGE any and all claims, debts, demands or causes of action the Contractor has or may have as a result of the same including, without limitation, any liens of Contract for the Work now or hereafter filed for record in said County.

Contractor represents, warrants, and certifies that all bills owed by the Contractor for materials furnished and labor performed in connection with the Work have been or will be fully paid and satisfied. If for any reason a lien or liens are filed for materials or labor against the Property by virtue of the Contractor's participation in the Project by any person claiming by, through, or under the Contractor, then Contractor will immediately obtain a settlement of such lien or liens and obtain and furnish to the owners of the Property a release thereof. Contractor shall indemnify such owners and their respective heirs, successors and assigns from any such bill or liens and from all costs and expenses, including attorney's fees, incurred in discharging any such bills or removing such liens.

Executed April 26, 2016.

Contractor Name: 3D Paving and Contracting, LLC

By: Roger Dupre

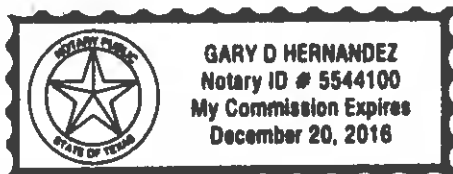
Title: Managing Partner

[Signature]
Witness

[Signature]
Witness

Subscribed and sworn to before me under my official seal of office this 26th day of April, 2016.

[Signature]
Notary Signature



**CONSENT OF
SURETY COMPANY
TO FINAL PAYMENT**

AIA DOCUMENT G707

OWNER	☒
ARCHITECT	☐
CONTRACTOR	☐
SURETY	☐
OTHER	☐

Bond # 4400039

PROJECT: FM 2499 at Lakeside Intersection Improvements, Flower Mound, TX
(name, address)

TO (Owner) Town of Flower Mound
2121 Cross Timbers Rd.
Flower Mound, TX
75028

ARCHITECT'S PROJECT NO:
CONTRACT FOR: construction
CONTRACT DATE: 3/16/2015

CONTRACTOR: 3D Paving and Contracting, LLC

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the
(here insert name and address of Surety Company)

FCCI Insurance Company
2435 N. Central Expressway, Ste 1000
Richardson, TX 75080

,SURETY COMPANY,

on bond of

(here insert name and address of Contractor)

3D Paving and Contracting, LLC
161 Lansdowne Circle
Coppell, TX 75019

,CONTRACTOR,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall
not relieve the Surety company of any of its obligations to

(here insert name and address of Owner)

Town of Flower Mound
2121 Cross Timbers Rd.
Flower Mound, TX 75028

,OWNER,

as set forth in the said Surety Company's bond

IN WITNESS WHEREOF,

The Surety Company has hereunto set its hand this 12th day of April, 2016.

FCCI Insurance Company

Surety Company

Signature of Authorized Representative

Jay Jordan, Attorney-in-Fact
Title

Attest
(seal):

NOTE: This form is to be used as a companion document to AIA DOCUMENT G706, CONTRACTOR'S AFFIDAVIT OF PAYMENT OF DEBT AND CLAIMS,
Current Edition



GENERAL POWER OF ATTORNEY

Know all men by these presents: That the FCCI Insurance Company, a Corporation organized and existing under the laws of the State of Florida (the "Corporation") does make, constitute and appoint:

Mistie Beck; Robert G Kanuth; Robert J Shuya; Jay Jordan; Tony Fierro; Johnny Moss; Jeremy Barnett

Each, its true and lawful Attorney-In-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed in all bonds and undertakings provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the sum of (not to exceed \$5,000,000): **\$5,000,000.00**

This Power of Attorney is made and executed by authority of a Resolution adopted by the Board of Directors. That resolution also authorized any further action by the officers of the Company necessary to effect such transaction.

The signatures below and the seal of the Corporation may be affixed by facsimile, and any such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached.

In witness whereof, the FCCI Insurance Company has caused these presents to be signed by its duly authorized officers and its corporate Seal to be hereunto affixed, this 22ND day of September, 2011.

Attest:

Craig Johnson
Craig Johnson, President
FCCI Insurance Company



Thomas A. Koval Esq., SVP, General Counsel,
Government Affairs and Corporate Secretary
FCCI Insurance Company

State of Florida
County of Sarasota

Before me this day personally appeared Craig Johnson, who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 9/25/2016

ARLENE CUEMAN
Notary Public, State of Florida
My Comm. Expires Sept. 25, 2016
No. EE 213082

Arlene Cueman
Notary Public

State of Florida
County of Sarasota

Before me this day personally appeared Thomas A. Koval, Esq., who is personally known to me and who executed the foregoing document for the purposes expressed therein.

My commission expires: 9/25/2016

ARLENE CUEMAN
Notary Public, State of Florida
My Comm. Expires Sept. 25, 2016
No. EE 213082

Arlene Cueman
Notary Public

CERTIFICATE

I, the undersigned Secretary of FCCI Insurance Company, a Florida Corporation, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the February 24, 2011 Resolution of the Board of Directors, referenced in said Power of Attorney, is now in force.

Dated this 12th day of April, 2016

Thomas A. Koval, Esq., SVP, General Counsel,
Government Affairs and Corporate Secretary





TOWN COUNCIL AGENDA ITEM NO. 05

CONSENT ITEM

DATE: May 16, 2016

FROM: Matthew J. Hotelling, P.E., PTOE, Traffic Engineer

ITEM: Consider approval of the award of Bid No. 2016-51, to Roadway Solutions Inc., for the construction of the FM 1171 at Kirkpatrick – Reconstruction and FM 1171 at Timber Creek – Reconstruction signal projects, in the amount of \$227,778.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On April 27, 2016, bids were received and opened for the construction of the traffic signal at FM 1171 at Kirkpatrick – Reconstruction and FM 1171 at Timber Creek – Reconstruction. Roadway Solutions Inc., submitted the lowest bid of the two responding bidders at \$227,778.00. The work associated with this capital improvement project includes the installation of certain equipment supplied by the Town. This location meets warrants for traffic signalization and has been approved by the Texas Department of Transportation.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$227,778.00

Proposed Expenditure:	Account Number(s):
\$18,293.96	505-220-78026 FM 1171 at Timber Creek
\$84,916.04	531-220-78026 FM 1171 at Timber Creek
\$1,529.07	505-220-78025 FM 1171 at Kirkpatrick
\$75,175.12	531-220-78025 FM 1171 at Kirkpatrick
\$47,863.81	536-220-78025 FM 1171 at Kirkpatrick

Finance Review by: Tammy Wilson, Executive Director of Financial Services *tw*

LEGAL REVIEW: The Town's standard construction agreement form documents, prepared by Taylor, Olson, Adkins, Sralla, & Elam L.L.P., were used to draft this agreement. No alteration to the legal content of this form document was made in preparation of these documents.

ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

RECOMMENDATION: Move to approve the award of Bid No. 2016-51, with Roadway Solutions Inc., for the construction of the FM 1171 at Kirkpatrick – Reconstruction and FM 1171 at Timber Creek – Reconstruction signal projects, in the amount of \$227,778.00; and authorize the Mayor to execute same on behalf of the Town.



Town of Flower
Mound
Bid Tabulation

Bid No: 2016-51 - FM1171 @ Kirkpatrick and FM1171 @ Timber Creek

Signal Reconstruction Project

Bid Opening: April 27, 2016 at 11:00am

Company	Total Bid
Roadway Solutions, Incorporated	\$ 227,778.00
Durable Specialties, Incorporated	\$ 295,370.50

******All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received will be available for inspection at that time.

Certified By: Rochelle M. Ragas, CPPB Purchasing Manager Town of Flower Mound, Texas	4/27/2016
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TOWN OF FLOWER MOUND**FM 1171 @ Kirkpatrick and FM 1171 @ Timber Creek
Signal Reconstruction Project****Bid # 2015-51****CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this ____ day of _____, 20__, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Roadway Solutions Inc., a Corporation, hereinafter referred to as the "Contractor." For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

FM 1171 @ Kirkpatrick and FM 1171 @ Timber Creek Signal Reconstruction Project
Bid # 2015-51

in the Town of Flower Mound, Texas, and all extra work in connection therewith, under the terms as stated in this Agreement, and under the terms of the Contract Documents; and at his, her, or their own proper cost and expense to furnish all superintendence, labor, insurance, equipment, tools, and other accessories and services necessary to complete the said construction in accordance with all the Contract Documents, incorporated herein as if written word for word, and in accordance with the Plans, which include all maps, plats, blueprints, and other drawings and printed or written explanatory manner therefore, and the Conditions and Specifications as prepared by the Town or its consultant hereinafter called "Engineer", who has been identified by the endorsement of the Contractor's written proposal, and the General Conditions, Supplemental Conditions, and Special Provisions of this Agreement, and the payment, performance, and maintenance bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Agreement.

ARTICLE 1. The Contract Documents shall consist of the following documents:

- A. The Construction Agreement;
- B. Properly executed Change Orders and Field Orders in writing and executed by the Town, the last in time being first in precedence;
- C. Any listed and numbered addenda;
- D. Special Provisions;

- E. Supplementary Conditions;
- F. Construction Drawings or Plans;
- G. Technical Specifications;
- H. Town's Standard Construction Details;
- I. The most current edition of the *Town of Flower Mound Design Criteria and Construction Standards* (by reference);
- J. *Occupational Safety and Health Standards – Excavation*, 20 CFR Part 1926 (by reference);
- K. *Texas Manual on Uniform Traffic Control Devices (TMUTCD)* (by reference);
- L. The General Conditions;
- M. *Public Works Construction Standards - North Central Texas, as amended* (by reference);
- N. Notice to Bidders;
- O. Instructions to Bidders;
- P. The Town's written notice to proceed to Contractor;
- Q. The Contractor's Bid Proposal;
- R. The Performance Bond, Payment Bond and Maintenance Bond; and
- S. Bid materials distributed by the Town that relate to the Project.

These Contract Documents are incorporated by reference into this Agreement as if set out in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided; however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed herein above. If, however, there exists a conflict or inconsistency between the Technical Specifications and the Construction Drawings, it shall be the Contractor's obligation to seek clarification as to which requirements or provisions control before undertaking any work on that component of the project. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the project, the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair, and/or correct that component of the project.

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **Two Hundred Twenty Seven Thousand, Seven Hundred Seventy Eight Dollars and No Cents (\$227,778.00)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of one hundred twenty (120) calendar days, and final completion of one hundred fifty (150) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

ARTICLE 3. Before commencing work, the Contractor shall, at its own expense, procure, pay for, and maintain the insurance coverage required by the Contract Documents written by companies approved by the State of Texas and acceptable to the Town of Flower Mound. Contractor shall provide the Town Purchasing Manager with certificates of insurance indicating coverage’s required by the Contract Documents. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificate of Insurance similar to the ACORD Form are acceptable. Town will not accept Memorandums of Insurance or Binders as proof of insurance. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.

ARTICLE 4. The Contractor shall procure and pay for performance and payment bonds applicable to the work in the amount of the total bid price. The Contractor shall also procure and pay for a maintenance bond applicable to the work in the amount of one hundred percent (100%) of the total bid price. The period of the Maintenance Bond shall be two years from the date of acceptance of all work done under the contract, to cover the guarantee as set forth in the Special Conditions. The performance, payment, and maintenance bonds shall be issued on the forms attached to this Construction Agreement. Other performance, payment, and maintenance bond forms shall not be accepted. Among other things, these bonds shall apply to any work performed during the two-year warranty period after acceptance as described in this Construction Agreement.

The performance, payment, and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Town, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment, and maintenance bonds upon Town request. In addition to the foregoing requirements if the amount of the bond exceeds One Hundred

Thousand and Zero/One Hundredths Dollars (\$100,000.00) the bond must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand and Zero/One Hundredths Dollars (\$100,000.00) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570.

ARTICLE 5. It is hereby further agreed that in consideration of the faithful performance of the work by the Contractor, the Town shall pay the Contractor the compensation due him by reason of said faithful performance of the work in accordance with the provisions of this Agreement. As it completes portions of the Work, the Contractor may request progress payments from the Town. Progress payments shall be made by the Town based on the Town's estimate of the value of the Work properly completed by the Contractor since the time the last progress payment was made. The "estimate of the value of the work properly completed" shall include the net invoice value of acceptable, non-perishable materials actually delivered to and currently at the job site only if the Contractor provides to the Town satisfactory evidence that material suppliers have been paid for these materials.

No progress payment shall be due to the Contractor until the Contractor furnishes to the Town:

1. copies of documents reasonably necessary to aid the Town in preparing an estimate of the value of Work properly completed;
2. full releases of liens, including releases from subcontractors providing materials or delivery services relating to the Work, in a form acceptable to the Town releasing all liens or claims relating to goods and services provided up to the date of the most recent previous progress payment;
3. an updated and current schedule clearly detailing the project's critical path elements; and
4. any other documents required under the Contract Documents.

Progress payments shall not be made more frequently than once every thirty (30) calendar days unless the Town determines that more frequent payments are appropriate. Further, progress payments are to be based on estimates and these estimates are subject to correction through the adjustment of subsequent progress payments and the final payment to Contractor. If the Town determines after final payment that it has overpaid the Contractor, then Contractor agrees to pay to the Town the overpayment amount specified

by the Town within thirty (30) calendar days after it receives written demand from the Town.

The fact that the Town makes a progress payment shall not be deemed to be an admission by the Town concerning the quantity, quality, or sufficiency of the Contractor's work. Progress payments shall not be deemed to be acceptance of the Work nor shall a progress payment release the Contractor from any of its responsibilities under the Contract Documents.

After determining the amount of a progress payment to be made to the Contractor, the Town shall withhold a percentage of the progress payment as retainage. The amount of retainage withheld from each progress payment shall be set depending upon the value of the Contract Work on the effective date of the Contract:

<u>Contract Amount</u>	<u>Retainage Percentage</u>
Up to \$25,000.00	15%
\$25,000.00 to \$400,000.00	10%
Over \$400,000.00	5%

Retainage shall be withheld and may be paid to:

1. ensure proper completion of the Work. The Town may use retained funds to pay replacement or substitute contractors to complete unfinished or defective work;
2. ensure timely completion of the Work. The Town may use retained funds to pay liquidated damages; and
3. provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents.

Retained funds shall be held by the Town in accounts that shall not bear interest. Retainage not otherwise withheld in accordance with the Contract Documents shall be returned to the Contractor as part of the final payment.

ARTICLE 6. The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that the Work has not been performed in accordance with the Contract Documents. The Town may use these funds to pay replacement or substitute contractors to complete unfinished or defective Work.

The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents. Amounts withheld under this section shall be in addition to any retainage.

ARTICLE 7. When the erosion control measures have been completed, the Contractor shall request that the Town perform a final inspection. The Town shall inspect the Work. If the Town determines that the Work has been completed in accordance with the Contract Documents and per TPDES General Construction Permit, it shall issue a written Notice of Acceptance of the Work. If the Town determines that the Work has not been completed in accordance with the Contract Documents or TPDES General Construction Permit, then it shall provide the Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

ARTICLE 8. When the Work is completed, the Contractor shall request that the Town perform a final inspection. The Town shall inspect the Work. If the Town determines that the Work has been completed in accordance with the Contract Documents, it shall issue a written notice of acceptance of the Work. If the Town determines that the Work has not been completed in accordance with the Contract Documents, then it shall provide the Contractor with a written list of items to be completed before another final inspection shall be scheduled.

It is specifically provided that Work shall be deemed accepted on the date specified in the Town's written notice of acceptance of the Work. The Work shall not be deemed to be accepted based on "substantial completion" of the Work, use or occupancy of the Work, or for any reason other than the Town's written Notice of Acceptance. Further, the issuance of a certificate of occupancy for all or any part of the Work shall not constitute a Notice of Acceptance for that Work.

In its discretion, the Town may issue a Notice of Acceptance covering only a portion of the Work. In this event, the notice shall state specifically what portion of the Work is accepted.

ARTICLE 9. After all Work required under the Contract Documents has been completed, inspected, and accepted, the Town shall calculate the final payment amount promptly after necessary measurements and computations are made. The final payment amount shall be calculated to:

1. include the estimate of the value of Work properly completed since the date of the most recent previous progress payment;
2. correct prior progress payments; and
3. include retainage or other amounts previously withheld that are to be returned to Contractor, if any.

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to, issue final payment using joint checks.

Final payment to the Contractor shall not be due until the Contractor has supplied to the Town copies of all documents that the Town determines are reasonably necessary to ensure both that the final payment amount is properly calculated and that the Town has satisfied its obligation to administer the Agreement in accordance with applicable law.

Subject to the requirements of the Contract Documents, the Town shall pay the Final Payment within thirty (30) calendar days after the date specified in the Notice of Acceptance. This provision shall apply only after all Work called for by the Contract Documents has been accepted.

ARTICLE 10. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE TOWN, ITS TOWN COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES, OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OF THE WORK OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS, OR EMPLOYEES OF EITHER CONTRACTOR OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS").

BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY.

INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

In its sole discretion, the Town shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the Town. Contractor shall retain approved counsel for the Town within seven business days after receiving written notice from the Town that it is invoking its right to indemnification under this

Agreement. If Contractor does not retain counsel for the Town within the required time, then the Town shall have the right to retain counsel and the Contractor shall pay the attorneys' fees and expenses.

The Town retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so. To the extent that Town elects to provide and pay for any such costs, Contractor shall indemnify and reimburse Town for such costs.

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of _____ and Zero/One Hundredths Dollars (\$000.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of _____ and Zero/One Hundredths Dollars (\$000.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

ARTICLE 12. For a two-year period after the date specified in a written notice of acceptance of Work and authorization to make final payment by the Flower Mound Town Council, Contractor shall provide and pay for all labor and materials that the Town determines are necessary to correct all defects in the Work arising because of defective materials or workmanship supplied or provided by Contractor or any subcontractor. This shall also include areas of vegetation that did meet TPDES General Construction Permit during final close out but have since become noncompliant.

Forty-five (45) to sixty (60) calendar days before the end of the two-year warranty period, the Town may make a warranty inspection of the Work. The Town shall notify the Contractor of the date and time of this inspection so that a Contractor representative may be present. After the warranty inspection, and before the end of the two-year warranty period, the Town shall mail to the Contractor a written notice that specifies the defects in the Work that are to be corrected.

The Contractor shall begin the remedial work within ten (10) calendar days after receiving the written notice from the Town. If the Contractor does not begin the remedial work timely or prosecute it diligently, then the Town may pay for necessary labor and materials to effect repairs and these expenses shall be paid by the Contractor, the performance bond surety, or both.

If the Town determines that a hazard exists because of defective materials and workmanship, then the Town may take steps to alleviate the hazard, including making repairs. These steps may be taken without prior notice either to the Contractor or its surety. Expenses incurred by the Town to alleviate the hazard shall be paid by the Contractor, the performance bond surety, or both.

Any Work performed by or for the Contractor to fulfill its warranty obligations shall be performed in accordance with the Contract Documents. By way of example only, this is to ensure that Work performed during the warranty period is performed with required insurance and the performance and payment bonds still in effect.

Work performed during the two-year warranty period shall itself be subject to a one-year warranty. This warranty shall be the same as described in this section.

The Town may make as many warranty inspections as it deems appropriate.

ARTICLE 13. The Contractor shall be responsible for ensuring that it and any subcontractors performing any portion of the Work required under the Contract Documents comply with all applicable federal, state, county, and municipal laws, regulations, and rules that relate in any way to the performance and completion of the Work. This provision applies whether or not a legal requirement is described or referred to in the Contract Documents.

Ancillary/Integral Professional Services: In selecting an architect, engineer, land surveyor, or other professional to provide professional services, if any, that are required by the Contract Documents, Contractor shall not do so on the basis of competitive bids but shall make such selection on the basis of demonstrated competence and qualifications to perform the services in the manner provided by Section 2254.004 of the Texas Government Code and shall so certify to the Town the Contractor's agreement to comply with this provision with Contractor's bid.

ARTICLE 14. The Contractor shall sign the Construction Agreement, and deliver signed performance, payment, and maintenance bonds and proper insurance policy endorsements (and/or other evidence of coverage) within fifteen (15) calendar days after the Town makes available to the Contractor copies of the Contract Documents for signature. Six copies of the Contract Documents shall be signed by an authorized representative of the Contractor and returned to the Town.

The Construction Agreement "effective date" shall be the date on which the Town Council acts to approve the award of the Contract for the Work to Contractor. It is expressly provided; however, that the Town Council delegates the authority to the Town Manager or his designee to rescind the Contract award to Contractor at any time before the Town delivers to the Contractor a copy of this Construction Agreement that bears the signature of the Mayor or Town Manager and Town Secretary or their authorized designees. The purpose of this provision is to ensure that:

1. the Contractor timely delivers to the Town all bonds and insurance documents; and
2. the Town retains the discretion not to proceed if the Town Manager or his designee determines that information indicates that the Contractor was not the lowest responsible bidder or that the Contractor cannot perform all of its obligations under the Contract Documents.

THE CONTRACTOR AGREES THAT IT SHALL HAVE NO CLAIM OR CAUSE OF ACTION OF ANY KIND AGAINST THE TOWN, INCLUDING A CLAIM FOR BREACH OF CONTRACT, NOR SHALL THE TOWN BE REQUIRED TO PERFORM UNDER THE CONTRACT DOCUMENTS, UNTIL THE DATE THE TOWN DELIVERS TO THE CONTRACTOR A COPY OF THE CONSTRUCTION AGREEMENT BEARING THE SIGNATURES JUST SPECIFIED.

Contractor stipulates that the Town is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, the Town does not waive any of its immunities from suit and/or liability, except as otherwise expressly and specifically provided herein or as specifically provided by law.

Payments under this Contract are due and payable in accordance with the provisions of Texas Government Code Section 2251.022. Interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Contractor and any subcontractor shall pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of this Agreement. The Town has determined the general prevailing rate of per diem wages in the locality in which the public work is to be constructed by using the prevailing wage rates as determined by the United States Department of Labor in accordance with the Davis-Bacon Act as applicable to this Project. Contractor or a subcontractor who violates this provision shall be liable for the penalty specified in Texas Government Code Section 2258.023, which as of the date of this Agreement is \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. Town reserves the right to receive and review payroll records, payment records, and earnings statements of employees of Contractor, and of Contractor's Subcontractors, and of Sub-Subcontractors to verify payments made to same. However, no Claim for additional compensation shall be considered by Town because of payments of wage rates in excess of the applicable rate provided herein.

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind

so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

The Contractor represents and warrants the following to the Town (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Town to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

1. that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
2. that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
3. that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and
4. that the execution of the Contract and its performance thereof are within its duly-authorized powers.

The Contract Documents shall be construed and interpreted by applying Texas law. Exclusive venue for any litigation concerning the Contract Documents shall be Denton County, Texas.

Although the Construction Agreement has been drafted by the Town, should any portion of the Construction Agreement be disputed, the Town and Contractor agree that it shall not be construed more favorably for either party.

The Contract Documents are binding upon the Town and Contractor and shall inure to their benefit as well as that of their respective successors and assigns.

If Town Council approval is not required for the Construction Agreement under applicable law, then the Construction Agreement "effective date" shall be the date on which the Mayor or Town Manager and Town Secretary or their designees have signed the Construction Agreement. If the Mayor or Town Manager and Town Secretary sign on different dates, then the later date shall be the effective date.

IN WITNESS WHEREOF, the Town and the Contractor, respectively, have caused this Agreement to be duly executed in the day and year first herein written in six copies, all of which to all intents and purposes shall be considered as the original.

This Agreement will be effective on the ____ day of _____, 20__.

TOWN OF FLOWER MOUND

CONTRACTOR

Thomas E. Hayden, MAYOR

(Signature)

(Printed Name)

(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST: _____
Theresa Scott, TOWN SECRETARY

ATTEST: _____ (Signature)

(Position)

APPROVED AS TO FORM AND
LEGALITY:

TOWN ATTORNEY



TOWN COUNCIL AGENDA ITEM NO. 06

CONSENT ITEM

DATE: May 16, 2016

FROM: Rochelle Ragas, Purchasing Manager

ITEM: Consider approval of the award of Request for Proposal Number 2016-41 to Oxley Williams Tharp Architects for architectural design services for Police Department and Central Fire Station Renovations in an estimated amount of \$75,000; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On February 29, 2016 a Request for Proposal was issued and a notice to proposers was advertised. A review was conducted by the Facilities Management Division, Police Department and Fire Department to ensure all requirements were met as specified for this service. Oxley Williams Tharp Architects was selected as the contractor for this service.

The Contractors will perform design consultation, pre-design/site strategy, document existing conditions, schematic design, and design development for the renovation of specific areas of two municipal facilities located at the Police Department and Central Fire Station.

FISCAL IMPACT: \$75,000

Proposed Expenditure:	Account Number(s):
\$45,500	318-560-43500
\$29,500	319-560-63000

Finance Review by: Tammy Wilson, Executive Director of Financial Services

LEGAL REVIEW: The document was reviewed by Ashely Dierker of Taylor, Olson, Adkins, Sralla and Elam, LLP

ATTACHMENTS:

1. Contract

RECOMMENDATION: Move to approve the award of Request for Proposal Number 2016-41 to Oxley Williams Tharp Architects for architectural design services for Police Department and Central Fire Station Renovations in an estimated amount of \$75,000; and authorization for the Mayor to execute same on behalf of the Town.



AIA® Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Eleventh day of April in the year Two Thousand Sixteen
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Town of Flower Mound
2121 Cross Timbers Rd.
Flower Mound, Texas 75028
Telephone Number: 972-874-6000

and the Architect:
(Name, legal status, address and other information)

Oxley Williams Tharp Architects, PLLC
509 Pecan Street, Suite 100
Fort Worth, Texas 76102
Telephone Number: 817-993-9844

for the following Project:
(Name, location and detailed description)

Flower Mound Police and Central Fire Station Renovations
Flower Mound, Texas

Renovations to the existing Police Station and Central Fire Station. Construction cost for both projects is estimated to be \$950,000.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
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13	SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Police and Court Building: The scope of work in this building will involve the study of various improvements of the existing jail area to enhance security (add security vestibules) and add cell areas and storage. The scope of work will also include construction documents for the jail area. The existing men's locker area will be studied to alleviate overcrowding and allow for future expansion. The scope of work also includes the study of the exterior parking for existing/future expansion for Police vehicles, and outside storage areas/small garage building.

Central Fire Station: Scope of work will include schematic design and preparation of construction documents including cost estimates to remodel the crew restroom to include the installation of at least one sink; and the relocation of the main entry in administration from the west to east side of the building. Scope also includes schematic design and construction documents including cost estimates for expansion of the administration and training areas.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

Init.

To be determined.

.2 Substantial Completion date:

To be determined.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

\$2,000,000.00 aggregate. \$1,000,000.00 per occurrence.

.2 Automobile Liability

\$1,000,000.00

.3 Workers' Compensation

\$1,000,000.00

.4 Professional Liability

\$2,000,000.00 aggregate. \$1,000,000.00 per occurrence.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information

Init.

furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

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§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by
(Paragraph deleted)

- .2 distributing the Bidding Documents digitally to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to

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exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings

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and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

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(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™–2009)	Architect	
§ 4.1.2 Multiple preliminary designs	Not Provided	
§ 4.1.3 Measured drawings	Not Provided	
§ 4.1.4 Existing facilities surveys	Not Provided	
§ 4.1.5 Site Evaluation and Planning (B203™–2007)	Not Provided	
§ 4.1.6 Building Information Modeling (E202™–2008)	Not Provided	
§ 4.1.7 Civil engineering	Not Provided	
§ 4.1.8 Landscape design	Not Provided	
§ 4.1.9 Architectural Interior Design (B252™–2007)	Architect	
§ 4.1.10 Value Analysis (B204™–2007)	Not Provided	
§ 4.1.11 Detailed cost estimating	Architect	
§ 4.1.12 On-site Project Representation (B207™–2008)	Not Provided	
§ 4.1.13 Conformed construction documents	Not Provided	
§ 4.1.14 As-Designed Record drawings	Not Provided	
§ 4.1.15 As-Constructed Record drawings	Not Provided	
§ 4.1.16 Post occupancy evaluation	Not Provided	
§ 4.1.17 Facility Support Services (B210™–2007)	Not Provided	
§ 4.1.18 Tenant-related services	Not Provided	
§ 4.1.19 Coordination of Owner's consultants	Architect	
§ 4.1.20 Telecommunications/data design	Not Provided	
§ 4.1.21 Security Evaluation and Planning (B206™–2007)	Not Provided	
§ 4.1.22 Commissioning (B211™–2007)	Not Provided	
§ 4.1.23 Extensive environmentally responsible design	Not Provided	
§ 4.1.24 LEED® Certification (B214™–2012)	Not Provided	
§ 4.1.25 Fast-track design services	Not Provided	
§ 4.1.26 Historic Preservation (B205™–2007)	Not Provided	
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007)	Not Provided	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

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- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Ten (10) visits to the site by the Architect over the duration of the Project during construction
- .3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Twenty-Four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

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§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

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§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of

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all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them first informally, and second by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other (Specify)

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

(Paragraph deleted)

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Texas, and venue for any dispute shall be in any court of competent jurisdiction in Denton County, Texas.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

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§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) such information as required by the Texas Public Information Act, or as otherwise required by law.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Police Station Renovations: Lump sum fee of \$33,500.00

Central Fire Station Renovations: Lump sum fee of \$24,300.00

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Those services designated as being provided by the Architect in Section 4.1 shall be included in the compensation for Basic Services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

To be negotiated at time additional services are deemed necessary.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10.00 %), or as otherwise stated below:

Init.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Fifteen	percent (	15	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate
Principal	\$140/hr
Project Manager/Architect	\$90/hr
Architectural Intern	\$65/hr

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10.00 %) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

The licensing fee shall be calculated by adding 25% of the total fee for the current design phase to the amount due for the percentage complete of that design phase at the time of termination. Phases are outlined in section 11.5 and the schedule prepared by the Architect and submitted to the Owner as set forth in section 3.1.3. Any outstanding payments and balances due to the Architect shall be paid prior to the Architect releasing the Instruments of Service.

§ 11.10 PAYMENTS TO THE ARCHITECT

(Paragraph deleted)

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid as outlined in the Texas Prompt Payment Act, Section 2251, Subchapter B shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

10.00 % per annum

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

By approving the design documents, the Owner does not waive any claim against the Architect for any design defect reflected in the Contract Documents. Architect acknowledges that the Owner is not a design professional, is not responsible for any design defects, and relies upon the professional judgment of the Architect as to its design.

Notwithstanding any other provisions herein, the Architect is required to conduct regular visits to the construction site as often as necessary in the discretion of the Architect to observe the site to evaluate and determine whether the Contractor's Work is on track with the Project schedule and calendar and to determine that the Work is proceeding in substantial accordance with the intent and the schedule set out in the Contract Documents. The Architect shall visit the site prior to all critical stages, such as concrete pours, steps contributory to the integrity of the structures, and covering interior work, such as plumbing, wiring, and mechanical systems. The Architect shall provide the Owner with written notice whenever the Architect determines that the Contractor is falling behind the Project schedule or that the Work is not in conformity with the Contract Documents. Notwithstanding anything herein to the contrary, the Architect shall not have control over or responsibility for any contractor's construction means, methods, techniques, sequences, procedures, or safety programs as this is the sole responsibility of each contractor.

The Architect's site visits do not relieve the contractors of the obligation to perform the Work in accordance with the Construction Documents or the Contract Documents.

Where the Architect observes Work that does not conform to the Contract Documents, the Architect is required to promptly notify the Owner in writing of the Architect's intention to reject the Work unless the Owner excuses the Work in writing within 24 hours of being notified.

Any services of the Architect made necessary by the discovery of a major defect or deficiency in the Work of the

Contractor which the Architect observed but failed to report, shall be made at no additional cost to the Owner.

Notwithstanding any other provisions herein, the Architect shall not be entitled to payment, including for Basic Services, Reimbursable Expenses, Additional Services, or other compensation, attributable to the breach of the standard of care by the Architect or Architect's consultants.

The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's observations and/or evaluation of the Work as provided herein, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Construction Documents and the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect. Notwithstanding anything in this Agreement to the contrary, the Owner understands and acknowledges that the Architect does not guarantee or warrant the quality or performance of the Work, as this is the responsibility of each contractor.

Notwithstanding any other provisions herein, Owner's City Council is the only representative of Owner, a municipality, having the power to enter into or amend a contract, to approve changes in the Scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price, agree to an extension of the dates of Substantial Completion or Final Completion, or approve changes in the Architect's compensation. Owner's City Council may designate one or more representatives with authority to sign documents after City Council approval and/or to advise and consult with Architect for day-to-day operations under the agreement.

It is distinctly agreed that by virtue of this Agreement, no architect, engineer, mechanic, contractor, materialman, artisan, laborer or subcontractor, whether skilled or unskilled, shall ever, in any manner have, claim or acquire any lien upon the Project of whatever nature or kind so erected or to be erected by virtue of this Agreement, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

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- .3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER

(Signature)

(Printed name and title)

ARCHITECT

(Signature)

 Andrew Oxley, Principal
(Printed name and title)

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Additions and Deletions Report for **AIA® Document B101™ – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

AGREEMENT made as of the Eleventh day of April in the year Two Thousand Sixteen

...

Town of Flower Mound
2121 Cross Timbers Rd.
Flower Mound, Texas 75028
Telephone Number: 972-874-6000

...

Oxley Williams Tharp Architects, PLLC
509 Pecan Street, Suite 100
Fort Worth, Texas 76102
Telephone Number: 817-993-9844

...

(Name, location and detailed description)

Flower Mound Police and Central Fire Station Renovations

Flower Mound, Texas

Renovations to the existing Police Station and Central Fire Station. Construction cost for both projects is estimated to be \$950,000.

PAGE 2

Police and Court Building: The scope of work in this building will involve the study of various improvements of the existing jail area to enhance security (add security vestibules) and add cell areas and storage. The scope of work will also include construction documents for the jail area. The existing men's locker area will be studied to alleviate overcrowding and allow for future expansion. The scope of work also includes the study of the exterior parking for existing/future expansion for Police vehicles, and outside storage areas/small garage building.

Central Fire Station: Scope of work will include schematic design and preparation of construction documents including cost estimates to remodel the crew restroom to include the installation of at least one sink; and the relocation of the main entry in administration from the west to east side of the building. Scope also includes schematic design and construction documents including cost estimates for expansion of the

administration and training areas.

PAGE 3

To be determined.

...

To be determined.

...

\$2,000,000.00 aggregate. \$1,000,000.00 per occurrence.

...

\$1,000,000.00

...

\$1,000,000.00

...

\$2,000,000.00 aggregate. \$1,000,000.00 per occurrence.

PAGE 5

- ~~1~~ — procuring the reproduction of Bidding Documents for distribution to prospective bidders;
~~2~~ — distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned ~~2~~ distributing the Bidding Documents digitally to prospective bidders;

PAGE 9

§ 4.1.1	Programming (B202™–2009)	Architect	
§ 4.1.2	Multiple preliminary designs	Not Provided	
§ 4.1.3	Measured drawings	Not Provided	
§ 4.1.4	Existing facilities surveys	Not Provided	
§ 4.1.5	Site Evaluation and Planning (B203™–2007)	Not Provided	
§ 4.1.6	Building Information Modeling (E202™–2008)	Not Provided	
§ 4.1.7	Civil engineering	Not Provided	
§ 4.1.8	Landscape design	Not Provided	
§ 4.1.9	Architectural Interior Design (B252™–2007)	Architect	
§ 4.1.10	Value Analysis (B204™–2007)	Not Provided	
§ 4.1.11	Detailed cost estimating	Architect	
§ 4.1.12	On-site Project Representation (B207™–2008)	Not Provided	
§ 4.1.13	Conformed construction documents	Not Provided	
§ 4.1.14	As-Designed Record drawings	Not Provided	
§ 4.1.15	As-Constructed Record drawings	Not Provided	
§ 4.1.16	Post occupancy evaluation	Not Provided	
§ 4.1.17	Facility Support Services (B210™–2007)	Not Provided	
§ 4.1.18	Tenant-related services	Not Provided	
§ 4.1.19	Coordination of Owner's consultants	Architect	

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§ 4.1.20	Telecommunications/data design	<u>Not Provided</u>	
§ 4.1.21	Security Evaluation and Planning (B206™–2007)	<u>Not Provided</u>	
§ 4.1.22	Commissioning (B211™–2007)	<u>Not Provided</u>	
§ 4.1.23	Extensive environmentally responsible design	<u>Not Provided</u>	
§ 4.1.24	LEED® Certification (B214™–2012)	<u>Not Provided</u>	
§ 4.1.25	Fast-track design services	<u>Not Provided</u>	
§ 4.1.26	Historic Preservation (B205™–2007)	<u>Not Provided</u>	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™–2007)	<u>Not Provided</u>	

PAGE 10

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Ten (10) visits to the site by the Architect over the duration of the Project during construction
- .3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Twenty-Four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

PAGE 13

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them first informally, and second by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. ~~If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

PAGE 14

☒ Litigation in a court of competent jurisdiction

...

§ 8.3 ARBITRATION

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

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~~§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.4 CONSOLIDATION OR JOINDER~~

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

...

~~§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7. due.~~

~~§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~

...

~~§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3. State of Texas, and venue for any dispute shall be in any court of competent jurisdiction in Denton County, Texas.~~

PAGE 15

~~§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) such information as required by the Texas Public Information Act, or as otherwise required by law.~~

...

Police Station Renovations: Lump sum fee of \$33,500.00
Central Fire Station Renovations: Lump sum fee of \$24,300.00

...

Those services designated as being provided by the Architect in Section 4.1 shall be included in the compensation for Basic Services.

...

To be negotiated at time additional services are deemed necessary.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10.00 %), or as otherwise stated below:

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Schematic Design Phase	<u>Fifteen</u>	percent (	<u>15</u>	%)
Design Development Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Construction Documents Phase	<u>Forty</u>	percent (	<u>40</u>	%)
Bidding or Negotiation Phase	<u>Five</u>	percent (	<u>5</u>	%)
Construction Phase	<u>Fifteen</u>	percent (	<u>15</u>	%)

...

<u>Principal</u>	<u>\$140/hr</u>
<u>Project Manager/Architect</u>	<u>\$90/hr</u>
<u>Architectural Intern</u>	<u>\$65/hr</u>

...

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10.00 %) of the expenses incurred.

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The licensing fee shall be calculated by adding 25% of the total fee for the current design phase to the amount due for the percentage complete of that design phase at the time of termination. Phases are outlined in section 11.5 and the schedule prepared by the Architect and submitted to the Owner as set forth in section 3.1.3. Any outstanding payments and balances due to the Architect shall be paid prior to the Architect releasing the Instruments of Service.

...

~~§ 11.10.1 An initial payment of (\$) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.~~

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid (—) days after the invoice date as outlined in the Texas Prompt Payment Act, Section 2251, Subchapter B shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

% ~~10.00~~ % per annum

...

By approving the design documents, the Owner does not waive any claim against the Architect for any design defect reflected in the Contract Documents. Architect acknowledges that the Owner is not a design professional, is not responsible for any design defects, and relies upon the professional judgment of the Architect as to its design.

Notwithstanding any other provisions herein, the Architect is required to conduct regular visits to the construction site as often as necessary in the discretion of the Architect to observe the site to evaluate and determine whether the Contractor's Work is on track with the Project schedule and calendar and to determine that the Work is proceeding in substantial accordance with the intent and the schedule set out in the Contract Documents. The Architect shall visit the site prior to all critical stages, such as concrete pours, steps contributory to the integrity of the structures, and covering interior work, such as plumbing, wiring, and mechanical systems. The Architect shall provide the Owner with written notice whenever the Architect determines that the Contractor is falling behind the Project schedule or that the Work is not in conformity with the Contract Documents. Notwithstanding anything herein to the contrary, the Architect shall not have control over or responsibility for any contractor's construction means, methods, techniques, sequences, procedures, or safety programs as this is the sole responsibility of each contractor. The Architect's site visits do not relieve the contractors of the obligation to perform the Work in accordance with the Construction Documents or the Contract Documents.

Where the Architect observes Work that does not conform to the Contract Documents, the Architect is required to promptly notify the Owner in writing of the Architect's intention to reject the Work unless the Owner excuses the Work in writing within 24 hours of being notified.

Any services of the Architect made necessary by the discovery of a major defect or deficiency in the Work of the Contractor which the Architect observed but failed to report, shall be made at no additional cost to the Owner.

Notwithstanding any other provisions herein, the Architect shall not be entitled to payment, including for Basic Services, Reimbursable Expenses, Additional Services, or other compensation, attributable to the breach of the standard of care by the Architect or Architect's consultants.

The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's observations and/or evaluation of the Work as provided herein, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Construction Documents and the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect. Notwithstanding anything in this Agreement to the contrary, the Owner understands and acknowledges that the Architect does not guarantee or warrant the quality or performance of the Work, as this is the responsibility of each contractor.

Notwithstanding any other provisions herein, Owner's City Council is the only representative of Owner, a municipality, having the power to enter into or amend a contract, to approve changes in the Scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price, agree to an extension of the dates of Substantial Completion or Final Completion, or approve changes in the Architect's compensation. Owner's City Council may designate one or more representatives with authority to sign documents after City Council approval and/or to advise and consult with Architect for

day-to-day operations under the agreement.

It is distinctly agreed that by virtue of this Agreement, no architect, engineer, mechanic, contractor, materialman, artisan, laborer or subcontractor, whether skilled or unskilled, shall ever, in any manner have, claim or acquire any lien upon the Project of whatever nature or kind so erected or to be erected by virtue of this Agreement, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement.

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Andrew Oxley, Principal

Certification of Document's Authenticity**AIA® Document D401™ – 2003**

I, Andrew Oxley, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:20:52 on 04/29/2016 under Order No. 7790424924_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)

PRINCIPAL
(Title)

APRIL 29, 2016
(Dated)



TOWN COUNCIL AGENDA ITEM NO. 07

CONSENT ITEM

DATE: May 16, 2016

FROM: Rochelle Ragas, Purchasing Manager

ITEM: Consider approval of the purchase of one new 2017 International 7400 Tandem Dump Truck with snow plow hookups, PTO, controls, and hydraulics to include installing Town of Flower Mound owned snow plow attachment and related from Southwest International Trucks, through the Buy Board cooperative purchasing program, in the total amount of \$117,134.21; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Public Works Department is requesting the purchase of a new 2017 International 7400 Tandem Dump Truck with snow plow hookups, PTO, controls, and hydraulics to include installing Town of Flower Mound owned snow plow attachment, in the amount of \$117,134.21.

The Town of Flower Mound and the Texas Local Government Purchasing Cooperative entered into a cooperative agreement, effective February 17, 2003, which allows our local government to purchase certain goods or services. The agreement renews automatically each fiscal year, unless cancelled by either party.

FISCAL IMPACT: \$117,134.21

Proposed Expenditure:	Account Number(s):
\$102,849.00	565-450-84500-6130
\$14,285.21	230-690-94100-6130

Finance Review by: Tammy Wilson, Executive Director of Financial Services *tw*

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Quote from Southwest International Trucks
2. Bid Award Recommendation

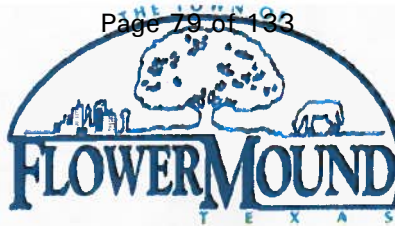
RECOMMENDATION: Move to approve the purchase of one new 2017 International 7400 Tandem Dump Truck with snow plow hookups, PTO, controls, and hydraulics to include installing Town of Flower Mound owned snow plow attachment and related from Southwest International Trucks, through the Buy Board cooperative purchasing program, in the total amount of \$117,134.21; and authorization for the Mayor to execute same on behalf of the Town.

Texas Local Government Purchasing Cooperative

The Buy Board

PRICING WORKSHEET

Buying Agency: Flower Mound Texas		Date Prepared 3/8/2016	
Southwest International Trucks		Contract 430-13	
Product Description: 2017 International 7400 tandem dump truck			
54,000 GVWR		7400 6x4 ls base chassis	
Contact Person:		Item: Base Chassis Bid	\$ 69,878.01
B: Options Option cost is 80% of MSRP			
front tow hooks	58.40	Federal emissions	350.00
frame reinforcement	1,320.00	remote engine control	36.00
front frame extension	512.00	Allison 3500 RDS 5 spd auto trans	5,853.60
wheelbase	488.80	Modine trans oil cooler	533.60
Meritor 14K front axle	560.00	synthetic trans oil	162.40
14K front springs	195.20	Meritor 40 K rear tandem axle	59.20
Air trailer connections to EOF	433.60	Hendrickson RT 40K rear suspension	171.20
16.5 x 5 HD front brakes	0.00	rear axle identity	152.80
Switchback horizontal exhaust SCR	895.20	50 gal fuel tank	0.00
power source on dash	24.00	7 gal DEF tank	0.00
body builder wiring	80.00	air ride driver seat	92.80
electric trailer brake wiring	290.40	fixed passenger seat	294.40
2 1850CCA batteries	44.80	air conditioner	658.40
back up alarm	96.00	22.5 x 9 front wheels	265.60
LED truck lights	152.80	8.25 x22.5 x 0.472 HD rear wheels	497.60
aux trailer feed circuit	63.20	Continental 315/80R22.5 20 ply front	508.80
battery box	55.20	continental 11R22.5 14 ply rear HDR2	224.00
engine shutdow system	117.60		
block heater	73.60		
N9 diesel 300 hp/ 860 torq	240.00		
Subtotal Column 1:	\$ 5,700.80	Subtotal Column 2:	\$9,860.40
Total Options		\$	15,561.20
CHASSIS WITH FACTORY OPTIONS			\$ 85,439.21
TOTAL BODY PRICE See attached body spec sheet			
Warren13/15 yard dump with power beyond #6666			\$19,560.00
Additional Options: BTE snow plow equipment and PTO to operate plow			11,395.00
Buy Board Fee			400.00
Transportation			75.00
DOT Inspection with Fire Extinguisher and Road Flare Kit			265.00
TOTAL BUY BOARD PRICE			\$117,134.21
Tom Claiborne			
Southwest International Trucks-Arlington.			
Arlington, Texas, 76010			
Fax# 817-861-7084			
Office# 817-461-2931			
E-mail Address: tom.claiborne@swit-tx.com			
To purchase this unit, please issue a purchase order to Southwest International Trucks, Inc. and send it to the Buy Board.			
We will order your truck when we receive notification from the Buy Board of your purchase order.			
Thank you,			
Tom Claiborne			



Bid Award Recommendation

Contract Buy Board Contract #430-13

Date: 4-19-2016

Description: **New 2017 International 7400 Tandem Dump Truck
w/snow plow hook ups/PTO/controls/hydraulics etc.
to include installing Town of Flower Mound owned
snow plow attachment and related.**

Replaces: Unit # 9410-13
Desc: 1990 Intenational 6-yd dump truck

Bidder #1: **Southwest International Trucks**

bid: **2017 International 7400 tandem dump truck w/snow plow setup
and Town of Flower Mound snow plow attachment mounted.**

See Quote for specs

Quote total: **\$117,134.21**

It is Fleet Services recommendation to award the bid to **Southwest International Trucks** as the lowest responsible bidder in the amount of **\$117,134.21** using **BuyBoard Contract #430-13..**

****Recommendation subject to available funds.**

H. Deats Stewart

Fleet Services Manager

04-19-2016

Date



TOWN COUNCIL AGENDA ITEM NO. 08

CONSENT ITEM

DATE: May 16, 2016

FROM: Ken Parr, Executive Director of Public Works

ITEM: Consider approval of an Interlocal Agreement between the Town of Flower Mound and the City of Highland Village to allow for a cooperative purchasing agreement; and authorize the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: Over the years the Town has entered into several cooperative purchasing agreements, pursuant to the authority contained in Section 791.025 of the Texas Government Code, as amended, with other governmental entities so that Town may avail itself of prices discounts and other advantages gained by said purchasing agreements. The City of Highland Village has indicated that they would like to utilize one of Flower Mounds existing purchasing agreements and this agreement will allow that to occur. This agreement would also allow either municipality to utilize the other parties existing purchasing agreements in the future.

Any future purchase by the Town utilizing this agreement will require either Town Manager or Town Council approval. Town Ordinance 07-11 authorizes the Town Manager to approve any purchases not exceeding \$15,000. All purchases exceeding \$15,000.00 will require Town Council Approval.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: James Donovan, of Taylor, Olson, Adkins, and Elam L.L.P, has reviewed the interlocal agreement as to form and legality.

ATTACHMENTS:

1. Proposed Interlocal Agreement

RECOMMENDATION: Move to approve an Interlocal Agreement between the Town of Flower Mound and the City of Highland Village to allow for a cooperative purchasing agreement; and authorize the Mayor to execute same on behalf of the Town.

INTERLOCAL AGREEMENT

This Interlocal Agreement ("the Agreement") is made and entered into this ____ day of _____, 2016, by and between the TOWN OF FLOWER MOUND, TEXAS, a municipal corporation ("the TOWN") and the CITY OF HIGHLAND VILLAGE ("the CO-OP ENTITY"), each organized and existing under the laws of the State of Texas, and acting by, through and under the authority of their respective governing bodies and officials in accordance with the "Interlocal Cooperation Act," Chapter 791 of the Texas Government Code (the "Act").

WHEREAS, the TOWN and the CO-OP ENTITY are both governmental entities engaged in the purchase of goods and services, which is a recognized governmental function; and

WHEREAS, the TOWN and the CO-OP ENTITY wish to enter into this Agreement to set forth the terms and conditions upon which they may purchase various goods and services commonly utilized by each entity; and

WHEREAS, participation in this Agreement will be highly beneficial to the taxpayers of the TOWN and the CO-OP ENTITY through the anticipated savings to be realized and is of mutual concern to the parties; and

WHEREAS, the TOWN and the CO-OP ENTITY have current funds available to satisfy any fees owed pursuant to this Agreement.

NOW THEREFORE, the TOWN and the CO-OP ENTITY, for and in consideration of the premises and the mutual covenants set forth in this Agreement, and pursuant to the authority granted by the governing bodies of each of the parties hereto, do hereby agree as follows:

1. The TOWN and the CO-OP ENTITY may cooperate in the purchase of various goods and services commonly utilized by the parties, where available and applicable, and may purchase goods and services from vendors under present and future contracts;
2. The TOWN and the CO-OP ENTITY shall each be individually responsible for payments directly to the vendor and for the vendor's compliance with all conditions of delivery and quality of the purchased items under such contracts. The TOWN and the CO-OP ENTITY shall each make their respective payments from current revenues available to the paying party;
3. The Agreement shall be in full force and effect until terminated by either party;
4. Notwithstanding anything herein to the contrary, participation in this Agreement may be terminated by either party upon thirty (30) days written notice to the other party;
5. The undersigned officer and/or agents of the party(ies) hereto are duly authorized officials and possess the requisite authority to execute this Agreement on behalf of the parties;

6. This Agreement may be executed separately by the parties, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement.

8. The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

9. This Agreement embodies the entire agreement between the parties and may only be modified in writing executed by both parties.

10. This Agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. Neither party will assign or transfer an interest in this Agreement without the written consent of the other party.

11. It is expressly understood and agreed that, in the execution of this Agreement, neither party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

12. The declarations, determinations and findings declared, made and found in the preamble to this Agreement are hereby adopted, restated and made part of the operative provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective upon execution and dating by each party. This Agreement shall be effective from the last date signed and marked on this Agreement by a participating party.

APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS:

BY:

Thomas E. Hayden, Mayor

DATE: _____

ATTEST:

Theresa Scott, Town Secretary

APPROVED AS TO FORM:

Bryn Meredith, Town Attorney

**APPROVED BY THE CITY COUNCIL OF THE CITY OF HIGHLAND VILLAGE,
TEXAS:**

BY:

Michael Leavitt (or His Designee), City Manager

DATE: _____

ATTEST:

Angela Miller, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Kevin B. Laughlin, Town Attorney



TOWN COUNCIL AGENDA ITEM NO. 09

CONSENT ITEM

DATE: May 16, 2016

FROM: Kari Biddix, Park Development Manager

ITEM: Consider approval of a resolution approving parkland design and improvements for the Kierstin Eaddy Memorial.

BACKGROUND INFORMATION: The PALS Board, on April 2, 2015, made a recommendation that cash, in the amount of \$215,071.34, be accepted in lieu of the otherwise required 3.2592 acres of park land dedication, and park development fees in the amount of \$134,636.00 for the Highland Court residential development, totaling \$349,707.34 in total fees.

BOARD REVIEW/CITIZEN FEEDBACK: On May 4, 2016, the PALS Board moved to recommend approval to Town Council of the Kierstin Eaddy Memorial Park.

ALTERNATIVES/OPTIONS: Town Council may approve or deny the Resolution for approval of the park.

LEGAL REVIEW: Bryn Meredith, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the Resolution as to form and legality.

ATTACHMENTS:

1. Draft resolution

RECOMMENDATION: Move to approve a resolution approving parkland design and improvements for the Kierstin Eaddy Memorial Park Town.

TOWN OF FLOWER MOUND, TEXAS**RESOLUTION NO. ____**

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING PUBLIC PARKLAND DESIGN AND IMPROVEMENTS WITHIN THE HIGHLAND COURT DEVELOPMENT GENERALLY LOCATED WEST OF LONG PRAIRIE ROAD AND NORTH AND EAST OF RIPPY ROAD AND AUTHORIZING A CREDIT AGAINST PARK LAND DEDICATION FEES AND PARK LAND DEVELOPMENT FEES IN ACCORDANCE WITH CHAPTER 90 OF THE TOWN CODE AND THE DEVELOPMENT AGREEMENT FOR SAID DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound is a home rule municipality acting under its charter adopted by the electorate pursuant to Article XI, Section 5, of the Texas Constitution and Chapter 9 of the Local Government Code; and,

WHEREAS, on April 20, 2015 the Town Council approved a development agreement (the "Development Agreement") for the Highland Court development (attached hereto as Exhibit "A") and on November 9, 2015, the Planning and Zoning Commission of the Town of Flower Mound approved the record plat (the "Plat") for the Highland Court development (RC15-0006) (the "Development"); and,

WHEREAS, the Plat contains a 1.85 acre public park, which shall serve as open space and a common area to be maintained by the Homeowners Association; and,

WHEREAS, pursuant to the Development Agreement, the developer is required to dedicate to the Town 3.36 acres of park space per 100 dwelling units, pay fees in lieu of dedication, or a combination thereof; and,

WHEREAS, land outside of FEMA floodplain and the FEMA fully developed floodplain within the 1.85 acre public park and the improvements to such public park may be used as a credit against park development fees and fees in lieu of park land dedication upon recommendation by the PALS Board and final approval by Town Council; and,

WHEREAS, the PALS Board has recommended approval and the Town Council now desires to accept the design of the improvements proposed for the 1.85 acre public park and approve credits against the otherwise required fees in lieu of park land dedication and park improvement fees;

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS THAT:

SECTION 1

The Town Council of the Town of Flower Mound, Texas, with respect to the Development, hereby:

1. accepts and approves the design and improvements to the park identified in Section 2 of the Development Agreement as "the Park located in the southwest corner of the

RESOLUTION NO. ____

- Property” and being approximately 1.85 acres in size (such park design and improvements are attached hereto as Exhibit “B”); and
2. authorizes a credit to the fees in lieu of parkland dedication and a credit to the park development fees, which shall each be calculated by the Town in accordance with Sections 90-445(2) and 90-446(c) of the Town Code (respectively), and shall be subject to the terms and conditions of the Development Agreement.

Nothing contained within this Resolution is intended to amend or otherwise modify the Development Agreement.

SECTION 2

That this Resolution shall be effective from its date of adoption.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____, ON THIS 16TH DAY OF MAY, 2016.

APPROVED:

Thomas E. Hayden, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, TOWN ATTORNEY

DEVELOPMENT AGREEMENT FOR Highland Court

THIS DEVELOPMENT AGREEMENT FOR Highland Court ("Agreement") is made and entered into this 20th day of April 2015, by and between the Town of Flower Mound, Texas (the "Town"), and Direct Development LLC, a Texas limited liability corporation ("Developer").

WITNESSETH:

WHEREAS, the Highland Court Project ("Project") is a unique development encompassing approximately 30 acres in Flower Mound and described by metes and bounds on Exhibit "1" ("HC"); and

WHEREAS, the Town and Developer wish to address various development issues related to the Project and to provide for the payment of certain fees and the dedication of certain property, among other matters; and

WHEREAS, the Town's SMARTGrowth Program requires that certain levels of key public services and infrastructure necessary to serve a new development project be in place before amendments to the Town's Master Plan, amendments to the Town's zoning ordinances, and approval of any development plan, record plat or site plan may be granted; and

WHEREAS, the Town and Developer desire to address (1) infrastructure and related concerns associated with the Project due to its location, (2) traffic issues associated with ingress and egress to/from the Project and an anticipated increase in traffic as a result of the development of the Project, (3) the anticipated roadway and related improvements to be constructed at and near the Project necessitated by the development of the Project, and (4) the concern for the public health, safety and welfare due to the foregoing; and

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Town and Developer covenant and agree as follows:

1. Project Subject to Town Ordinances. The Project, or any portion thereof, at all times shall be developed and constructed in accordance with all applicable Town ordinances and agreements related to the Project (including but not limited to the HC Planned Development District ordinance approved concurrently with this Agreement), and shall be subject to said ordinances and agreements, as such now exist or may hereafter be amended and/or approved by the Town. Unless otherwise expressly stipulated in this Agreement, nothing herein shall relieve Developer from its responsibilities for the construction of public improvements under applicable development ordinances of the Town.

2. Southwest Park

- a. The Park located in the southwest corner of the property as represented in exhibit 2 shall remain the property of the HC HOA; the HC HOA will be solely responsible for all required maintenance
- b. The Town will be granted a permanent public access easement
- c. The park will be designed in consultation with the appropriate Town Staff and the Parks, Arts and Library Services Board
 - i. During the Development process, the Developer will meet with staff to gather input into the initial park concept and agree on the scope of the park design. Scope for park construction will include all activities necessary for park construction excluding rough grading.
 - ii. During the Development Plan process, the Developer will submit the 70% plans to the appropriate Town Staff for review and comment.
- d. During the Development Plan process, the Developer will submit the 90% plans to the Parks, Arts and Library Services Board for review and comment; at the same time fees in lieu of parkland dedication and Park Development fees will be discussed and a recommendation provided to Town Council.

3. Fees in lieu of Park Land Dedication

- a. Fees in lieu of park land dedication shall be calculated in accordance with 90-445(2).
- b. A credit against these fees may be given for land marked as "A" and "B" in exhibit 2; land identified as A is currently not part of the FEMA floodplain, but may be shown to be part of the FEMA fully developed floodplain; land identified as B is currently part of the FEMA floodplain and may be shown, based upon a flood study, to have different boundaries than currently shown and could also contain the FEMA fully developed floodplain. Any land within "A" or "B" found to be designated as the FEMA floodplain or the FEMA fully developed floodplain will not be accepted for park land dedication credit (Section 90-443).
- c. If the appropriate agreed to actions have not been completed, an amount equal to the fees in lieu of park land dedication shall be placed in escrow; this escrow amount shall be released to the "Developer" upon successful completion of the appropriate agreed to actions and no construction or construction related activity in the floodplain area will be permitted until the appropriate action is completed.

3. Park Development Fees

- a. Park development fees shall be calculated in accordance with 90-446
- b. Developer will be solely liable for construction of the park as recommended by PALS and approved by Town Council.
- c. Credit towards Park Development Fees for actual construction costs of the park, as submitted and approved by receipts, and as approved by Town

Council in accordance with Section 90-446(c), can be provided.

Required buffer trees – protected trees in the landscape buffer, open space or parks that are preserved will be considered trees required for buffering in accordance with 82-241 and 82-242.

Entry Monument maintenance – Any entry monument(s) located in Town right of way will be constructed and maintained by the Highland Court HOA. Plans must be approved by the Town prior to construction.

7. **Captions and Headings.** The captions and headings of the Sections of this Agreement are for convenience and reference only and shall not affect, modify or amplify the provisions of this Agreement nor shall they be employed to interpret or aid in the construction of this Agreement.

8. **Covenant Running with the Land.** This Agreement shall be deemed a covenant that runs with the land and is binding on all heirs, successors, assigns, grantees, vendors, trustees, representatives of Developer and all others holding any interest now or in the future, and it is the intent of this Agreement, and the parties so acknowledge, that all phases of the Project shall be subject to this Section of this Agreement.

9. **Applicable Laws and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in Denton County, Texas.

10. **Notices.** Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town: The Town of Flower Mound, Texas
2121 Cross Timbers Road
Flower Mound, Texas 75028
Attn: Town Manager's Office

If to Developer: Direct Development, LLC.
2001 Ross Avenue, Suite 550
Dallas, Texas 75201

11. **Attorneys Fees.** In the event any person initiates or defends any legal action or

proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney' s fees on any appeal). Nothing herein shall constitute a waiver of any claim or defense that could be asserted in any litigation related to this Agreement and the Parties agree that this Agreement is not subject to Subchapter 1 of Chapter 271 of the Texas Local Government Code.

12. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

13. Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

14. Filing in Denton County Deed Records; Covenant Running with the Land. This Agreement or a memorandum thereof shall be filed in the deed records of Denton, Texas. Upon any sale or other transfer of any ownership rights in HC, Developer shall notify the Town in writing of such sale or transfer within thirty (30) days of such sale or transfer, provided, however, no notice shall be required for the sale of a lot for which a record plat has been approved and recorded in the deed records. This Agreement shall be deemed a covenant that runs with the land and is binding on all heirs, successors, assigns, grantees, vendors, trustees, representatives of Developer and all others holding any interest now or in the future with the exception of the purchaser of a lot for which a record plat has been approved and recorded in the deed records and on which a residence has been constructed (a "Fully Improved Lot").

15. Binding Obligation. The Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Developer to same. Further, this Agreement is and shall be binding upon Developer, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest in HC now or in the future with the exception of the purchaser of a Fully Improved Lot.

16. Mediation. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

17. Default. No party shall be in default of provisions under this Agreement until notice of the alleged failure of such party to perform has been given as provided herein

(which notice shall set forth in reasonable detail the nature of the alleged failure) and until such party has been given ten (10) days after the written notice in the case of the default of a payment obligation, and in all other cases a reasonable time, to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than ten (10) days after written notice of the alleged failure has been given).

18. Roughly Proportionate Determination under Texas Law. Developer has been represented by legal counsel in the negotiation of this Agreement and has been advised regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the specific exactions required by the Town and agreed to by Developer in this Agreement are roughly proportionate to the anticipated impact of the development of HC in accordance with applicable Town ordinances. Developer hereby waives and releases the Town from any and all liability under §212.904 of the Texas Local Government Code, as amended, with respect to Developer's construction and payment obligations under this Agreement.

19. Rough Proportionality Determination under Federal Law. Developer hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and chapter 395 of the Texas Local Government Code in regard to its construction and payment obligations under this Agreement. Developer and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements, if any, mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of such agreements. Developer further acknowledges that the benefits of zoning and platting have been accepted with full knowledge of potential claims and causes of action which may be raised now and in the future, and Developer acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. **DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS TOWN FROM ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO DEVELOPER'S SUCCESSORS, ASSIGNS, GRANTEEES, TRUSTEES OR REPRESENTATIVES, BROUGHT PURSUANT TO THIS AGREEMENT OR THE CLAIMS OR TYPES OF CLAIMS DESCRIBED IN PARAGRAPHS 18 AND 19.**

20. Release; Estoppel Certificates. From time to time upon written request of Developer to the Town Manager, the Town Manager may execute, in recordable form, a release of any provision of this Agreement if the Town Manager and Town Attorney determine Developer has fully satisfied the provision to be released. From time to time upon written request of Developer to the Town Manager, the Town Manager may execute a written estoppel certificate identifying any obligations of Developer under this Agreement that are in default or, with the giving of notice or passage of time, would be in default; and stating, to the extent true, that to the best knowledge and belief of the

Town, Developer is in compliance with its duties and obligations under such agreements.

21. Exhibits. The following exhibits are attached hereto and incorporated into this Agreement for all purposes:

Exhibit 1 Metes and Bounds Description of HC Property in the Town of Flower Mound

Exhibit 2 Concept Plan

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date first above written.

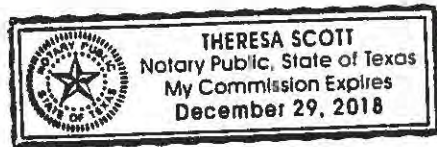
THE TOWN OF FLOWER MOUND, TEXAS

By: *Thomas E. Hayden*
Name: Thomas E. Hayden *JEAN LEVENICK*
Mayor, Town of Flower Mound

pro tem
STATE OF TEXAS §
 §
COUNTY OF DENTON §

Jean Levenick

This instrument was acknowledged *^* before me on this the 27 day of APRIL, 2015 by Thomas E. Hayden, Mayor of the Town of Flower Mound, Texas, on behalf of the Town of Flower Mound, Texas.



Theresa Scott
Notary Public, State of Texas

DEVELOPER:

Direct Development, LLC.
a Texas limited liability corporation

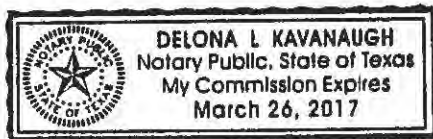
By: _____

Name: David Watson
Authorized Signatory

STATE OF TEXAS §

COUNTY OF Denton §

This instrument was acknowledged before me on this the 14 day of MAY, 2015 by DAVID WATSON, Authorized Signatory of Direct Development, LLC. a Texas limited liability company, on behalf of said limited liability company.



Delona L. Kavanaugh
Notary Public, State of Texas

ORDINANCE NO. _____

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Exhibit "A"
Legal Description

BEING a tract of land situated in the J. Watkins Survey, Abstract No. 1324, Town of Flower Mound, Denton County, Texas, the subject tract being all of a tract conveyed to Borchardt Partners, Ltd. according to the deed recorded in Document No. 99-0059183 of the Official Public Records, Denton County, Texas (OPRDCT), and all of a tract conveyed to Borchardt Partners, Ltd. according to the deed recorded in Document No. 99-0059184 OPRDCT, the subject tract being more particularly described as follows:

BEGINNING at a 1/2" iron rod found in Rippy Road, a prescriptive right-of-way, for the southwest corner of the subject tract;

THENCE N 01°05'52" W, 1182.02 feet along said road to a 3/8" iron rod found for the northwest corner of the subject tract, and being the southwest corner of a tract conveyed to Hawks Ramsey LLC, recorded in Document No. 2007-51767 OPRDCT;

THENCE S 88°45'25" E, 758.64 feet along the common line thereof to a 1/2" iron rod with plastic cap found;

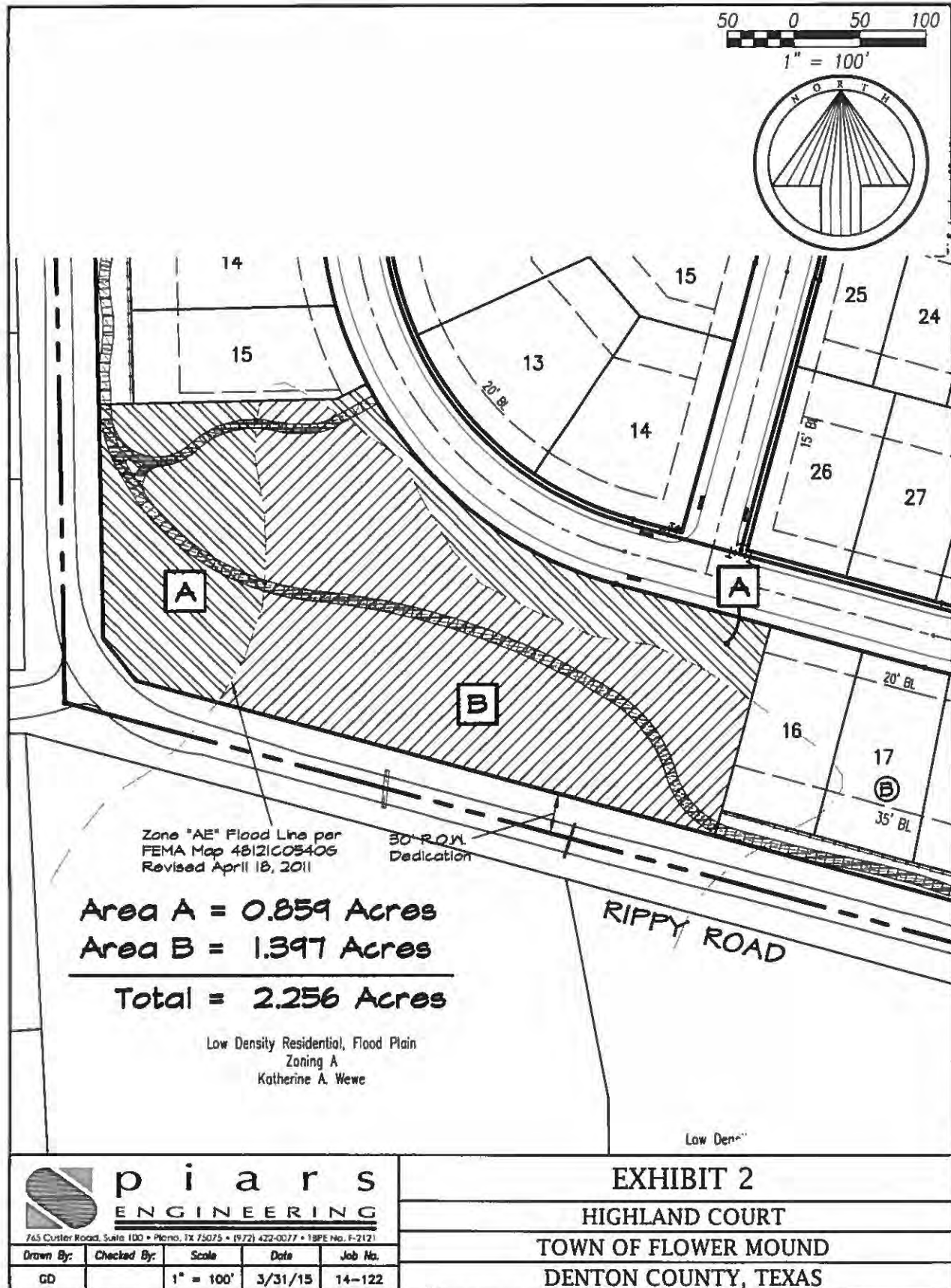
THENCE S 02°38'35" E, 118.55 feet continuing along the common line thereof, to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

THENCE S 88°47'04" E, 264.39 feet continuing along the common line thereof, crossing the common line between said Borchardt Partners tracts, to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set for the northwest corner of North Point Center, an addition to the Town of Flower Mound according to the plat recorded in Cabinet X, Page 332 of the Plat Records, Denton County, Texas;

THENCE S 01°04'16" E, 1322.75 feet along the common line thereof to a 1/2" iron rod found in Rippy Road for the southeast corner of the subject tract;

THENCE N 74°04'03" W, 141.04 feet along said road to a point for the common corner between said Borchardt Partners tracts;

THENCE N 74°50'08" W, 927.00 feet continuing along said road to the POINT OF BEGINNING with the subject tract containing 1,312,149 square feet or 30.123 acres of land.





LandDesign.

HIGHLAND COURT

AMENITY PARK - CONCEPTUAL DESIGN
FLOWER MOUND, TEXAS



DECEMBER 10, 2015 (LJ00000004)

L4.0 SECTION



L4.0 SECTION



L4.0 IMAGE



L4.0 IMAGE



L4.0 IMAGE



L4.0 IMAGE



L4.0 IMAGE



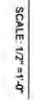
0	1
L4.0	IMAGE



9	WILL
L4.0	

TO BE DETERMINED

L4.1 SECTION AND IMAGE

SECTION AND IMAGE
L4.1

L4.1 SECTION AND IMAGE



1. The first step is to identify the problem or question that needs to be solved.



L4.1 ELEVATION / PLAN / SECTION



☒ Not for Construction
☐ Issued for Permit Approval
☒ Issued for Pricing
☐ Issued for Construction

LandDesign.
222 W. Las Colinas Blvd., Suite 1405H
Irving, Texas 75039
V: 214.785.6099 F: 214.329.1112
www.LandDesign.com
TIME: F-14754 / TBAE BR:1927





TOWN COUNCIL AGENDA ITEM NO. 10

REGULAR ITEM

DATE: May 16, 2016

FROM: Tracy Knierim, Executive Director of Community Relations *JK*

ITEM: Public Hearing to consider adopting on second reading the attached ordinance granting to Allied Waste Services of Fort Worth, LLC dba Republic Services, the right and privilege to operate and maintain the service of solid waste and recycling collection and hauling over, upon, along, and across the present and future streets, alleys, bridges, and public properties of the Town of Flower Mound in order to preserve and protect the public health of the citizens of the Town, rejecting all other proposals received, in accordance with section 11.2 of the Request for Proposals and State law and authorize the Mayor to execute a Franchise Agreement for solid waste and recycling collection services.

BACKGROUND INFORMATION: This item is the second of two public hearings to consider approving an ordinance and franchise agreement for solid waste and recyclable material collection and disposal/processing. On October 5, 2015, the Town's current solid waste and recycling services provider, Waste Management, proposed a significant rate increase to maintain service levels for residential waste and recycling collection. As a result, it was determined in the best interest of the Town to solicit Requests for Proposals (RFP) to ensure continued quality service at the best value for Flower Mound residents and businesses. The contract with Waste Management will expire on September 30, 2016.

On January 10, 2016, RFP No. 2016-22 was issued with a deadline for proposals of February 3, 2016. The Town received four responses from Community Waste Disposal, Allied Waste Services of Fort Worth, LLC dba Republic Services (Republic Services), Waste Management, and Progressive Waste. On April 18, 2016, staff brought forward a first reading of the Solid Waste Franchise for Town Council consideration which was subsequently tabled pending further evaluation and the submission of additional information from the top three respondents.

Additional information was received from Republic Services, Community Waste Disposal, and Waste Management and discussed at the May 2, 2016 Town Council meeting. Upon conclusion of this public hearing, Republic Services was selected as the Town's solid waste and recycling provider.

If awarded, Republic Services will become the Town's solid waste and recycling provider effective October 1, 2016 for a 5 year term, with three 5-year renewal options. Proposed residential and commercial services and rates are contained in the Solid Waste Franchise Agreement.

BOARD REVIEW/CITIZEN FEEDBACK: A Town staff evaluation committee independently reviewed each proposal in accordance with the requirements of the RFP. The committee met on February 17, 2016 to discuss the evaluations, requested and received additional information from respondents, and brought recommendations forward for Council consideration at the April 18 and May 2 Town Council meetings.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed Revenue:	\$368,191	Franchise Fees – Solid Waste (100-4123)
	\$128,753	Solid Waste Collections – (200-4220)
	<u>\$ 80,000</u>	Customer Relations Program (100-4719)
	\$576,944	

Finance Review by: Tammy Wilson, Executive Director of Financial Services 

LEGAL REVIEW: Bryn Meredith, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the ordinance as to form and legality.

ATTACHMENTS:

1. Ordinance
2. Franchise Agreement

RECOMMENDATION: Move to adopt on second reading the attached ordinance granting to Allied Waste Services of Fort Worth, LLC dba Republic Services, the right and privilege to operate and maintain the service of solid waste and recycling collection and hauling over, upon, along, and across the present and future streets, alleys, bridges, and public properties of the Town of Flower Mound in order to preserve and protect the public health of the citizens of the Town, rejecting all other proposals received, in accordance with section 11.2 of the Request for Proposals and State law and authorize the Mayor to execute a Franchise Agreement for solid waste and recycling collection services.

TOWN OF FLOWER MOUND, TEXAS**ORDINANCE NO. _____**

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, GRANTING A FRANCHISE FOR SOLID WASTE SERVICES TO ALLIED WASTE SERVICES OF FORT WORTH, LLC DBA REPUBLIC SERVICES; AMENDING CHAPTER 70, ARTICLE IV "SOLID WASTE" OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; REPEALING DIVISIONS 1 AND 2 OF ARTICLE V "SOLID WASTE" IN APPENDIX B; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound is a home rule city acting under its Charter adopted by the electorate pursuant to Article XI, Section 5, of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, Articles III and X of the Charter of the Town of Flower Mound authorize the Town Council to grant, amend, renew, and extend all franchises for public utilities by ordinance upon two readings; and

WHEREAS, the Town Council is authorized to adopt regulations for controlling and governing solid waste collection, handling, transportation, storage, processing and disposal pursuant to Chapter 363 of the Texas Health and Safety Code; and

WHEREAS, the Town Council finds that this ordinance is in the best interest of the Town of Flower Mound and is necessary to preserve and protect the public health, safety, and general welfare of the citizens of the Town of Flower Mound and the general public.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, THAT:

SECTION 1

All of the above premises are found to be true and correct factual and legislative determinations of the Town of Flower Mound and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2

Allied Waste Services of Fort Worth, LLC dba Republic Services, is hereby granted a franchise, license, and privilege within the territorial jurisdiction of the Town and shall furnish all personnel, labor, equipment, trucks, and all other items necessary to provide refuse collection, removal, and disposal services and recyclable materials collection as specified and to perform all of the work called for and described in the franchise agreement between the Town of Flower Mound and Allied Waste Services of Fort Worth, LLC dba

ORDINANCE NO. _____

Page 2

Republic Services, which will not be codified, but shall be kept on file in the Town Secretary's Office and is made effective in accordance with this Ordinance and made a part of this Ordinance by reference.

SECTION 3

From and after October 1, 2016, Section 70-261 of the Code of Ordinances of the Town of Flower Mound, entitled "Regulations for collection and disposal", is hereby amended in its entirety and replaced with the following provision:

"Sec. 70-261. - Regulations for collection and disposal.

The regulations regarding solid waste collection and disposal, including the rates and charges for solid waste collection services, are contained in the effective franchise agreement for solid waste collection services on file in the Town Secretary's Office."

SECTION 4

From and after October 1, 2016, Section 70-262 of the Code of Ordinances of the Town of Flower Mound, entitled "Rates and charges", is hereby repealed in its entirety.

SECTION 5

From and after October 1, 2016, Division 1 and Division 2 of Article V, entitled "Solid Waste," in Appendix B of the Code of Ordinances are hereby repealed in their entirety.

SECTION 6

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the Town of Flower Mound, Texas, as amended, except when the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

SECTION 7

It is hereby declared to be the intention of the Town Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any section, paragraph, sentence, clause, or phrase of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clauses, and phrases of this Ordinance, since the same would have been enacted by the Town Council without the incorporation in this Ordinance of any such unconstitutional section, paragraph, sentence, clause or phrase.

ORDINANCE NO. _____

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SECTION 8

Any person, firm or corporation who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine as provided in Section 1-13 of the Code of Ordinances of the Town of Flower Mound. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

SECTION 9

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of any ordinances that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 10

The Town Secretary of the Town of Flower Mound is hereby directed to publish the full text of this ordinance once each week for two consecutive weeks in the official newspaper of the Town in accordance with Town Charter Sec. 10.02.

SECTION 11

This Ordinance shall be in full force and effect from and after the expiration of 30 days following its passage, pursuant to the terms contained herein, and publication as required by law, and it is so ordained.

DULY PASSED, APPROVED, AND ADOPTED ON FIRST READING BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE _____ DAY OF _____, 2016.

DULY PASSED, APPROVED, AND ADOPTED ON SECOND READING BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE _____ DAY OF _____, 2016.

APPROVED:

Thomas E. Hayden, MAYOR

ORDINANCE NO. _____

Page 4

ATTEST:

Theresa Scott, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Bryn Meredith, TOWN ATTORNEY

SOLID WASTE FRANCHISE AGREEMENT

This Solid Waste Franchise Agreement ("Contract") is made and entered into by and between the Town of Flower Mound, Texas, a municipal corporation located in Denton and Tarrant Counties, Texas (hereinafter called "Town"), and Allied Waste Services of Fort Worth, LLC dba Republic Services, (hereinafter called "Contractor").

WHEREAS, Contractor was granted a franchise, license, and privilege on the 2nd day of May, 2016, to provide solid waste and recyclable materials collection within the Town and to perform such work as may be incidental thereto in accordance with the terms of this Contract.

NOW, THEREFORE, in consideration of the following mutual agreements and covenants, it is understood and agreed by and between the parties hereto as follows:

1. Grant of Franchise

- A. Contractor is hereby granted the right and privilege to conduct business for the purpose of collection and disposal of solid waste, garbage, refuse, trash, and rubbish (municipal solid waste), and recyclable materials collection and processing within the corporate limits of the Town and any tracts, territories, and areas hereafter annexed to, or acquired by, the Town. All commercial establishments located within the jurisdictional limits of the Town shall contract with Contractor by separate agreement for their municipal solid waste collection and disposal during the term hereof, subject to the terms of this franchise.
- B. The Town hereby grants Contractor the right to use the public streets, alleys and thoroughfares within the corporate limits of the Town, and any tracts, territories, and areas hereafter annexed to, or acquired by, the Town, for the purpose of engaging in the business of solid waste collection and recycling collection in the Town.
- C. This franchise shall take effect and continue and remain in full force and effect for a period of 5 years from October 1, 2016 (the "initial term"). The initial term of this franchise shall be automatically renewed and extended for three successive five-year periods (each, a "renewal term"); provided, should either the Town or Contractor desire to not renew this franchise upon the expiration of the then current term, such party shall give the other party written notice of such termination at least 90 days prior to the last day of such current term, whereupon this franchise shall terminate upon the expiration of such current term.

2. Contract

- A. This Contract shall include the following documents, and this Contract does hereby expressly incorporate same herein as fully as if set forth verbatim in this Contract:
 - (a) The request for proposals from Town;

- (b) This Contract and Contract terms and definitions;
 - (c) Contractor's proposal, including all exhibits;
 - (d) The performance bond; and
 - (e) Any addenda or changes to the foregoing documents agreed to by the parties hereto.
- B. All provisions of the Contract Documents shall be strictly complied with and conformed to by Contractor, and no amendment to this Contract shall be made except upon the written consent of the parties, which consent shall not be unreasonably withheld. No amendment shall be construed to release either party from any obligation of the Contract Documents except as specifically provided for in such amendment.
- C. This Contract constitutes the entire understanding between the parties hereto and cancels and supersedes all prior negotiations, representations, understandings and agreements, either written or oral, with respect to the subject matter hereof.
- D. In the event of any conflict between any provision of this Contract and any provision in either or both items (a) and (c) referenced herein, the provisions of this Contract shall control.

3. Definitions

Dumpster/ Roll-off Container (Commercial/Industrial): Metal receptacle designed to be lifted and emptied mechanically for use only at Commercial and Industrial Units.

Brush/Bundle: Tree, shrub and brush trimmings or newspapers and magazines securely tied together forming an easily handled package not exceeding four feet in length or fifty (50) lbs. in weight.

Bulky Wastes: Stoves, water tanks, washing machines, furniture, refrigerators (with all CFCs (chlorofluorocarbons) removed), Construction Debris (generated from the Residential Unit only) and other waste materials other than Dead Animals, Hazardous Waste, or Stable Matter with weights or volumes greater than those allowed for Polycarts, as the case may be.

Commercial and Industrial Refuse: All Bulky Waste, Construction Debris, Garbage, Rubbish and Stable Matter generated by a Customer at a Commercial and Industrial Unit.

Commercial and Industrial Unit: All premises, locations or entities, public or private, requiring Refuse collection within the corporate limits of the Town, not a Residential Unit.

Commercial Hand Collect Unit: A retail or light commercial type of business, which generates no more than one cubic yard of refuse per week.

Commodity: Material that can be sold in a spot or future market for processing and use or reuse.

Commodity Buyer: A buyer or processor, selected by Contractor pursuant to the Contract Documents, of Recyclable Materials delivered by Contractor.

Compactable Waste: Items that can be crushed under the weight of compaction equipment.

Construction Debris: Waste building materials resulting from construction, remodeling, repair or demolition operations.

Contract Documents: The Request for Proposal, Contractor's Proposal, Performance Bond, Contract resulting from negotiations, and any addenda or changes to the foregoing documents agreed to by the Town and Contractor.

Contractor: The person, corporation, or partnership performing services under this Contract.

Customer: An occupant, owner, or tenant of a Residential, Commercial Hand Collect, Commercial or Industrial Unit who generates Refuse.

Dead Animals: Animals or portions thereof equal to or greater than ten (10) pounds in weight that have expired from any cause except those slaughtered or killed for human use.

Disposal Site: A Refuse depository including, but not limited to, sanitary landfills, transfer stations, incinerators and waste processing/separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction and requiring such licenses, permits or approvals to receive for processing or final disposal of Refuse and Dead Animals.

Garbage: Any and all dead animals of less than ten (10) lbs. in weight, except those slaughtered for human consumption; every accumulation of waste (animal, vegetable and/or other matter) that results from the preparation, processing, consumption, dealing in, handling, packing, canning, storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter (including, but not by way of limitation, used tin cans and other food containers; and all putrescible or easily decomposable waste animal or vegetable matter which is likely to attract flies or rodents); except (in all cases) any matter included in the definition of Bulky Waste, Construction Debris, Dead Animals, Hazardous Waste, Rubbish or Stable Matter.

Hazardous Waste: Waste, in any amount, which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate state agency by or pursuant to federal or state law, or waste, in any amount, which is regulated under federal or state law. For purposes of this Contract, the term Hazardous Waste shall also include motor oil, gasoline, paint and paint cans.

Landfill/Transfer Station: A facility used by Contractor where trash and garbage are disposed of by burying between layers of earth.

Non-compactable Waste: Brick, concrete, dirt, composition shingles, ceramic tile and related like items that cannot be crushed under the weight of compaction equipment.

Overflow: All Garbage generated at a Residential Unit that does not fit inside the Residential Unit's Polycart(s) with the lid(s) closed.

Polycart: A wheeled receptacle with a maximum capacity of 96 gallons constructed of plastic, metal and/or fiberglass, designed for automated or semi-automated solid waste collection systems, and having a tight fitting lid capable of preventing entrance into the container by small animals. The weight of a Polycart and its contents shall not exceed 175 lbs. Polycarts will be provided to each Residential Unit and Commercial Hand Collect Unit, with ownership retained by Contractor.

Recyclable Materials: Commodities collected by Contractor pursuant to the Contract Documents, which can be sold in a spot or future market for processing and use or reuse including, but not limited to, newsprint, magazines, plastic (PET and HDPE) bottles, glass containers, aluminum and metal (tin) cans and corrugated boxes/cardboard.

Recycling Container: A plastic polycart designed for the purpose of curbside collection of recyclable materials at Residential Units.

Refuse: Residential Refuse and Bulky Waste, Construction Debris and Stable Matter generated at a Residential Unit, unless the context otherwise requires, and Commercial and Industrial Refuse.

Residential Refuse: All Garbage and Rubbish generated by a Customer at a Residential Unit.

Residential Unit: A dwelling within the corporate limits of the Town occupied by a person or group of persons comprising not more than four (4) families. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A residential dwelling, whether of single or multi-level construction, consisting of four (4) or less units, shall be treated as a Residential Unit, except that each single-family dwelling within any such Residential Unit shall be billed separately as a Residential Unit.

Rubbish: All waste wood, wood products, tree trimmings, grass cuttings, dead plants, weeds, leaves, dead trees or branches thereof, chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used and discarded mattresses, used and discarded clothing, used and discarded shoes and boots, combustible waste pulp and other products such as are used for packaging, or wrapping crockery and glass, ashes, cinders, floor sweeping, glass mineral or metallic substances, and any and all other waste materials not included in the definition of Bulky Waste, Construction Debris, Dead Animals, Garbage, Hazardous Waste or Stable Matter.

Stable Matter: All manure and other waste matter normally accumulated in or about a stable, or any animal, livestock or poultry enclosure, and resulting from the keeping of animals, poultry, or livestock.

Storm Event Debris: Garbage, Rubbish, Bulky Waste, Brush, and other debris and waste materials that result from a hurricane, tornado, wind storm, flood, natural disaster, or other act of God the collection of which falls outside the Residential Unit base rates set forth in this Contract.

Town: The Town of Flower Mound, Texas.

Yard/Green Waste: Decomposable plant materials, including brush, leaves, grass, weeds and other vegetation.

4. Scope and Nature of Operation

A. Residential Collection: Contractor shall undertake curbside collection service for the collection of residential Refuse and Recyclable Materials to each Residential Unit one (1) time per week when placed at curbside by 7:00 a.m. on the designated collection day. Further, Contractor shall provide Town a copy of maps indicating the routes used in the collection of waste from all residential customers. The Town has the right to reject and request reasonable modification of routes, and updates on routes of Contractor.

B. Commercial and Industrial Accounts:

(a) Contractor shall collect and remove acceptable Garbage from the premises of commercial, institutional and industrial customers at such frequency as shall be reasonably requested by the owner, owner's agent, or tenant of the property. Collection service shall be a minimum of once a week or more to maintain premises free of accumulation of waste. If collection is from a container, that container should be located on a concrete pad to accommodate equipment. The Town shall be the sole determinant of acceptable dumpster pads, locations and screening.

(b) Contractor shall provide curbside collection service for the collection of Refuse from Commercial Hand Collect Units as defined by this Contract one (1) time per week when placed in Polycarts, and placed at curbside by 7:00 a.m. on the designated collection day.

- C. Brush/Bulky Wastes Collection: In addition, Contractor shall provide a special collection service for Brush/Bulky Wastes and/or Bundles one (1) time per week to all Residential Unit Customers, unless otherwise specified. Contractor agrees to collect such large objects and quantities of waste as described in definitions for Brush/Bundle and Bulky Wastes up to 4 cubic yards.
- D. Residential Doorside Collection - Household Hazardous Waste & E-Waste Collection: Contractor shall offer, for the life of this Contract, a scheduled on call service program for the collection of household hazardous waste and electronic waste. Residents will be provided with the contact information required to place a call for instructions regarding the placement and pickup of said items at resident's location. Pickups shall generally be made within one-to-two weeks of call to schedule service. Calls received by noon on Friday, will be serviced the following week on a day designated by contractor. Upon the request of a residential customer, Contractor will collect from each residential premise, not to exceed one day per month per calendar month, all program household hazardous and electronic set-out in accordance with acceptable items. Contractor will, upon confirmation of the appointment, immediately mail or drop off a program household and electronics waste bag or bags with vermiculite, complete with detailed program guidelines and set out instructions to the customer.
- E. Dead Animals: From time to time, Contractor may provide for the special collection of dead animals at residential, commercial, and industrial units upon such terms and conditions as are mutually agreed upon by Contractor and the Town, and Contractor has no obligation to pick up all such dead animals.

5. Collection Operation

- A. Hours of Operation:
 - (a) Residential garbage collection shall be conducted only between the hours of 7:00 a.m. and 7:00 p.m.
 - (b) Commercial garbage collection for commercial areas located adjacent to residential areas shall be conducted only between the hours of 7:00 a.m. and 7:00 p.m.
 - (c) All other commercial garbage collection not specified in subparagraph (B), above, shall be conducted only between the hours of 3:00 a.m. and 7:00 p.m.
 - (d) Garbage collection from public or governmental areas shall be conducted only between the hours of 7:00 a.m. and 7:00 p.m.
- B. Hours of Disposal: Contractor shall dispose of waste within the operating hours of disposal site.
- C. Routes of Collection: Collection routes shall be established by Contractor as approved by the Town. The Town shall be provided route collection maps and container locations.

D. Holidays: The following shall be holidays for purposes of this Contract:

New Year's Day
 Memorial Day
 Independence Day
 Labor Day
 Thanksgiving Day
 Christmas Day

When a holiday falls on a week day (Monday through Friday), Contractor shall delay all routes one day from the day of the holiday until the end of that week, completing all routes on Saturday of that week. For example, if New Year's Day falls on Wednesday, no routes are run on Wednesday. The New Year's Day routes will be run on Thursday, Thursday's routes will be run on Friday, and Friday's routes will be run on Saturday.

E. Complaints: The Town's Customer Relations Office shall assume responsibility for receiving and coordinating all residential service requests and complaint management functions related to Contractor's solid waste collection and recycling collection services. To assist in defraying the costs for this function, Contractor shall make an annual contribution to the Town as described in Section 26 "Customer Relations Contribution." At a minimum, customer complaint procedures shall provide that the customer complaint shall be addressed within one (1) business day (Monday through Friday) of receipt of such complaint and shall be promptly resolved.

F. Collection-Equipment:

- (a) Contractor, at its sole cost and expense, agrees to furnish all trucks, equipment, machines and labor which are reasonably necessary to adequately, efficiently and properly collect and transport garbage from accounts serviced by Contractor in accordance with this Contract. Collection of garbage shall be made using sealed packer-type trucks, and such equipment shall not be allowed to leak nor scatter any waste within the corporate limits of the Town nor while en route to the disposal site, where such accumulation shall be dumped.
- (b) Due to street size variations in the Town, Contractor shall provide equipment that will accommodate such public streets and alleys. Contractor shall utilize lighter-capacity single-axle collection trucks for those routes identified by the Town and Contractor as likely to be damaged by the use of heavier garbage hauling equipment (*i.e.*, on asphalt paved streets). Contractor shall, if necessary, hand-clean all spillage resulting from its collection activities.
- (c) All motor vehicles used in performance of the obligations herein created shall be clearly marked with Contractor's name, telephone number and unit number legible from 150 feet. No advertising shall be permitted on vehicles. All collection equipment shall be maintained in a first class, safe and efficient working condition throughout the term of this Contract. Such vehicles shall be

maintained and painted as often as necessary to preserve and present a well-kept appearance, and a regular preventative maintenance program. The Town may inspect Contractor's vehicles at any time to insure compliance of equipment with this Contract, or require an equipment replacement schedule to be submitted to the Town. Vehicles are to be washed on the inside and sanitized with a suitable disinfectant and deodorant a minimum of once a month. Such vehicles shall be washed and painted or repainted as often as necessary to keep them in a neat and sanitary condition.

- G. Disposal: Contractor shall deliver solid waste collected to a licensed sanitary landfill of its choice operated in compliance with rules stipulated by the Texas Commission on Environmental Quality (TCEQ) and/or the Environmental Protection Agency (EPA).
- H. Spillage: Contractor shall not be responsible for scattered refuse unless the same has been caused by its acts or those of any of its employees, in which case all scattered refuse shall be picked up immediately by Contractor. Contractor will not be required to clean up or collect loose refuse or spillage not caused by the acts of its employees, but shall report the location of such conditions to the Town's Customer Relations Office so that proper notice can be given to the customer at the premises to properly contain refuse. Contractor shall pick up commercial refuse spillage or excess refuse after the customer reloads the container. In the case of commercial customers, Contractor shall then be entitled to an extra collection charge for each reloading of a commercial container requiring an extra collection. Should such commercial spillage continue to occur, Town shall require the commercial customer and Contractor to increase the frequency of collection of the commercial customer's refuse or require the customer to utilize a commercial container with a larger capacity, and Contractor shall be compensated for such additional services.
- I. Vicious Animals: Employees of Contractor shall not be required to expose themselves to the dangers of vicious animals in order to accomplish refuse collection in any case where the owner or tenants have animals at large, but Contractor shall immediately notify the Town, in writing, of such condition and of its inability to make collection.
- J. Protection from Scattering: Vehicles shall not be overloaded so as to scatter refuse; however, if refuse is scattered from Contractor's vehicle for any reason, it shall be picked up immediately.

6. CONTRACTOR RESPONSIBILITIES

- A. Contractor shall provide on-site personnel during the transition period from the Town's current Solid Waste contractor. Contractor shall provide an employee(s) at Town Hall located at 2121 Cross Timbers Road, Flower Mound, TX, to assist the Town's Customer Relations division during the transition period for as long as needed in the Town's sole discretion.

- B. Contractor shall provide direct mail information regarding Contractor's solid waste services to all Flower Mound households and also print, at Contractor's expense, brochures annually up to 2,000 pieces, as needed, for the length of the contract. The Town reserves the right to approve the form of all such direct mail pieces and brochures, and to adjust this number as needed to meet growth.
- C. During each year of this Contract, Contractor shall provide twenty-five (25) 30-yard roll-off containers for neighborhood clean-up events and other Town events as designated. The provision of such roll-off containers shall be at no charge to the Town; such complimentary service shall include all costs (e.g., delivery, rental, disposal, etc.). The Town shall provide a two-week notification to Contractor to schedule such events.
- D. In addition, Contractor, during the term of this Contract, in October of each year of this Contract, beginning in October 2016, shall donate \$5,000 annually to Keep Flower Mound Beautiful (KFMB).

7. Recyclable Materials

- A. Contractor shall provide a single-stream Recyclable Materials collection service to Residential Units on a once per week schedule. Residents will not be required to separate Recyclable Materials by type of material; therefore, all recyclables may be commingled with other Recyclable Materials. Contractor shall include a list of acceptable Recyclable Materials in its program materials sent to Residential Units.
- B. Contractor shall be responsible for transporting the Recyclable Materials to a processing site of its choice and must have established buyers or markets for the recyclables, as the market allows. Contractor shall be required to identify the buyers of the Recyclable Materials upon request by the Town. Recyclable Materials collected for the purpose of recycling may not be deposited in any landfill unless the Recyclable Materials load is contaminated with Garbage or other unacceptable waste.
- C. Contractor shall be totally responsible for the costs of processing and marketing of all Recyclable Materials collected pursuant to this Contract.

8. Ownership

Title to Refuse, Dead Animals and Recyclable Materials shall pass to Contractor when placed in Contractor's collection vehicle, removed by Contractor from a Dumpster/Roll-off or container of any sort, or removed by Contractor from the customer's premises, whichever last occurs. Title to hazardous waste or any other wastes excluded from this Contract remains with the generator of such waste and Contractor shall have no responsibility or liability to the Town for such unacceptable waste.

9. Services at Town Facilities

- A. Contractor shall provide solid waste collection service at the Flower Mound Town Hall, located at 2121 Cross Timbers Road, and at all other current and future municipal facilities in the Town, all at no charge, excluding the roll-off and sludge removal services at 1105 Duncan Lane referred to later in this section.
- B. The 30-yard roll-off containers at the Town's Service Center, located at 1105 Duncan Lane, typically filled with Brush, tree limbs and other waste or Bulky Waste picked up from the rights-of-way throughout the Town, shall be serviced at no charge per container with no rental fee charged.
- C. The Town, at its sole discretion, may elect to dispose of all sludge accumulated at the Town's wastewater treatment plant located at the end of Duncan Lane, Flower Mound, Texas, using its own equipment or by contract with a separate vendor. If requested by Town, Contractor agrees to dispose of sludge at a landfill of Contractor's choice accumulated at the Town's wastewater treatment plant, at the following rates during the term of this Contract, or any renewal thereof:
- (a) Routine Transportation Charge (includes 4 tons) \$237.19 per haul
 - (b) Landfill Disposal Charge \$25.00 per ton*
*based on the current profile on file of the material
 - (c) Emergency/Wet Weather Contingency Charge
6 times a year; Combined flat rate charge for
labor and fuel to deliver empty; 20 or 30 cubic
yard containers as needed or requested \$75 each
 - (d) Per Hour Charge for Delays (Stated hourly rate
reflects total hourly cost for any delays caused
by the Town of Flower Mound. Delay charge will
not apply to any delays not caused by the Town
of Flower Mound.) \$40 per hour
 - (e) Liner for container if needed included in pricing above.

The charges in this section are not subject to franchise fees.

10. Landfill Access

Residents may dispose of up to 10 cubic yards of waste free of charge once per month on Saturday's from 8.a.m. to 12.p.m. at the Camelot Landfill located at 580 Huffines Blvd, Lewisville, TX 75056.

11. Polycarts

As of the effective date of this Contract, Polycarts shall be new, labeled with a unique serial number for identification and tracking purposes. Polycarts used for recycling shall be green in color and Polycarts utilized for Garbage disposal shall be blue in color. Contractor shall provide Polycarts to new residents, and shall repair and/or replace any damaged Polycarts within one (1) business week of first notification.

12. Quarterly Meetings

Contractor shall conduct quarterly meetings with designated Town staff to provide a review/update of any outstanding issues.

13. Reporting Requirements

Contractor shall provide, at a minimum, the following types of reports within the time periods specified:

- (a) Daily reports detailing Polycart transactions provided to the Town's Customer Relations Division
- (b) Monthly reports, within two (2) weeks of the end of the reporting period, detailing: Polycart transactions; tonnage of recycling and trash collected; participation/set-out rates, etc.
- (c) Annual reports each October on the status of the terms and conditions of the Franchise and any points that need to be addressed.

14. Rates

Effective October 1, 2016, Contractor shall charge the following rates (the "base rates") for services performed herein. Note: All rates and cart sizes listed below are current as of October 1, 2016, and are exclusive of five percent (5%) franchise fee (all collection types) and four percent (4%) billing fee (residential collection only).

(a) Residential:

Weekly solid waste collection (96-gal Polycart),	
Weekly recyclables collection (96-gal Polycart),	
Weekly brush/bulky collection (4 cubic yards), and	
On-Call HHW & E-Waste collection	\$11.69/month
Additional solid waste Polycart	\$6.75/month
Additional recycling Polycart	\$1.00/month
Senior Citizen Discount (65 years or greater)	\$1.50/month

(b) Commercial:

Commercial Hand Collection, Per 90-96-Gallon Polycart
Semi- or Fully-Automated Collection Cost:

Once Per Week \$30.34 /mo
Two Carts Once Per Week \$37.16 /mo

Manual Collection Cost:

Once Per Week \$30.34 /mo
Two Carts Once Per Week \$37.16 /mo

*Front Load Containers Rates (in dollars):

<u>Size/Pickup</u>	<u>1xWeek</u>	<u>2xWeek</u>	<u>3xWeek</u>	<u>4xWeek</u>	<u>5xWeek</u>	<u>6xWeek</u>	<u>Extra</u>
2 Cu Yd	69.51	116.20	162.89	209.60	256.27	275.57	35.57
3 Cu Yd	77.67	140.08	194.91	257.32	289.33	312.83	40.70
4 Cu Yd	93.39	186.76	249.74	335.48	421.28	463.67	48.92
6 Cu Yd	124.86	219.31	313.72	453.80	593.86	657.92	54.93
8 Cu Yd	163.63	282.24	500.67	553.72	781.70	916.05	61.16

*Roll-Off Containers:

20 Cubic Yard Per Haul (Including Disposal) \$402.52
30 Cubic Yard Per Haul (Including Disposal) \$421.39
40 Cubic Yard Per Haul (Including Disposal) \$436.78
Delivery and Exchange \$100.00
Daily Container Rental \$4.00

Compactors (rental fees are negotiable):

6 Cubic Yard Per Haul (Including Disposal) \$139.12
8 Cubic Yard Per Haul (Including Disposal) \$174.35

30 Cubic Yard Per Haul (Including Disposal) \$485.90

40 Cubic Yard Per Haul (Including Disposal) \$515.58

42 Cubic Yard Per Haul (Including Disposal) \$526.18

(c) Temporary Front-load for Residential Purposes:

Price to include delivery, rental, removal, and disposal costs:

6 Cubic Yard \$154.88
 8 Cubic Yard \$164.88
 10 Cubic Yard \$180.69

All Commercial and Industrial Customer base rates are subject to a franchise fee and sales taxes, as applicable.

(d) Optional Yard/Green Waste Recycling Add-on: Should at any time during the first five years of this agreement, the Town decide to add the "Green Waste" program, Contractor guarantees the rate of \$1.65 per household per month, based on total Residential Unit billing, for the first five (5) years of this Contract (subject to CPI adjustments as provided in "Modification of Rates" below) to allow the addition of yard waste separated at the curb and 100% recycled collected weekly on the designated service day. The Town will provide 60 days notice to contractor of desire to add this service.(e) Special Brush/Bulky Collection: Contractor shall provide special request collection within seven (5) calendar days of the request at the appropriate rate, as described herein. If any Residential Unit Customer shall desire to dispose of any Brush, Bulky items, Construction Debris (generated from the residential unit only) or Stable Matter, such customer shall notify Contractor of customer's desire to dispose of such items and Contractor shall quote the price(s) listed below and if Customer agrees to such pricing, Contractor shall collect the material and bill the Residential Unit directly for this service. This service shall be subject to the Town's franchise fee. Service shall be limited to items as defined herein, placed at the usual place of garbage pickup, or as otherwise directed by Contractor or Town. The customer shall be billed directly by Contractor at the rate of \$45.00 per hour.(f) Modification of Rates:

- i. The residential and commercial base rates shall remain effective for a period commencing on October 1, 2016, and continuing through September 30, 2017, and thereafter shall be subject to a fixed 2.6% Price Index increase, annually, beginning on October 1, 2017.. If this Contract should be renewed for another successive five year term, this fixed Price Index increase amount will be eligible for re-negotiation and could increase or decrease depending on economic factors.
- ii. The Senior Discount remains \$1.50 per month for the life of this Contract, regardless of the adjustments made under this section.
- iii. Contractor shall publish at least two (2) notices in a newspaper of general circulation in Flower Mound, Texas, stating the amount and effective date of such rate adjustment, if any, with such notices to be published at least twenty (20) days prior to the effective date of the

adjustment and in an area of said newspaper other than the classified or legal notice section of same. Said notice shall be at least three inches by three inches (3" x 3") in size.

15. State, Local, and Federal Regulations

Contractor agrees to comply with all applicable existing laws of the United States and of this state and any further applicable laws which may be enacted by the United States or this state, and agrees to comply with the regulations of any regulatory body or officer authorized to prescribe or enforce regulations pertaining to the subject matter of this Contract, it being expressly agreed that nothing in this Contract shall be construed in any manner to abridge the right of Town to pass or enforce necessary police and health regulations for the protection of its inhabitants.

16. Licenses and Taxes

Contractor shall obtain all licenses and permits (other than the license and permit granted by this Contract) and promptly pay all taxes required by the Town and the state.

17. Vehicle Identification

All vehicles and equipment used by Contractor shall be clearly marked on each side with Contractor's name and telephone number in letters not less than two inches (2") in height. In the event the Town shall at any time so require, Contractor shall also assign to each of its vehicles an identifying number and shall mark the same upon said vehicles in figures not less than two inches (2") in height.

18. Regulation of Leased Containers

The Town shall permit Contractor to rent or lease containers to the owner or occupant of any premises within the corporate limits of the Town for refuse storage and collection purposes, subject to the following requirements:

- (a) All such containers shall be constructed according to industry standards and to specifications which are acceptable to and approved by the Town;
- (b) All such containers shall be equipped with suitable covers to prevent blowing or scattering of refuse while being transported for disposal of their contents;
- (c) All such containers shall be cleaned and maintained regularly by Contractor so as to be in good repair, of a good appearance and free of such refuse residues as may cause odor and provide a breeding place for flies and harborage of rodents; and
- (d) All such containers shall be clearly marked with Contractor's name and telephone number in letters not less than two inches (2") in height.

Contractor shall lease or rent such containers at terms which are fair and reasonable and which are in accordance with a schedule or rates provided therefore by ordinance of the Town.

19. Disposal of Refuse

- A. For the purposes of this Contract, the designated landfill(s)/recycling facility(ies) shall be Camelot Landfill located at 580 Huffines Blvd, Lewisville, TX 75056 and/or the Arlington Landfill located at 800 Mosier Valley Rd, Arlington, TX 76040 and the MRF located at 6200 Elliott Reeder Rd, Fort Worth, TX 76117. If, during the term of this Contract, including any renewal term, the facilities shall not be available for use by Contractor for more than five (5) consecutive days, Contractor in consultation with the Town will designate new facilities, which facilities shall be consented to by Contractor, and which consent shall not be unreasonably withheld, provided if Contractor does not own such new facilities, and Contractor, or any affiliate thereof, shall have concerns about such new facilities in respect to environmental liability, Contractor, in its sole discretion, may disapprove and cancel designation of such new facilities, where upon the Town shall designate another facility, subject to the provisions of this section.
- B. If, during the term of this Contract, including any renewal term, the facilities shall not be available for use by Contractor due to acts of God and/or failure of the operators to comply with all relevant and applicable federal or state laws, regulations, rules, permits or permit conditions, the provisions of Subsection A above, shall be null and void.

20. Office

Contractor shall establish an office with a local telephone listing, under the name of Contractor, to handle inquiries or complaints with regard to waste materials collection within the Town. All such calls shall be given prompt and courteous attention. The office shall be open from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding regular holidays, and shall have a published number for complaints after normal working hours.

21. Enforcement

The services furnished hereunder to said Town and its inhabitants shall be subject to such reasonable rules and regulations as Contractor may make from time to time, subject to the reasonable approval of the Flower Mound Town Council. Contractor may require authorization for ingress and egress from and upon the customer's private property for the purpose of garbage collection.

22. Non-collection Notice and Follow-Up

- A. Where the owner or occupant of any premises is maintaining improper or inadequate refuse containers or is otherwise in violation of the Town's ordinances with respect to the location of refuse containers or the nature, volume or weight of refuse to be removed from the premises, Contractor shall refrain from collecting all or a portion of such refuse and will notify the Town and the owner or occupant thereof within twenty-four (24) hours thereafter of the reason for such non-collection, using a standard identification tag approved by the Town.
- B. Where the Town is notified by a Residential Unit owner or occupant that Refuse has not been removed from his premises on the scheduled collection day and where no notice of non-collection or a change in collection schedule has been received from Contractor, the Town will investigate the matter, and if the investigation discloses that Contractor has failed to collect refuse from the subject premises without cause as supported by notice as described herein, Contractor shall collect the same on the same business day if notification to Contractor is provided by 3:00 p.m., but not later than 12:00 p.m. the next business day if notification is provided after 3:00 p.m.
- C. In the event Contractor shall fail to collect Refuse after the issuance of a collection order, such failure shall constitute an act of non-collection. If, within any month, Contractor shall be guilty of ten (10) or more acts of non-collection, the same shall be deemed an act of non-compliance within the contemplation of Section 30, "Liquidated Damages," of this Contract.

23. Transferability of Contract

Other than by operation of law, no assignment of this Contract or any right accruing under this Contract shall be made in whole or in part by Contractor without the express written consent of the Town. In any such assignment, the assignee shall assume all of the liabilities of Contractor.

24. Remuneration

The Town shall bill the Residential Units, and shall pay actual collections to Contractor on a monthly basis; such remittance to be paid as mutually agreed upon.

- (a) The Town shall add to the base rate, an amount equal to five percent (5%) for furnishing of garbage services within the corporate limit of the Town in full payment for the use of the streets, highways, easements, alleys, parks, and all other public lands and places within the Town (the "franchise fee"). The franchise fee shall be retained by the Town on a monthly basis.
- (b) It is understood that charges for refuse service to Residential Units will be billed and collected from such residential customers by the Town.

- (c) The Town will add to the residential base rate, an amount equal to four percent (4%) for billing all Residential Unit accounts, which shall be in addition to the franchise fee. This administrative charge shall be deducted at the end of the month before Contractor is paid by the Town and shall be retained by the Town for services rendered to the customers, based upon actual receipts collected by the Town and posted to customer accounts. The billing methods and arrangements may from time to time be revised by agreement of the parties. Remittances will be made directly to Contractor by the Town's Finance Department in conjunction with the first check run following month end.

25. Commercial and Industrial Accounts

Contractor will provide billing to and collection from all Commercial and Industrial Unit accounts. The disposal of temporary construction debris within the corporate limits of the Town shall be subject to this Contract. Contractor agrees to pay to Town a five percent (5%) franchise fee, as agreed upon between the Town and Contractor, on or before the last day of each month. Such fee will be based on the gross amount billed for all services rendered during the preceding month, excluding any sales taxes. Contractor shall quote rates for commercial and industrial services in compliance with the rate structure set forth in this Contract. Contractor shall bill Commercial and Industrial Unit customers directly, and the Town shall not be entitled to any compensation relating to such billing, other than the aforementioned franchise fee. Contractor shall have the right to suspend services to any Commercial or Industrial Unit Customer that does not timely pay for waste services after providing written notice to said Customer. If Contractor suspends service to a Commercial or Industrial Unit Customer for failure to timely pay said invoices, Contractor has the right to charge a service reactivation fee and/or finance charges or late payment fees if such service to the Commercial or Industrial Unit Customer is reinstated.

26. Customer Relations Contribution

In addition to any other contributions by Contractor referenced in this Contract, Contractor shall make an annual contribution each October, beginning in October 2016, of \$80,000 to the Town to assist in defraying costs incurred by the Town to maintain a customer relations program. This amount shall increase each October by 2.6% (the fixed Price Index rate) as described in Section 14, "Rates," specifically that portion entitled "Modification of Rates."

27. Books and Records

The Town and Contractor agree to maintain at their respective places of business adequate books and records relating to the performance of their respective duties under the provisions of this Contract and such books and records shall be made available at any time during regular business hours for inspection by the other party, upon reasonable advance notice. The inspecting party shall be responsible for all of their own expenses, including travel and contractual services.

28. Contractor as Independent Contractor of Town

Contractor shall be solely responsible for the actions of its employees during the performance of service under this Contract. Contractor shall assure the Town that the actions of Contractor's employees shall be in the best interests of the Town and its citizens. Contractor and its employees are independent contractors of the Town.

29. Equipment Assumptions and Intent

- A. The reasonable rates set forth above reflect the use of garbage hauling equipment, purchased new for this Contract, for residential collection and larger front-end load vehicles for the commercial routes. Contractor will utilize lighter-capacity single-axle collection trucks for those routes identified by the Town and Contractor as likely to be damaged by the use of heavier garbage hauling equipment (*i.e.*, on asphalt-paved streets and cul-de-sacs). The parties agree to work together to maintain the refuse system contemplated by this Contract in as modern, efficient, and environmentally and economically sound condition as can reasonably be accomplished, incorporating such innovation and improved methods as may be developed from time to time during the term and modifying this Contract as needed to provide for this spirit and intent.
- B. The Town reserves the right to inspect the vehicles and equipment (including Polycarts for garbage and recyclables) to be used pursuant to this Contract on or after September 1, 2016, to affirm Contractor's ability to begin service on October 1, 2016.

30. Liquidated Damages

Except for *force majeure* events as defined below, in the event Contractor shall fail to perform any of the terms or conditions of this Contract, the Town shall promptly notify Contractor in writing of the defect in performance. Thereafter, if Contractor does not correct or cure the defect in performance within five (5) business days after receipt of written notice, or in the case of defects that cannot be cured within five (5) days, if Contractor has not taken reasonable steps to effectuate a cure within five (5) business days after receiving written notice, the same shall constitute an act of non-compliance. For each such act, the Town may deduct from the consideration to be paid Contractor, as liquidated damages, the sum of \$250.00 per day for each day that each such act of non-compliance shall continue. In addition to the damages listed above, if any such continuing failures to perform adversely affect the delivery of service to any particular customer or customers, the Town may deduct from the consideration to be paid Contractor, as liquidated damages, the sum equal to one (1) monthly bill for that customer or customers, per adverse event reported that Contractor has not cured pursuant to this section. This remedy is hereby expressly made cumulative of all or any other remedies available to the Town, at law or in equity, for the breach of this Contract. The parties hereto agree that such liquidated damage amounts are fair and reasonable.

31. Termination

- A. If at any time Contractor shall fail to substantially perform terms, covenants or conditions herein set forth, Town shall notify Contractor by registered or certified mail addressed to Contractor at the address set forth herein of specific reasons in support of Town's claim that Contractor has substantially breached the terms and provisions of this Contract. Contractor shall be allowed a 30-day period from the date of receipt of said notice from Town to remedy any failure to perform. Should Town deem the failure to perform remedied, no hearing shall be held.
- B. Should Contractor fail to remedy its performance, after a hearing described herein, the Town may terminate this Contract and the rights and privileges granted to Contractor herein. A notice shall be sent to Contractor no earlier than ten (10) days before a hearing is scheduled. The notice shall specify the time and place of the hearing and shall include the specific reasons in support of Town's claim that Contractor has substantially breached the terms and provisions of this Contract. Should Town still deem Contractor to have failed in its performance, said hearing shall be conducted in public by the Town Council and Contractor shall be allowed to be present and shall be given full opportunity to answer such claims as are set out against it in the aforesaid notice. If, after said public hearing, the Town Council makes a finding that Contractor has failed to provide adequate refuse collection service for Town, or has otherwise substantially failed to perform its duties hereunder, the Town Council may terminate this Contract.
- C. Town may terminate this Contract during any renewal term without cause upon the annual anniversary of this Contract (October 1) by providing at least one hundred and twenty (120) days written notice to the Contractor before such annual anniversary date.

32. Notices

Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the respective part of the address set forth below:

If to the Town, at: 2121 Cross Timbers Road
 Flower Mound, Texas 75028
 ATTN: Mr. Jimmy Stathatos, Town Manager

If to Contractor, at: ATTN: General Manager
 6100 Elliott Reeder Rd
 Fort Worth, TX 76117

or such other addresses as the parties may hereafter specify by written notice delivered in accordance herewith.

33. Force Majeure and Storm Debris

- A. Notwithstanding anything herein to the contrary, Contractor shall not be liable for the failure to perform its duties if such failure is caused by a catastrophe, riot, war, terrorism, governmental order or regulation, fire, act of God or other similar or different contingency beyond the reasonable control of Contractor.
- B. Contractor and the Town understand and agree that, in the event of a hurricane, tornado, wind storm, flood, natural disaster, or other act of God, Storm Event Debris may result from such event. Contractor shall provide rates to collect and dispose of such Storm Event Debris to the Town. The Town is not obligated to select Contractor to perform the collection of Storm Event Debris.

34. Liability Insurance

- A. Contractor shall not commence work under this Contract until Contractor has obtained all the insurance required by this section, and certificates evidencing such coverage has been delivered to the Town. Such policies shall be issued by companies authorized to do business in the State of Texas, and the Town shall be named as an additional insured on all such policies except workers compensation. The failure by Contractor to keep in force all insurance required by this Contract shall be deemed a breach of this Contract.
- B. The following minimum limits of insurance shall apply to this Contract and must be maintained by Contractor at all times. Coverage may be accomplished by a combination of primary and excess insurance.

<u>Type Coverage</u>	<u>Per Occurrence Minimum</u>	<u>Aggregate Minimum</u>
Workers Compensation	As required by law and shall cover all employees including drivers.	As required by law.
Comprehensive & General Public Liability	\$2,500,000	\$10,000,000
Property Damage	\$1,000,000	\$ 1,000,000
Comprehensive Auto Liability Combined Single Limit	\$5,000,000	

35. Performance Bond

Contractor shall furnish a \$100,000 Performance Bond, annually, as security for the faithful performance of this Contract. Contractor shall pay premiums for the bonds described above. A certificate from the surety showing that the bond premiums are paid in full shall accompany the bond. Such certificate shall be submitted to the

Town with the bond on an annual basis. The surety on the bond shall be a duly authorized corporate surety authorized to do business in the State of Texas.

36. Indemnity

Contractor shall indemnify and save harmless the Town, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees arising out of a willful or negligent act or omission of Contractor, its officers, agents, servants and employees arising out of or in connection with the performance, attempted performance, or non-performance of the work and services under this Contract; provided, however, that Contractor shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees arising out of a willful or negligent act or omission of the Town, its officers, agents, servants and employees, or arising out of a claim that the Town was not authorized to award this Contract or such was in conflict with the terms of a prior contract executed by the Town.

37. Severability

In the event that any provision or portion thereof of any Contract Document shall be found to be invalid or unenforceable, then such provision or portion thereof shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of any Contract Document shall not affect the validity or enforceability of any other provision or portion of any Contract Document.

38. Venue

Venue for any action arising under or pursuant to the terms of this Contract shall lie exclusively in Denton County, Texas.

39. Enforcement

The Town grants unto Contractor the right to seek an injunction against any third party which is believed to be infringing on the rights of Contractor to this Agreement, including Contractor's franchise rights granted herein. By granting this right to Contractor, the Town in no way reduces its right or obligation to enforce this Agreement or any other Town ordinance relating to the collection and disposal of Waste. Furthermore, Contractor shall have all rights and remedies available to it under Texas law to collect delinquent payment of fees by the Town and/or Commercial Unit and Industrial Unit Customers. The Town agrees to take all steps necessary and permitted by law to require Customers to comply with the terms of this Contract.

40. Governmental Powers and Immunity

It is understood and agreed that by execution of this Agreement, Town does not waive or surrender any of its governmental powers, or sovereign immunity, nor does the Town waive any of its immunities from suit and/or liability.

(SIGNATURE PAGE TO FOLLOW)

TOWN OF FLOWER MOUND, TEXAS

Tom Hayden, Mayor

ATTEST:

Theresa Scott, Town Secretary

APPROVED AS TO FORM:

Town Attorney

CONTRACTOR

Name, Title

STATE OF TEXAS §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority in and for _____ County, Texas, on this day personally appeared _____, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the _____ of _____ and that he/she is authorized by said corporation to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 2016.

Notary Public in and for the State of Texas

Type or Print Notary's Name

My Commission Expires:

Town Council Future Agenda Items



SCHEDULED	6/6/2016	Presentation	Special Recognition of Hollywood Feed, LLC for their generous sponsorship of a message board and dog agility equipment at The Hound Mound at Heritage Park.
		Consent	Consider approval of the purchase of traffic signal heads and parts, in the estimated annual amount of \$50,000.00, from McCain Inc, through a City of Grand Prairie contract.
		Consent	Consider approval of an Intergovernmental Cooperative/Mutual Aid Agreement for Operational Assistance in Providing Security for the 2016 Republican National Convention in Cleveland, Ohio.
		Consent	Consider approval of an ordinance adopting Atmos Energy Corp., Mid-Tex Division's rate tariffs that reflect the negotiated rate change pursuant to the Rate Review Mechanism process.
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on May 16, 2016.
		Consent	Consider approval of a grant application to the Texas Water Development Board for supplementing the purchase of automated road closure signs; acceptance of money if grant is awarded; provision of a 25% match to grant funds if grant is awarded; execution of an agreement with the Texas Water Development Board if grant is awarded; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Sagebrush Drive Change Order No. 3.
		Consent	Consider approval of a Professional Services Agreement with Schrickel, Rollins and Associates, Inc., to provide master planning and construction documents associated with the Heritage Park of Flower Mound Phase III project, in the amount of \$139,750.00; and authorization for the Mayor to execute same on behalf of the Town.

SCHEDULED	6/6/2016	Regular	Public Hearing to consider approval of an ordinance amending Chapter 94, "Trees", of the Land Development Regulations (LDR16-0002 – Tree Ordinance Amendments) of the Code of Ordinances by amending Section 94-22, entitled "Protected tree lists," Section 94-23, entitled "Tree survey; development projects," Section 94-32, entitled "Trees located in buildable area," Section 94-39, entitled "Mitigation requirements for authorized tree removal," Section 94-40, entitled "Incentives for preservation of protected, specimen, and historic trees," Section 94-51, entitled "Enumeration," Section 94-65, entitled "Residential lots," Section 94-66, entitled "Approved tree planting lists," Section 94-81, entitled "Exceptions," and deleting Section 94-67, entitled "Landscape credit for large trees," and to consider adopting an ordinance providing for said ordinance. (Planning and Zoning Commission recommended by a vote of to at its May 23, 2016, meeting.)
		Regular	Public Hearing to consider a request for rezoning (ZPD16-0004 –The Pines of Flower Mound) to amend Planned Development District No. 82 (PD-82) with Retail District-2 (R-2) uses, by amending the Development Standard(s) to amend the Comprehensive Sign Package, and to consider adopting an ordinance providing for said amendment. The property is generally located south of Flower Mound Road and west of Gerault Road. (Planning and Zoning Commission recommended by a vote of to at its May 23, 2016, meeting.)
6/20/2016	Presentation		Proclamation for National Parks and Recreation Month
		Consent	Consider approval of an ordinance amending Chapter 38 of the code of ordinances, entitled "Fire Prevention and Protection" to provide for adoption of the International Fire Code, 2015 edition and local amendments thereto.
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on June 6, 2016.
		Consent	Bakersfield Park Pedestrian Bridge Construction Award.
		Consent	Consider approval of the minutes from a work session of the Town Council held on June 16, 2016.
		Consent	Yucca Drive & Woodbine Street Reconstruction Design Award.
		Consent	FM 2499 @ FM 3040 Water Line Replacement Construction Award.
		Consent	Consider approval of an ordinance amending Chapter 14, "Buildings and Buildings Regulations," Article XV, of the Code of Ordinances of the Town of Flower Mound, by adopting the 2015 edition of the International Energy Conservation Code and local amendments thereto.
		Consent	Consider approval of an ordinance amending Chapter 14, "Buildings and Building Regulations," Article XIV, of the Code of Ordinances of the Town of Flower Mound, by adopting the 2015 edition of the International Residential Code and local amendments thereto.

SCHEDULED	6/20/2016	Consent	Consider approval of an ordinance amending Chapter 14, "Buildings and Building Regulations," Article IV, of the Code of Ordinances of the Town of Flower Mound, by adopting the 2015 edition of the International Mechanical Code and local amendments thereto.
		Consent	Consider approval of an ordinance amending Chapter 14, "Buildings and Building Regulations," Article III of the Code of Ordinances of the Town of Flower Mound, by adopting the 2015 edition of the International Plumbing Code and by adopting the 2015 edition of the International Fuel Gas Code together and local amendments to such codes.
		Consent	Consider approval of an ordinance amending Chapter 14, "Buildings and Building Regulations," Article II of the Code of Ordinances of the Town of Flower Mound, by amending Section 14-31,"International Building Code", and by adopting the 2015 edition of the International Building Code with amendments.
		Consent	FM 2499 @ FM 3040 Water Line Replacement Testing Award.
	7/18/2016	Consent	Material Testing Services Selection.
		Consent	FM 2499 12-Inch Water Line Phase III Construction Award.
		Consent	Professional Engineering Services Selection.
		Consent	Individual Park Projects (Gerault Game Field) Change Order 1 and Final Acceptance.
		Consent	Individual Park Improvements (Glenwick Park Bridge) Construction Award.
	8/4/2016	Consent	FM 2499 12-Inch Water Line Phase III Testing Award.
	8/15/2016	Consent	Oak Street Lift Station and Force Main Change Order No. 3 and Final Acceptance.
	9/6/2016	Consent	FM 2499 / Gerault Drainage and Intersection Construction Award.
	10/3/2016	Consent	2015 Street Reconstruction Construction Award.
	10/17/2016	Consent	2015 Street Reconstruction Testing Award.
FUTURE		Presentation	Tentative Strategic Planning Session of the Town Council
		Presentation	Public Information Act and Open Records Request review and discussion.

FUTURE	Consent	Consider adoption of an ordinance granting to Oncor Electric Delivery Company LLC, its successors and assigns, an electric power franchise to use the present and future streets, alleys, highways, public utility easements, public ways and public property of the Town of Flower Mound, Texas, providing for compensation therefor, providing for an effective date and a term of said franchise, providing for written acceptance of this franchise, providing for the repeal of all existing franchise ordinances to Oncor Electric Delivery Company LLC, its predecessors and assigns, and finding that the meetings at which this ordinance is passed is open to the public.
	Regular	PLACEHOLDER: Amend Ch. 94 Trees
	Regular	Consider a request for a Record Plat (RC16-0005 – Longhorn Addition) to create a residential subdivision, with an exception to allow residential access from a rural collector pursuant to Section 82-134 of the Code of Ordinances. The property is generally located east of Scenic Drive and south of Kensington Court. (The Planning and Zoning Commission recommended by a vote of to at its , 2016, meeting.)
	Regular	Public Hearing to consider adopting on first reading an ordinance of the Town Council of the Town of Flower Mound, Texas, granting a franchise for solid waste services to Community Waste Disposal, L.P.
	Regular	PLACEHOLDER Consider approval of Exotic Animal Ordinance
	Regular	Public Hearing to consider a request for a Specific Use Permit No. 447 (SUP16-0006 - Kids Discovery District) to permit an indoor amusement and recreation facility, and to consider adopting an ordinance providing for said amendment. The property is generally located north of Northshore Boulevard and east of Long Prairie Road. (The Planning and Zoning Commission recommended by a vote of to at its , 2016, meeting.)